

SEPARATION OF POWERS AND INDEPENDENCE OF THE CONSTITUTIONAL COURT AND EQUIVALENT BODIES

Importance

The degree of confidence achieved today by the Judiciary of the Dominican Republic, has fostered a strong tendency towards the prosecution of the resolution of conflicts generated by relationships between individuals of rights, creating a state judicial agency that crams each day, without any filter control, the court files, making it impossible that the current justice system can give a satisfactory answer, promptly and effectively to the requests made.

It's times like these where the judge's role becomes more important. The judge becomes the benchmark for what is right in so far as to administer justice, to the extent that guarantees the rights of all individuals from the perspective of law perspective it does not respond to criteria of utility, but of respect rights and dignity of every human being.

There is consensus that the transformation of justice is a priority and an urgent necessity as a means to strengthen the rule of law which the people aspire, we can show justice more effective, more efficient, more accessible, more transparent, less levels of impunity and violation of human rights and a more developed awareness of their own problems and the role it should play in society as a factor of legal certainty and social harmony.

We hope that the courts are not only courts but also courts, where the Constitution is no longer just a political pact to become the ultimate source of all our rights, applies in its entirety under the principle of the supremacy of the Constitution on the procedural laws. Justice has ceased to be marble buildings, impervious, free from the scrutiny of society, a kind of black box that came out charged and found guilty or innocent blindfolded statues, much Latin and eternal and incomprehensible scenario discussions specialists. That's good, very good, because although justice has become the news and therefore the judiciary in a consumer product offered by the media, the fact remains that the media play an important role in keeping informed the society about the conduct of judicial officers, helping to regulate the actions of these and ensure that they, at all times, be law abiding, are consistent with individual rights, and expression of constitutional guarantees.

Justice today, can not be solely responsible or the State, on the one hand, much less of the judiciary. Of the courts of the State which manifests through the judges, in a fundamental way, today is inadequate.

The modern tendency is precisely the responsibility of good governance or administration of justice, as they prefer to call others is everyone's responsibility, because in one way or another we need justice.

Since the advent of the Dominican people become a nation organized free and independent State, with the name of the Dominican Republic, in accordance with the provisions of the Constitution proclaimed in 1844, control of constitutionality has been an exclusive monopoly of the Dominican Judiciary . In 167 years of republican history has fallen to the courts of exclusive, permanent and constant arbitrate the question of the constitutionality, of determining when an act of government was or was not contrary to the Constitution. To this end the judiciary has done this by fuzzy control systems and focused, sometimes running concurrently, and on one occasion separately.

The history of our constitutional law is the history of judicial control of constitutionality in the Dominican Republic.

The question of constitutionality in the Dominican Republic is characterized by having gone through five different stages over 167 years of life as an independent state, which are clearly differentiated in the constitutional reforms that have been made. The first stage covers the period from 1844 to the enactment of the 1924 Constitution, a second phase which runs from the Constitution of 1924 until the effective date of the year 1927, a third stage is from the term of the Constitution of 1927 until the entry into force of the Constitution of 1994, a fourth stage that extends from the entry into force of the year 1994 to 2010, and a fifth stage from January 26, 2010, in which the liability of the guarantor of the Constitution and respect for individual and social rights embodied in it is shared by the judiciary through the knowledge of the issues as a constitutional exception (fuzzy control), and the Constitutional Court through the concentrated control.

The Judiciary and State Power

Long prevailed in the Dominican Republic the idea that the judiciary was dominated by a kind of ghost: that of dependency and corruption, which could not be eradicated. Skeptics in their insides pronounced the words of Simón Bolívar, which serve as an epitaph, which read: "America is ungovernable. Those who have served the revolution have plowed the sea. "

The judiciary has made considerable progress in recent years, but in no way implies that we are confident and satisfied. We are aware that there is a long road ahead, a road that never ends, because we think of justice as a service. A judge is nothing more nor less than a public servant, his clients are members of a society as any in existence since the beginning of humanity is evolving, therefore, the Judiciary must develop in parallel, on pain of becoming in a living fossil that does not fulfill its role of an efficient and timely manner, thus losing their very reason to exist.

The Dominican Supreme Court is proud to say that has claimed the right of Dominican society to have an independent judiciary. Previously existed only in theory, a judiciary, and the resulting effect was an organ of state with a judicial function, but could never say that it was a judiciary.

Constitution of the Dominican Republic, Article 149 .- The Judiciary. Justice is administered free of charge, on behalf of the Republic by the Judiciary. This power is exercised by the Supreme Court and other courts established by this Constitution and the laws.

