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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**OF THE COUNCIL OF EUROPE**

**(VENICE COMMISSION)**

# PERU

# DRAFT LAW No. 7139/2023-CR
# DRAFT LAW No. 8040/2023-CR
# DRAFT LAW No. 6816/2023–CR

**DRAFT LAW No. 7139/2023-CR**

**BILL TO DECLARE THE PUBLIC PROSECUTOR'S OFFICE IN EMERGENCY, AND EXTRAORDINARY MEASURES FOR ITS INSTITUTIONAL REORGANISATION.**

The Congressman of the Republic, Segundo Toribio Montalvo Cubas, member of the PERÜ LIBRE Parliamentary Group, subscribes in exercise of the right of legislative initiative conferred by article 107 of the Political Constitution of the State and in accordance with articles 22, 75, 76 numeral 2) of the Regulations of the Congress of the Republic, presents the following bill:

**LEGAL FORMULA:**

**DRAFT LAW DECLARING A STATE OF EMERGENCY IN THE PUBLIC PROSECUTOR'S OFFICE AND EXTRAORDINARY MEASURES FOR ITS INSTITUTIONAL REORGANISATION**

**Article 1.**
**Object of the Law**
The purpose of the present law is to declare the Public Prosecutor's Office to be in emergency for the period of time it lasts, thereby suspending the functions of the National Public Prosecutor and the Board of Supreme Public Prosecutors and establishing the National Assembly of Public Prosecutors (ANF), which is composed of seven prosecutors, four of whom are elected from among the Presidents of the Boards of Supreme Public Prosecutors, from among their peers, who have the status of incumbent prosecutors; and three elected by the Presidents of the Provincial Prosecutors' Boards, from among their peers, who have the status of incumbent prosecutors.

**Article 2.**
**Declaration of Emergency and Reorganisation**
The Public Prosecutor's Office shall be declared in Emergency and Reorganisation, for up to two years, during the time in which the disciplinary and/or criminal situation of the Supreme Public Prosecutors, within the framework and scope of the present law, is resolved.
It is understood that the Emergency and Reorganisation process is of an exceptional and temporary nature, the purpose of which is to take measures to achieve objectives that will improve both its organisation and its internal structure, decentralising and democratising the decision-making process which is the responsibility of the National Public Prosecutor and the Board of Supreme Public Prosecutors.

**Article 3.**
**Resources**
For the implementation of the present law, the Public Prosecutor's Office finances it from its budget, without demanding additional resources from the public treasury.

**Article 4.**
**Repeal or suspension of rules**
Repeal or suspend, as appropriate, all rules which conflict with the provisions of this Act.

**Article 5.**
**Complementary Transitional Provisions**
**FIRST. Incorporation of Transitory Complementary Provision in the Organic Law of the Public Prosecutor's Office - Legislative Decree No. 52, according to the following text:**

**"National Assembly of Prosecutors**

1. During the period established for the emergency declared by law, the functions and powers determined in the Organic Law of the Public Prosecutor's Office of the following bodies are suspended:
   a} Prosecutor General.
   b} Board of Supreme Prosecutors.
2. The functions and powers of the Board of Supreme Prosecutors are assumed by the National Assembly of Prosecutors (ANF).
3. The functions and powers of the National Public Prosecutor are assumed by the President of the National Assembly of Public Prosecutors. The President is elected from among the members of the National Assembly of Public Prosecutors, from among their peers, and must meet the requirements set out in Article 39 of the Organic Law of the Public Prosecutor's Office.
4. The election of the members of the National Assembly of Prosecutors must be held within five days of the publication of the present law, for which purpose the Secretary General of the National Prosecutor's Office shall convene all the Presidents of the boards of Senior Prosecutors and the Presidents of the Board of Prosecutors of all the prosecutorial districts of the country. The Secretary General also organises the election of the members of the National Assembly of Prosecutors, together with a President of a Board of Senior Prosecutors and a President of a Board of Provincial Prosecutors, chosen by lot.
5. The National Assembly of Prosecutors elects its President within two days of the election of its members. In no case shall the Presidency exceed one year; at the end of this period, the National Assembly of Prosecutors shall elect a new President.
6. The members of the National Assembly of Prosecutors have the prerogatives of a Supreme Prosecutor.
7. The President of the National Assembly of Prosecutors shall convene its members in assembly whenever he deems it necessary and at least once a week.