Paragraph I. - The judicial function is to administer justice to decide disputes between individuals or corporations, in private or public, in any kind of action, judging, and having judgments executed. His practice is for the courts and tribunals established by law. The judiciary enjoys functional autonomy, administrative and budgetary. "

Supremacy of the Constitution and its relationship to judicial independence

Under the principle of the supremacy of the Constitution, is an inescapable duty of constitutional justice, whose maximum representation embodies the Constitutional Court and the judiciary, as guardian of the Constitution and respect for social rights and individual embodied in it, as well as guaranteeing the rule of law, to act as the controlling body of all State action, in order to prevent overreaching and institutions to ensure the rule of law.

Dominican Republic's Constitution, Article 6 .- "Supremacy of the Constitution. All persons and bodies exercising public powers are subject to the Constitution, the supreme law and legal foundation of the State. Are null and void any law, ordinance, resolution, regulation or act contrary to this Constitution. "

Constitution of the Dominican Republic, Article 184 .- "Constitutional Court. There will be a Constitutional Court to ensure the supremacy of the Constitution, defending the constitutional order and the protection of fundamental rights. Its decisions are final and irrevocable and binding precedents for the government and all organs of the State "

In the same vein, it should be noted that the Basic Law stipulates in its Third Transitory Provision: "The Supreme Court will hold the functions conferred by this Constitution to the Constitutional Court and the Judicial Council to integrate both these instances," under which the Supreme Court has continued the process of knowledge of the actions of constitutionality, under the direct control or via concentrated.

Constitution of the Dominican Republic, Article 188 .- "Fuzzy control. The courts of the Republic will meet the constitutional exception in cases brought before it. "

The Constitution and Body Control

The judicial control of constitutionality is the ultimate expression in a country of the existence of a genuine rule of law, as it involves the submission of the actions of the authorities for legality. If the aim is to ensure that all the establishment of state subject to the Constitution, which derive their powers and functions.

Constitution, Article 5 .- "basis of the Constitution. The Constitution is based on respect for human dignity and on the indissoluble unity of the nation, the common fatherland of all Dominicans. "

Limits Constitutional Provisions on State Powers

The only way that government beyond constitutional justice is adjusting its actions to the Constitution of the Republic, acting within the powers reserved by it to each agency's authority. The limit is necessary for all branches of government are found in the provisions of Article 6 of the Constitution. It follows that when they go beyond the limits of the powers expressly enshrined in our substantive law, constitutional justice advocacy body acts as the institutional order, restoring the law violated.

Constitution, Article 6 .- "... are null and void any law, ordinance, resolution, regulation or act contrary to this Constitution."

For his part, Article 4 of the Constitution states: "Article 4 .- The National Government and separation of powers. The government of the Nation is essentially civil, republican, democratic and representative. It is divided into Legislative, Executive and Judiciary. These three branches are independent in the exercise of their functions. Their managers are responsible and can not delegate its powers, which are only determined by the Constitution and the laws. "

Standards of institutional checks and balances

Constitution, Article 154 .- "Powers. Belongs exclusively to the Supreme Court, without prejudice to any other powers conferred by law:

- 1) To determine in a single instance of criminal cases against the President and the Vice-President, senators, deputies, judges of the Supreme Court, Constitutional Court, ministers and deputy ministers, the Attorney General's Office, judges and prosecutors general appellate courts or equivalent, judges of the superior courts of land, the Supreme Administrative Court and the Superior Electoral Tribunal, the Ombudsman, members of the diplomatic corps and heads of missions accredited abroad, members of the Junta Central Electoral, the Chamber of Auditors and of the Monetary Board;
- 2) To hear appeals in accordance with the law;
- 3) To know, as a last resort, whose knowledge of the causes in the first instance within the jurisdiction of the courts of appeal and their equivalents;
- 4) Appoint, in accordance with the Judicial Career Law, the judges of the appellate courts or their equivalents, the district courts or their equivalent, of training judges, magistrates and the deputies, judges of any other court of the judiciary created by the Constitution and laws. "

Constitution, Article 155 .- "Integration. The Judicial Council shall be composed as follows:

- 1) The President of the Supreme Court, who will preside;
- 2) A Judge of the Supreme Court, elected by the plenary of the same;
- 3) A Judge of Court of Appeal or the equivalent, chosen by their peers;
- 4) A Judge of First Instance or the equivalent, chosen by his peers;
- 5) A Magistrate or the equivalent, chosen by their peers ...

Paragraph I. - The members of this council, except the President of the Supreme Court, will remain in these roles for five years, will cease to exercise their judicial functions as are members of the council and will not qualify for a new term on the council.