**SECOND: Authentic interpretation of Article 80-A of the Organic Law of the Public Prosecutor's Office**

It is to be interpreted that the coordination of the special teams established in Article 80-A of the Organic Law of the Public Prosecutor's Office must fall to a Senior Prosecutor and that the same status of Senior Prosecutor must be held by the Senior Prosecutor who will intervene in the procedural stages within his competence, as indicated in the aforementioned law.

**THIRD: Authentic interpretation of Article 65 of the Organic Law of the Public Prosecutor's Office.**

Interpret as one of the functions of the National Public Prosecutor, established in Article 65 of the Organic Law of the Public Prosecutor's Office, that of appointing Coordinating Senior Prosecutors and that this coordination is temporary, does not generate tenure or permanence and may fall to the prosecutor that the National Public Prosecutor deems appropriate, according to his criteria, without stating reasons.

**FOURTH: Authentic interpretation of Article 5 of the Organic Law of the Public Prosecutor's Office**

The principle of hierarchy is interpreted in article 5 of the Organic Law of the Public Prosecutor's Office, in addition to the intra-procedural hierarchy, understood as the prevalence of the criteria of the superior prosecutor in hierarchy over the criteria of the inferior prosecutor in hierarchy, within a judicial process; also, of the extra-procedural hierarchy or institutional hierarchy, understood as the respect for the authority of the superior prosecutor in hierarchy, in the functional performance and within the organisation of the Public Prosecutor's Office,

understood as the respect for the authority of the superior prosecutor in the hierarchy, in the functional performance and within the organisation of the Public Prosecutor's Office.

**FIFTH: Ratification or Change of Coordinating Senior Prosecutors**

The President of the National Assembly of Prosecutors shall, within a maximum of one month of being elected, assess the permanence of the current Coordinating Senior Prosecutors, and in accordance with the assessment, ratify the current coordinators or proceed to their immediate change. This rule does not preclude the change of a particular Coordinating Senior Prosecutor, at such time as it deems appropriate, in accordance with the power conferred by law, in accordance with the interpretation set out in the preceding provision.

**SIXTH: Special Commission for the Elaboration of the Draft of the New Organic Law of the Public Prosecutor's Office**

The Special Commission for the Elaboration of the Draft of the New Organic Law of the Public Prosecutor's Office is hereby established, which shall be composed of four members appointed by the National Assembly of Public Prosecutors, three members appointed by the Ministry of Justice, three members appointed by the Supreme Court of the Republic, three members appointed by the Board of Deans of the Peruvian Bar Associations.

The Commission shall be chaired by one of the members appointed by the National Assembly of Public Prosecutors and shall have a technical secretariat. The Commission and the Technical Secretariat shall operate and meet at the Ministry of the Interior, which shall provide the infrastructure and logistics for its operation and the completion of the project.

The appointment of the members of the Commission is the responsibility of any legal professional and they are not subject to the incompatibilities established and regulated by law.

Once the Commission has been set up, it shall develop its work plan and present the Draft of the New Organic Law of the Public Prosecutor's Office within a maximum period of two months.

**MOTIVE EXHIBITION**

Justice is administered by taking the law as the central element. Of course, laws or rules with the status of law are of fundamental importance in the administration of justice, but above them are the Constitution and the set of explicit and implicit principles which emanate from it, as our Constitutional Court has said on several occasions, and therefore, the subjection of jurisdiction to the law must be taken in the broad sense we have given it;

Indeed, the Court has stated that jurisdiction is conceptualised as "[...] the activity carried out by the State through an 'impartial' authority which acts - independently and impartially - within a process, the results of its work being the production of legal rules which are unreviewable for other State activities and, in certain cases, for the jurisdictional activity itself [...]";[1]

**I. PUBLIC MINISTRY:**

Article 138 of the Political Constitution of Peru states that the power to administer justice emanates from the people and is exercised by the Judiciary through its hierarchical bodies in accordance with the Constitution and the laws.

[1] Judgment of the Constitutional Court delivered on 12 July 2004 in Case 05 l 8-2004-AA-TC on the amparo action brought by Mr Javier Diez Canseco Cisneros against the Agencia de Promoción de la Inversiõn (Proinversión), Empresa de Electricidad del Perl (Electroperú) and the Ministry of Energy and Mines, in order to put an end to the threatened violation of the right of electricity consumers and users to have access to a lower cost and higher quality service, (…).