Paragraph II .- The law shall define the functioning and organization of this council. "

Constitution, Article 156 .- "functions. The Judicial Council is the permanent organ of administration and discipline of the judiciary. Have the following functions:

- 1) Submit to the full Supreme Court candidate or candidates for appointment, determination of hierarchy and promotion of judges of various courts of the judiciary, in accordance with the law;
- 2) financial and budgetary management of the Judiciary;

- 3) The disciplinary control over judges, officials and employees of the Judiciary with the exception of members of the Supreme Court of Justice;
- 4) The application and implementation of performance assessment tools for judges and administrative staff members of the judiciary;
- 5) The transfer of judges of the Judiciary;
- 6) The establishment of administrative positions of the Judiciary;
- 7) The appointment of all officers and employees who report to the Judiciary;
- 8) Other duties assigned under the law. "

The First Transitory Provision of the Constitution provides that the Judicial Council should be established within six months after the entry into force of this Constitution.

Materialize until the enactment of the law that define the functioning and organization of the Judicial Council, the disciplinary system will remain covered by the provisions of Law no. 327-98 of the Judiciary:

Judicial Career Law, Article 44 .- "The judges are subject to this law are prohibited:

- 1) Conduct activities unrelated to their duties;
- 2) To abandon or suspend their work without prior approval of competent authority, except in cases of emergency or force majeure;
- 3) Delay or deny unreasonably dispatch of business in his office or the provision of services that apply;
- 4) Display both the service and in private life, a behavior that affects the respectability and dignity of the judicial function.
- 5) Solicit, accept or receive, directly or through intermediaries, bonuses, grants, gifts, commissions or rewards, as payment for legal business to his inauguration;
- 6) Receive more than one payment from the treasury, except in cases provided by law;
- 7) Borrow money and incur obligations without the prior written participation to the Supreme Court, with individuals or legal entities which have relationships because of the judicial role to play;
- 8) Get individually concessions or benefits from other branches of government involving official privilege on his behalf;
- 9) Assist the workplace drunk or under the influence of drugs or narcotics;
- 10) Provide consultation on legal issues currently contentious character, or may acquire that character;
- 11) All other prohibitions established by law or regulation, or resulting from the proper understanding and observance of social and administrative ethics.

PARAGRAPH I. - The judges can not practice law either directly or through intermediaries, or other profession that distracts from the performance of their official duties or is incompatible with the dignity of the position they play. This provision does not abrogate the exception provided by Article 86 of the Code of Civil Procedure, for the causes that can defend the judges, but even in these cases can not do it before the court in which they exercise their functions.

PARAGRAPH II .- Do not eligible to serve in the same court or tribunal and the spouses or partners who are united by ties of consanguinity or affinity to the fourth degree.

PARAGRAPH III .- Do not be eligible for the national judiciary the active military, political leaders and activists, ministers of any religious cult based, lawyers with a criminal record or disciplined for acts that undermine his professional reputation due. "

Judicial Career Law, Article 45 .- "It is incompatible with the permanent functions of the judges paid subject to this law:

- 1) Perform other office of profit and permanent, except as provided by Article 108 of the Constitution;
- 2) Be a part at a time, of any body or entity of the Government, and shall not belong to political parties or associations, nor to professional organizations whose membership is not limited only to those who have their endowment;
- 3) Participate in the management or business administration or economic, in the sense that somehow leads to a duality of powers, rights and interests.
- 4) Any statement of hostility to the principle or form of government and any public statement inconsistent with the reservation that imposes its functions. "

Judicial Career Law, Article 46 .- "The acceptance of a new paid position incompatible with the exercise being implies the renunciation of it."

Judicial Career Law, Article 47 .- "A judge who finds it sub-judice will cease exercising its functions, will fail to receive the salary. If is acquitted or discharged, shall be ipso facto reinstated to his position, and he had paid the wages forgone. These provisions are only applicable to crimes and offenses that are punishable by imprisonment. Be considered sub-judice, where crime, since the person has been seized or has been issued against her conduciveness warrant, in misdemeanor matters when he has been detained or cited by the prosecution by the court concerned, or sent to its jurisdiction. The fact that the person to obtain bail does not change the condition of being sub-judice. In this case, the summons shall be in the space of five days following the day on which the complaint was filed or the complaint and to appear at the end of three days off.

The cause will always be a direct way in corrections.