With regard to the Public Prosecutor's Office, our Magna Carta, in Article 159, establishes this body "as the holder of the criminal action and representative of society in judicial proceedings"[2]; and, in Article 158, it provides it with the constitutional guarantee of autonomy, in order to "ensure and protect the freedom of action of this constitutional body, so that it can effectively carry out the functions entrusted to it by the fundamental rule, avoiding dependence and subordination with respect to other bodies, powers or persons, whether public or private"[3].

## II. CORRUPTION AND THE PUBLIC PROSECUTOR'S OFFICE:

That, the latest events of public knowledge, on allegations of corruption, organised crime, among others within the Public Prosecutor's Office, affecting our social coexistence and democratic institutionality, warn us that an urgent reform of this organ of the System of Administration of Justice is needed through the establishment, implementation and enforcement of properly articulated and effective public policies; The negative public perception of the transparency of the Public Prosecutor's Office calls into question the legal certainty and prompt justice it stands for.

Explaining corruption should not be viewed from a single perspective, as corruption is not only unlawful conduct whose passive subject is the State, involving the improper and illicit use of power, but also a sociological, ethical, illegal and criminal problem. It is therefore the cause and effect of a social reality, being a real or rather institutionalised social phenomenon that undermines sustainable social development and allows some people to enrich themselves illicitly at the expense of others.

The latest event of alleged acts of corruption, where supreme prosecutors are mentioned, are the testimonial declarations of the citizen Jaime Javier Villanueva Barreto, which refer to alleged acts of corruption and which involve supreme and superior prosecutors, for which the **interim Prosecutor of the Nation Juan Carlos Villena Campana** opened the **Prosecutorial File N° 33-2024**; declared as complex, for which he has ordered the **TERM of EIGHT MONTHS**, **starting Preliminary Diligences**, being sure that this term will be extended, which is worrying, since we are facing serious facts that question the objectivity, impartiality and ethics of the prosecutors, in the exercise of their duties established in our Magna Carta and the Organic Law of the Public Prosecutor's Office.
Corruption is known to influence the political instability of states. This phenomenon seriously undermines citizens' confidence in the regular functioning of political institutions. This mistrust can conceal alarming situations that can lead to an explosive atmosphere of social dissatisfaction.

The idea of strengthening this type of proposals in the functional, organisational and administrative sphere is necessary and preventive, as they are mechanisms of a technical or organisational nature[4] implemented within the state apparatus in order to dissuade or avoid, precisely, contexts that favour the materialisation of acts of corruption.

This approach was also proposed by former President Martin Vizcarra in 2019, before the Congress of the Republic, through Bill N° 3765-2018, which proposed to amend the Organic Law of the Public Prosecutor's Office (D. Leg. N° 052) and to declare the Public Prosecutor's Office in emergency. However, it did not succeed because it was proposed more in a political context than a technical one, as it sought to empower those who are now immersed in alleged acts of corruption within this public institution.

[2] Legal basis 11 of the judgement of the Constitutional Court in Case N° 5228-2006-HC/TC, published on 30 May 2006 on the Constitutional Court's website.
[3] Legal basis 101 of the judgement in Case N° OOO4-2006- PI/TC, published on 21 April 2006 in the Official Gazette El Peruano.
[4] Winfried Hassemer, "Legal and administrative possibilities for a more effective fight against corruption. Corruption of public officials", in Pena y Estado, No 1, uno 1995, p. 152.

Likewise, the Ombudsman's Office, in its Report N° 3 on corruption in Peru, issued in August 2019; under the title "Procesos y Procedimientos seguidos contra Fiscales y Jueees a nivel nacional", evidences the situation described above, and thus we can realise that corruption within the organs that administer justice to date is on the rise, in addition, it can be seen that very little has been done by the institutions themselves to control and end or stop the scourge called corruption; In fact, the President of the Board of Prosecutors of Ucayali, after having been arrested for alleged acts of corruption and taken to Lima, died in very strange circumstances in the prison of the Judicial Power. He was accused of leading a criminal network that "granted" jobs in the Public Prosecutor's Office in exchange for economic benefit, with the participation of, at the very least, officials from the Public Prosecutor's Office, who "chose in Lima" among the subject "proposed" by the President of the board of "local" Prosecutor. A state of affairs which can no longer prevail in the Public Prosecutor's Office.