"These are mistakes that lead to oral reprimand, the following:

- 1) Failure time job without good cause;
- 2) Neglecting the performance and quality of work;
- 3) To suspend the work without good cause;
- 4) Neglecting the care, supervision and order of the records, materials, goods and equipment placed in their care;
- 5) Neglecting or attend negligently or improperly to the parties in court proceedings and lawyers;
- 6) Give the rude treatment clearly subordinate to higher authorities and the public to seek information;

- 7) Refusing to assist in any task related to the performance of his office, when it applies, a competent authority;
- 8) Any other acts or omissions under which, according to the sanctioning authority, are similar in nature to the above and does not warrant further punishment.

Are faults that result in written warning, the following:

- 1) Let's go to work or absent from it, for one (1) day without justification;
- 2) Neglecting the management of documents and records, without appreciable effect;
- 3) commit a second offense of a similar nature;
- 4) Any other acts or omissions, be classified as misdemeanors, according to sanctioning authority, is similar to the above and do not warrant further punishment.

Are faults that lead to suspension to thirty (30) days, the following:

- 1) Failing repeatedly duties improperly exercise the rights or the prohibitions or incompatibilities constitutional or legal when the act or omission have serious consequences for the citizens or the State;
- 2) try repeatedly disrespectful, aggressive, inconsiderate or offensive subordinates to their superiors and the public.
- 3) Conduct in the workplace activities outside their official duties;
- 4) consistently neglect document management and records, with a result of damage or injury to citizens or the State;
- 5) cause or result in damage or deterioration of goods entrusted to, negligence or lack of due care;
- 6) Do not give satisfactory annual performance evaluation as indicated in this law;
- 7) Delays or unreasonably deny clearance of cases to his office;
- 8) Perform partisan activities, as well as soliciting or receiving money and other assets for political purposes in the workplace;
- 9) To promote, participate in or support activities contrary to public policy, to the detriment of the good performance of its functions or duties of other employees and officials;
- 10) To disseminate or circulate any issues or classified documents, confidential or sensitive matters which the judge is aware of his inauguration;
- 11) Any other acts or omissions that, in the opinion of the competent authority, whether similar or equivalent to other offenses set forth in this article and do not warrant further punishment.

Are serious offenses, which result in dismissal, as judged by the Supreme Court, the following:

- 1) Solicit, accept or receive, directly or through others, fees in cash or in kind, or soliciting, accepting or receiving, directly or through another person, gratuities, donations, gifts or rewards, as payment for the provision of services that are inherent to the position performs. For the purposes of this missing, presumed as bonuses, gifts, commissions, gifts, rewards and similar illegal profits, economic content, disciplinary

sanctions under this law, the sums of money or goods in kind, for such concepts, receive the relatives of officials, to the third degree of consanguinity and second degree of affinity, even if evidence is obtained, certain evidence or testimony and unequivocal facts or actions subject to sanctions;

- 2) Failure to fulfill the duties, rights or exert undue respect the prohibitions and no constitutional or legal incompatibilities when the act or omission have serious consequence of damage or injury to citizens or the State;
- 3) Having involvement, either directly or through third persons, firms or companies having economic relations, when these relations are linked directly with a matter whose knowledge is in charge of that court;
- 4) Borrow money and incur obligations to natural or legal persons being the judge empowered to hear a matter relating to such persons;
- 5) Make or permit acts of fraud in relation to the recognition and payment of salary, allowances, subsidies, incentives, bonuses or benefits;
- 6) Collect subsistence wages, or bonuses for services not performed or not subject to payment, for a period longer than actually spent performing the service;
- 7) Engaging in assault, libel, slander, insubordination or immoral conduct at work, or in any act detrimental to the good name to the interests of the judiciary;
- 8) Being convicted criminally for an offense or crime to deprivation of liberty;
- 9) Accept a foreign government position, function, honor or distinction of any kind without prior permission of the National Government;
- 10) engage in activities incompatible with the decorum, social morality, the performance in office and the respect and loyalty due to the administration of justice and the community;
- 11) Failure to attend work for three (3) consecutive days, without justification, thus incurring the abandonment of post;
- 12) Recidivism in misconduct that have been cause for suspension of thirty (30) days;
- 13) Report to work drunk or under the influence of narcotics or drugs;
- 14) Committing any other offenses similar to those above by their nature and severity, according to the sanctioning authority. "

Legal Guarantees

It is true that the court when hearing a case may not fall into the hipergarantismo, which is the understatement that makes the evidence submitted, to the detriment of society, but it should not fall into the infragarantismo, which is the overvaluation of proof, to the detriment of the accused. The judge must find the right point of balance, which in most cases gives the wisdom and common sense, on a case by case basis.

Today we talk about access to justice, lovely word, the word dream. Access to justice is that courts have the doors open purely and simply, the physical doors to the public, users, but the judge opened the doors of his heart to call for justice, which will increasingly make citizens, those who can not afford to pay lawyers, or have no means to express what they have, those who have no friends and no one to touch the heart of the judge for justice.