The data presented in Report No. 3, which is presented in this report, accounts for the criminal proceedings brought against prosecutors and judges at the national level for the alleged commission of corruption offences in the period between January 2015 and September 2018; having used the data registered by the Specialised Public Prosecutor's Office for Corruption Crimes, which they compared with the database of the National Council of the Judiciary (currently replaced by the National Judicial Board) and the Public Prosecutor's Office, specifying that this information includes the stages of preliminary proceedings, preparatory investigation, intermediate stage and oral trial or judgement.

## III. NEED FOR THE DECLARATION OF EMERGENCY OF THE PUBLIC PROSECUTOR'S OFFICE DUE TO CORRUPTION:

It is well known that corruption has a disastrous impact on the political, social and economic development of any country, directly affecting democracy and leading to inequalities. These facts present us with the challenge of recovering a State that acts with transparency and with technically solvent and honest officials, with sufficient strength to confront the factitious powers, such as the economic one, and that assumes its real role of guaranteeing the defence of the rights of all citizens.

The **Public Prosecutor's Office itself has failed** in its attempt to **declare an emergency and reorganise itself**, thus we have the **declaration of emergency of the Public Prosecutor's Office for a period of 60 days,** ordered by **Resolution of the Public Prosecutor's Office No. 401 - 2019-MP-FN, dated 25 February 2019**; by the ex Fiscal de la Nacion, **Zoraida Avalos Rivera**, now removed from office, precisely for alleged acts of corruption and lack of suitability in the exercise of her position.

To advance along this path, it is necessary to permanently analyse the reality of anti-corruption actions from the State itself, whether or not there is political will to fight corruption in the country, as well as some concrete cases that allow us to determine possible modus operandi, modalities and legal loopholes that could be opening the field for the corrupt to act. This should be accompanied by a review of existing national and international legal instruments that help to combat corruption in Peru.

Therefore, the functions and role of prosecutors should be analysed, as well as the legal mechanisms for combating corruption. Therefore, the Congress, showing the political will of the State to face the fight against corruption, should act by declaring an emergency and institutional reorganisation of the Public Prosecutor's Office.

## IV. LEGISLATIVE PROPOSAL

As can be seen, the levels of corruption have become entrenched in the Public Prosecutor's Office, so the present bill initiative seeks, as main objectives against corruption: to generate a

public opinion that is aware of the harmful effects of corruption in the functioning of public institutions, such as the Public Prosecutor's Office, and even to report them biblically, through citizen participation by each Public Prosecutor's District. Furthermore, to elaborate and implement policies and strengthen the regulatory framework and management instruments, decentralising the

The selection and appointment process of prosecutors in each Prosecutorial District, without the decision making of the President of the local Board of Prosecutors having to "come" to Lima to be approved by the National Prosecutor's Office, which concentrates the power of the National Prosecutor, a situation which, for example, does not occur in the Judicial Branch, where each Court President is autonomous in the appointment and promotion of the judges of his jurisdiction, without any intervention of the Judicial Branch.

Finally, this proposal will not constitute an obstacle to the safeguarding of the principles, rights and guarantees of the Public Prosecutor's Office, which on the contrary will be reinforced with the aim of strengthening the democratic institutionality in our country, a role that cannot be alien to an attentive Congressional work.

## V. EFFECT OF THE RULE'S EFFECT IN OUR LEGISLATION

The present legislative initiative, given the need to update the outdated Organic Law of the Public Prosecutor's Office, approved by Legislative Decree No. 052, and in view of the serious crisis that engulfs the Public Prosecutor's Office, proposes the creation of the Special Commission, in charge of carrying out the diagnosis of the current state of its organisational structure, its processes and procedures of the Public Prosecutor's Office and of elaborating a new management instrument that regulates the organisational structure of the Public Prosecutor's Office.

The direct effect is the replacement of Legislative Decree N° 052, Organic Law of the Public Prosecutor's Office by the New Organic Law of the Public Prosecutor's Office.

The optimal effect will be to improve the performance and quality of the services provided to citizens by the Public Prosecutor's Office, as an autonomous State body, by defending the legality, the rights citizens and of the public interest, the defence and representation of society and the family, minors and incapacitated persons and the social interest, as well as the prosecution of crime and civil reparation.