Regarding this point, it is noteworthy that there is not one Dominican who is not exposed to go to court. In the best case, to claim our rights, and the worst, to account for our

actions in public life or private. In both cases we expect the judge to act independently, impartially and with respect for the law.

Constitution, Article 68 .- "Guarantees of fundamental rights. The Constitution guarantees the effectiveness of fundamental rights, through the care and protection mechanisms that offer a person the ability to obtain satisfaction of their rights, against the obligors or debtors of the same. Fundamental rights are binding on all public authorities, which should ensure its effectiveness in the terms established by this Constitution and the law. "

Constitution, Article 69 .- "Effective judicial protection and due process. Every person in the exercise of their rights and interests, is entitled to effective judicial protection, respect of due process that will consist of the minimum guarantees set out below:

- 1) The right to justice accessible, timely and free;
- 2) The right to be heard within a reasonable time by a competent jurisdiction, independent and impartial tribunal previously established by law;
- 3) The right to be presumed innocent and treated as such, until it has been declared guilty by decree absolute;
- 4) The right to a public trial, oral and adversarial, with full equality and respect the right of defense;
- 5) No person shall be tried twice for the same cause;
- 6) No person shall be compelled to testify against himself;
- 7) No person shall be tried except under laws that predate the act which he is charged, before a competent court and following all the formalities of each trial;
- 8) There is no evidence obtained in violation of the law;
- 9) Any sentence can be appealed in accordance with the law. The superior court shall not aggravate the penalty imposed when only the convicted person to appeal the sentence;
- 10) the rules of due process apply to all sorts of legal and administrative proceedings. "

Constitution, Article 70 .- "habeas data. Everyone has the right to a judicial action to deal with the existence and access data from it appearing on bank records or public or private data and, if false or discriminatory, requiring the suspension, modification, updating and confidentiality those under the law. Will not affect the confidentiality of sources of news reporting. "

Constitution, Article 71 .- "writ of habeas corpus. All persons deprived of their freedom or be threatened, unlawfully, arbitrarily, is entitled to a writ of habeas corpus before a competent court, by itself or by anyone acting on its behalf in accordance with the law , to hear and decide, in a simple, effective, quick and summary, the legality of the deprivation or threat of freedom. "

Constitution, Article 72 .- "under Action. Everyone is entitled to a writ of amparo to claim before the courts, by themselves or by anyone acting on its behalf, the immediate protection of their fundamental rights are not protected by habeas corpus, when they are violated or threatened by any action or omission of any public or private authority to enforce compliance with a law or administrative act, to ensure the rights and interests and

diffuse. In accordance with the law, the procedure is preferred, summary, oral, public, free and unencumbered by formalities "

Constitution, Article 73 .- "Invalidity of acts which subvert the constitutional order. Are null and void acts of the usurped authority, the actions or decisions of public authorities, institutions or people to alter or subvert the constitutional order and any decision reached by requisitioning of armed force. "

Rule of Law

A Social Democratic State of Law is something more than respect for the outcome of elections. It also means that justice is the competent and appropriate for citizens they will safeguard their rights effectively, solving conflicts that concern them and promoting harmony allowing cohesion and prevent social exclusion.

Constitution, Article 7 .- "social and democratic state of law. The Dominican Republic is a social and democratic state of law, organized as a unitary republic, founded on respect for human dignity, fundamental rights, labor, popular sovereignty and the separation and independence of public powers. "

Constitution, Article 8 .- "Essential role of the state. Function of the state is the effective protection of individual rights, respect for their dignity and obtaining the means to enable them improve on an equal, equitable and progressive, within a framework of individual liberty and social justice compatible with public order, general welfare and rights of all people. "

Independence from the perspective of the Judiciary

Definitely, there may be economic growth and sustainable without domestic and foreign investment, but there can be no investment without legal certainty and legal security there can be no independence of the judiciary, as there can be no independence of the judiciary without permanence of judges in their positions, and stay only guarantee of tenure.