## VI. LINKAGE WITH THE LEGISLATIVE AND POLITICAL AGENDA EXPRESSED IN THE NATIONAL AGREEMENT.

The legislative initiative is linked to the legislative agenda, approved by Legislative Resolution of Congress 002-2023-2024-C, and is framed within State Policy No. 28: Full enforcement of the Constitution and human rights and access to justice and judicial independence, of the FOURTH OBJECTIVE: EFFICIENT, TRANSPARENT AND DECENTRALISED STATE, through which the State seeks to: (a) promote the institutionalisation of a System of Administration of Justice, respecting the independence, autonomy and budget of the Judiciary, the Public Prosecutor's Office, the National Council of the Judiciary and the Constitutional Court, within a process of modernisation and decentralisation of the State at the service of the citizen; (b) promote the transparent appointment of judicial authorities, as well as their valorisation and ongoing training; (c) promote a relationship between community justice and the Judiciary that respects interculturality and regulates the powers, attributions and limitations of the former; (d) consolidate the regulation of justice of the peace and the popular election of justices of the peace; (e) promote conciliation, mediation, arbitration and, in general, alternative mechanisms for conflict resolution; (f) adopt legal and administrative measures to guarantee the validity and dissemination of the Constitution, ensure unrestricted respect for human rights and ensure the punishment of those

responsible for their violation; (g) establish mechanisms to monitor the proper functioning of the administration of justice, respect for human rights, and the eradication of judicial corruption in coordination with civil society; (h) guarantee national coverage and the improved functioning of the Office of the Ombudsman; and (i) strengthen the internal control mechanisms of the judicial bodies.

**VII. COST-BENEFIT ANALYSIS:**

The present legislative proposal **does not generate economic costs to the national treasury**, since it has no impact on the budget allocated to public entities, being charged to the budget

**DRAFT LAW No. 8040/2023-CR**

CONSTITUTIONAL REFORM ACT DECLARING THE NATIONAL JUSTICE BOARD AND THE PUBLIC MINISTRY IN REORGANISATION, AND REPEALING SECTION 154(2) OF THE CONSTITUTION.

The undersigned Congressman of the Republic, **WILSON SOTO PALACIOS** and the members of the **Acción Popular Parliamentary Group**, and other signatory Congressmen, under the protection of the provisions of Articles 107 and 206 of the Peruvian Constitution and in accordance with Articles 22, paragraph c), 75e and 76, paragraph 2) of the Regulations of the Congress of the Republic, present the following legislative initiative:

## I. LEGAL FORMULA

**CONSTITUTIONAL REFORM LAW THAT DECLARES THE NATIONAL JUSTICE BOARD AND THE PUBLIC PROSECUTOR'S OFFICE TO BE REORGANISED, AND REPEALS ARTICLE 154, PARAGRAPH 2 OF THE CONSTITUTION.**

**THE CONGRESS OF THE REPUBLIC.**
**Has given the following Law:**

**Article 1.**
**Purpose of the Law**
The purpose of the present law is to amend the Political Constitution of Peru, to declare the National Board of Justice of the Public Prosecutor's Office to be reorganised and to repeal Article 154, paragraph 2.

**Article 2.**
**Incorporating the Fourth Special Transitory Provision**
The Fourth Special Transitory Provision is incorporated into the Political Constitution of Peru, in the following terms:

**"FOURTH:** The current members of the National Board of Justice terminate their term of office with the entry into force of this Special Transitional Provision. The functions of the National Board of Justice shall be temporarily assumed by a 'reorganising commission composed of exclusively by the former presidents of the Constitutional Court, who shall elect their president and vice-president from among themselves.
The former presidents of the Constitutional Court conclude their function as soon as the new members of the National Board of Justice selected by the Special Commission referred to in Article 155 of the Constitution are sworn in.
The incumbent supreme prosecutors cease to hold office with the entry into force of this Special Transitional Provision; their positions shall be filled by the most senior incumbent senior prosecutors in the country, until the incumbents are elected.
The reorganising commission composed of the former presidents of the Constitutional Court has as its priority function the appointment of the new supreme prosecutors, upon invitation. The appointment requires the favourable vote of the majority of its members".

**COMPLEMENTARY DEROGATORY PROVISION**

Only repeal
Article 154, paragraph 2 of article 154 of the Political Constitution of Peru.
Lima, May 2024.

## II. EXHIBITION OF MOTIVES

For many years, and currently with greater incidence, the justice system in the country has been undergoing a serious institutional crisis, and within these, mainly the Public Prosecutor's Office and the National Board of Justice, entities that play a transcendental role in the adequate provision of the justice administration service in the country.