Constitution, Article 151 .- "Independence of the Judiciary. The judges and members of the judiciary are independent, impartial, responsible and inflexible and are subject to the Constitution and laws. Can not be removed, dismissed, suspended, transferred or retired, but for some of the causes for and guarantees provided by law. "

Judicial Independence VS. Independence of Justice

When the August 3, 1997 were chosen by the National Judicial Council members of the current Supreme Court, sworn in April and put on hold the 5th of that month, there was no doubt that Judicial Power started to thresh different paths. That one of their main goals was to lay the groundwork for implementing the constitutional prerogative of their independence as a way to eradicate the corruption that was rampant for more than a court. The Judiciary is the third branch of government. It is a state power. This independence is not enough to be recognized as a mere rhetorical statement, it is necessary that the other two branches of government to accept and recognize that independence. The best performance of the judiciary is premised irreplaceable independence of its institutions over other branches of government and autonomy of judges. But the rule of law is not

enough separation and independence of powers. One thing is the independence of the judiciary and another thing is the independence of justice. The independence of the judiciary is that judges act independently and without being directed in their decisions by higher courts. We can say that the independence criteria must be understood as non-horizontal impact may come from the other two branches of government and non-vertical impact, which may come from the judiciary itself.

We are not afraid of challenges. The Supreme Court of Justice has successfully taken. Resistance to pressures from different sectors from the beginning wanted to penetrate the judiciary is without doubt the greatest and worst of the obstacles we had to save. Our efforts to raise the flag of judicial independence have been strenuous. We have laid many traps and we have escaped from them, we have put a lot of tripping and we laughed, we've been tempted and have resisted.

Judicial independence should not only be seen as the independence of the judiciary from other branches of government, the so-called independent body, but also the independence of individual judges within the judiciary, functional independence. It is clear that as a judge in training, has greater confidence in the decisions made and, therefore, take them with greater security and independence of criteria, without being coerced in their deepest beliefs by other peers and or interpretations of law that these doest.

We electors of Dominican society to maintain our independence process of all judges and above all transparency in the justice sector. justice that has to be effective. What society expects is a judiciary that gives a rapid, timely and efficiently to the problems that arise and is a great goal, but also the great challenge today is the judiciary.

In the Dominican Republic the judiciary enjoys today a complete and sustainable independence, both externally and internally. We almost passed the first generation of judicial reform, going beyond the issues of independence to focus our attention on the second generation of reform, consisting of meeting in a prompt and efficient demand justice for the population.

In the same way that only a democratic state allows the free play, enjoyment and discussion of ideas, and guarantees civil liberties and fundamental rights of human beings, the proper and sound administration of justice, with the necessary budget legal certainty and the rule of law, can only be obtained with the independence of the judiciary. Strengthening the independence of the judiciary and its reform and modernization have been one of the great achievements, highlighting the fact that the Dominican reform process could be considered a model in Latin American countries.

Where once the independence of justice was important, now is crucial, because of the increasing importance of the administration of justice in modern society. This is due, in part because society has become dependent issue and the legal system, but even more by the fact that courts are more often aware of social problems that impact in the context of society as that affect the fundamental underestimate.

Independence of the Constitutional Court

Since the founding of the Republic has been the judicial control of constitutionality which was enshrined in the Constitution of November 6, 1844, our first Constitution, which established the fuzzy control. Throughout the historical development which we shall present the only body on an exclusive basis to hear the appeal of constitutionality is the judiciary, which is dominated from the start of the Republic by the fuzzy control,

except Constitution of 1924 which first implemented the concentrated control and the 1994 constitution that established the two systems.

As of January 26, 2010, the judiciary loses its exclusivity is to share with a non-judicial body is the Constitutional Court.

In the period since the enactment of the Constitution of 1994 until the reform of 2010, the question of constitutionality is subject to two systems concurrently control of constitutionality: the fuzzy control and concentrated control, so it a mixed system.

In the fuzzy control all the country's courts are empowered to hear constitutional issues where there is dispute between the parties and is offered as an exception to the unconstitutionality of a law, ordinance, resolution, regulation or any act by public authorities , not judgments, as these can only be attacked by the remedies provided by law. The law traditionally found its legal basis supporting the matter in the former Article 46 of the Constitution.

Through the fuzzy control the Supreme Court can act in two ways: 1st. as the Court of Cassation, in chambers Reunidas or any of its three rooms, meeting environmental ultimately unconstitutional and 2nd. en banc, to hear criminal cases where defendants are listed as officers covered by the privilege of jurisdiction referred to in Article 67 of the Constitution, or when acting in disciplinary powers.

As the concentrated control, our highest court has the authority in accordance with the requirement of paragraph 1st. Article previously indicated, to learn exclusively in a single instance of the constitutionality of laws, at the request of the Executive, one of the Presidents of the chambers of Congress or an interested party.

This stage is characterized for the first time in the constitutional history of the country converge at the same time the two control systems: fuzzy control and concentrated control. Although as we said, in 1924 introduced the concentrated control, it was only appropriate when dealing with laws, decrees, resolutions and regulations that interfere with individual rights enshrined in the Constitution, which were established in Article 6, as inherent in human personality. And when the matter was referred by the courts of background they were forced to terminate until the Supreme Court, the only body competent to deal with the issue of constitutionality, the case will fail.

As of January 26, 2010, the Supreme Court, with the launch of the Constitutional Court has no jurisdiction to hear via the main action of unconstitutionality, attribution has been assigned to the new body . She and her, the entire judiciary of the country, they only charged with deciding the exceptions of unconstitutionality under the provisions of Article 188 of this reform, which states that "The courts of the Republic will meet the exception of constitutionality in matters submitted to it, returning to fuzzy control, with the limitations outlined below.

On the basis of fuzzy control we believe it appropriate to recall that in our country, on the principle of the supremacy of the Constitution, has established an unblemished jurisprudence is deeply rooted in the consciousness of our judges, who has attained the status of legal culture, under which the constitutionality of a statute, ordinance, regulation or act contrary to the Constitution, which arose in connection with a judicial proceeding in any matter, can be pronounced not only to be presented as a constitutional exception for any party appearing in it, but every court dealing with a process is required to examine and pronounce on its own initiative, ie without being prompted, the

unconstitutionality of any act of public authority that is contrary to the Constitution of the Republic.

Making a purely academic exercise, we note that the current constitutional text that view is strengthened by Article 6 of the Constitution, by providing: "Article 6 .- The supremacy of the Constitution. All persons and bodies exercising public powers are subject to the Constitution, the supreme law and legal foundation of the State. Are null and void any law, ordinance, resolution, regulation or act contrary to this Constitution. " It follows that with the present Constitution, the fuzzy control system of constitutionality will not be altered in substance and that all judges in the country for litigation attorneys who are competent, regardless of the area concerned, judges continue to constitutionality, but only as long as the constitutional rule which is discussed is relevant to solving the case of the species, being forced to rule on it, one of two ways: one, when requested by either party in the process, and two ex officio, ie without any formalities and without anyone requesting it because they can not ignore a summons to a Constitution that they have sworn to uphold.

We think it appropriate to add that the power of courts to declare unconstitutional a provision is limited to the matter in dispute has not been previously decided by the Constitutional Court, as in this case, because of erga omnes binding of their sentences they imposed on all public authorities and obviously, the entire judiciary.

Consequently, both the highest judicial tribunal of the Republic, like other country's courts when deciding on an allegedly unconstitutional rule, must take into account what has been the decision thereon adopted by the Constitutional Court, and if have been tried previously, subject to the criterion.

Article 184 of the Constitution promulgated on January 26, 2010, covers aspects of constitutional control, stating:

Constitution, Article 184 .- "Constitutional Court. There will be a Constitutional Court to ensure the supremacy of the Constitution, defending the constitutional order and the protection of fundamental rights. Its decisions are final and irrevocable and binding precedents for the government and all organs of state. Enjoy administrative and budgetary autonomy. "

Form of Election Judges

Constitution, Article 182 .- "Choice Constitutional Court judges. The National Judicial Council to form the Constitutional Court provide which of them will become President and appoint a first and second substitute to replace the President, the absence or disability. "

Functions and Operation

Constitution, Article 185 .- "Powers. The Constitutional Court shall have jurisdiction in one instance:

- 1) The direct actions of unconstitutionality against laws, decrees, regulations, resolutions and ordinances, at the request of the President of the Republic, a third of the members of the Senate or House of Representatives and any person with legitimate interest legally protected;

- 2) Preventive control of international treaties before ratification by the legislative body;
- 3) conflicts of competence between public authorities at the request of one of its holders;
- 4) Any other matter required by law.

Constitution, Article 186 .- Integration and decisions. The Constitutional Court shall consist of thirteen members and its decisions shall be adopted by a qualified majority of nine or more members. The judges who issued a dissenting opinion may enforce their motivations in the decision.

Constitution, Article 187 .- and renewal requirements. To be a judge of the Constitutional Court required the same requirements for judges of the Supreme Court. Its members are irremovable for the duration of their mandate. The condition judge only lost by death, resignation or dismissal for serious misconduct in the performance of their duties, in which case they may appoint a person to complete the term.

Paragraph .- The judges of this court are appointed for a single period of nine years. May not be elected, except those as replacements have been in office for less than five years. The composition of the Court gradually be renewed every three years.

Constitution, Article 188 .- Fuzzy control. The courts of the Republic will meet the constitutional exception in cases brought to its attention.

Constitution, Article 189 .- Regulatory Tribunal. The law shall regulate the constitutional procedures and on the organization and functioning of the Constitutional Court. "

Independent Role of the Judge

Constitution, Article 151 .- "Independence of the Judiciary. The judges and members of the judiciary are independent, impartial, responsible and inflexible and are subject to the Constitution and laws. Can not be removed, dismissed, suspended, transferred or retired, but for some of the causes for and guarantees provided by law.

- 1) The law establishes the regime of responsibility and accountability of judges and judicial officials. The service in the judiciary is incompatible with any other public or private, except the teacher. Its members are not eligible for any elective public office or participate in partisan political activity;
- 2) The mandatory retirement age for judges of the Supreme Court is seventy-five years. For the judges, officials and employees of the Judiciary be established in accordance with the law governing the matter. "

Legal profession and access to it

The Judiciary is the set of rules governing the rights, duties, responsibilities, prohibitions and incompatibilities made by judges, as members of the judiciary, aimed at guaranteeing its judicial power, stability and independence in order to form an administration of justice efficient and effective, fundamental support the rule of law.

She promotes the institutional strengthening of the judiciary, while ensuring fair working relationships between judges and harmonics. The entry, stay, mobility, promotion, and improving the ability of the judge of the race, have the institutional interest only basis and merit. Therefore, considerations of political, religious, racial, social, kinship, gender, or any other nature are excluded for those purposes.

All the judges of the judiciary are subject annually to the Performance Assessment and this assessment determines them their stay or withdrawal of the Judiciary, the movements in the ranks of the legal profession and their participation in competitions promotions, obtaining scholarships and participation in special training courses and their participation in social welfare programs, the granting of incentives for moral and economic character, the development of specific training programs or individuals.

Through this system seeks to measure the performance of judges in order to maximize its performance and efficiency and make it a tool for individual professional development and to maintain a high level of efficiency of justice.

Objectives of the Evaluation of Performance:

Provide a means of obtaining evidence for decisions about judges in the Judicial Career System.

Form the basis of evidence of merit and efficiency of judges.

Having a tool to help determine training needs and continuously updated according to the institutional requirements and the status of the judge.

Provide adequate feedback, which allows the training plan developed to exceed any existing deficiencies and strengthen the proper discharge of the judge.

We harbor no doubt about the enforcement of the legal profession, is the most important step that, in pursuit of the institutional strengthening of the judiciary, has been taken in the Dominican Republic in recent decades, the same way, nobody will doubt that without the existence of a judicial system strong, independent, and made up of honest individuals, professionals and committed to the society they serve, it is impossible to speak of any development.

Admission to the legal profession does not mean granting its members a letter of marque. It is a reminder of the commitment assumed to society, he hoped that the courts are not only courts but also courts of justice, with justice budget needed prompt, timely, guarantees, accessible, transparent and effective.

It is important to remember unquestionably true but unfortunately not always well-considered in practice: the judge should have all the essential elements which ensure the development of an independent and impartial work, pillar from which begins the construction of a delicate gear Judiciary closer to the just aspirations of citizens. This implies, of course, the existence of a strong judiciary and structured, where access and progress in the same are governed by objective criteria that promote the improvement and

recognize the ability and effort made by each of the judges during the development of his professional life.

For the success of the judiciary is not enough legal regulations and the rules, it is also necessary that we throw to the lake our prejudices, weaknesses and hesitations. We are injecting serum quickening the Dominican judicial system to achieve the necessary catharsis, thanks to the power of the will of the Supreme Court and the National Judicial College.

Constitution, Article 150 .- "judicial career. The law shall regulate the legal status of the

judicial admission, training, promotion, promotion, dismissal and retirement of the judge, in accordance with the principles of merit, ability and professionalism, as well as the pension scheme for judges, officials and employees of the judiciary. "

Pressure from the branches of government

The greatness of a country is measured by the degree of confidence that inspires his righteousness. Justice does not have to be nice or popular. Enough to be reliable and appropriate, which can only be achieved when supported by its own ethical values, such as, among others, democracy, independence of the judiciary, the separation of powers, judicial tenure, respect due process.

The reliability and adequacy of justice do not only constitute a guarantee for the respect of human rights, but a determining influence on the decisions of economic agents, since a country without justice is a country with no economic future, as recently outlined an institution devoted to the study of economic phenomena, which ended a newspaper article with an exhortation to all Dominicans should support the hard work that is taking place in the judiciary and future generations will be very grateful, they will receive a more Dominican Republic fair.

Everyone who assumes a public function, contracts at the same time the obligation to respond to all of society for their actions under the social contract that binds us to it, and we can not rely on the principle of our private law of relativity conventions under which they are only enforceable between the parties. We are all parties in the affairs of the public and anyone is entitled to demand accountability.