These organisations make headlines every day in almost all media outlets due to the conduct of their members, who are involved in serious acts that violate the Constitution and the law, which also causes conflict among themselves.

This situation, which deteriorates the credibility of such important State agencies, causes the population to disqualify them and to lose any kind of credibility in their actions, which are also described as having a political tinge in their actions, which are not proper to their raison d'être.

The illegalities and unconstitutionalities in which the JNJ authorities were involved were even the subject of constitutional proceedings for the removal of all its members, which ultimately resulted in the impeachment of two of its members.

Similarly, the highest authority of the Public Prosecutor's Office was removed from office for illegal actions that have even been the subject of legal proceedings to date, which evidently damages the institutionality of the entity that must watch over the defence of legality, among other things.

In the JNJ its members are disqualified for their actions outside the law, and the same happens with the Supreme Prosecutors, a situation that cannot continue to have direct repercussions on the administration of justice.

The former Congressman and former president of the Constitution and Regulations Commission, the now renowned constitutionalist Natale Amprimo Plá, in his opinion column in the newspaper 'El Comercio', stated on 29 May 2024, the following:

"Change or die

“We need new people to regain the confidence and try to get out of the hole we are in”.

The situation of the Public Prosecutor's Office is not good enough. For the time being, I do not think I am wrong in saying that the majority of Peruvians feel that none of the current prosecutors are of the right calibre. They are totally/least divided, on the benches of one side or the other, and without any leadership whatsoever.

For its part, the constitutional Board of Justice (BoJ), which is constitutionally charged with appointing supreme justices and ratifying them every seven years, was born in a bad way and today is clearly in 'status mortis'. While it is uncertain what will happen, it is clear that today it lacks the credibility it once had, and its members, instead of devoting themselves to consolidating the institution, have shown themselves to be more concerned with building team spirit on personal issues, having taken to doctoral level the application of double jeopardy in the exercise of their competences.

Faced with this situation, what can be done? I believe that there is no quick solution with the existing legal instruments. Exceptional measures are needed for a situation that cannot continue for a minute longer, as we are in a situation akin to gangrene: either the infected limb is amputated or death is certain.

I recognise that any formula will be highly debatable, but we must move forward because immobility will kill us. With what we have, nothing positive can be done; it is just more agony. As the saying goes, you cannot ask for pears from an elm tree; the current ones are very worn out.

Therefore, I propose a constitutional reform that would allow, while the JNJ is being reorganised or its replacement is being implemented, for former presidents of the Constitutional Court Constitutional Court — of all political persuasions — to invite competent professionals with leadership skills and a proven track record to take up positions as supreme prosecutors, so that a **new Board of Supreme Prosecutors** can be formed that is free from the flaws of the current one. Only then will it be possible to make a fresh start without the current questions and, in this way, a new opportunity.

What should be done with the current ones? The commission should evaluate them, but I believe they should end their service to the nation as soon as the new ones are selected. I am not saying that they are bad people - I do not know them - I am only saying that objectively, and in good faith, they cannot and should not continue, for the good of the institution they are now part of. I am sure that they, in private, also know this.

If the reform is approved before the end of the current legislature, it could be ratified at the beginning of the next one and a new picture could be painted before the end of the year.

We need new people to regain hope and try to get out of the hole we are in. The good thing about the formula whereby the former presidents of the Constitutional Court are the ones who invite the new supreme prosecutors is that none of them were elected by the neighbours of the Plaza Balivar, nor promoted by whoever occupies Pizarro's seat today. That puts a distance between them and the current power and helps to build trust. It is not easy/ but I refuse to accept what is there. If change is not sought, we will have to turn off the light"[5].

Considering the importance of this proposal, we endorse it and present it so that the Parliament can analyse, evaluate and approve it in a timely manner and thus provide a solution to the difficult moment that two important entities are going through in order to uphold the constitutional rule of law that governs the life of our country.

The National Board of Justice is an autonomous public institution, and its mission is to appoint, evaluate, ratify and sanction judges and prosecutors, national control authorities of the Public Prosecutor's Office and the Judiciary, and the heads of the ONPE and the RENIEC; contributing to the strengthening of the administration of justice and to the strengthening of the judiciary. RENIEC; contributing to the strengthening of the administration of justice and to democratic democratic institutionality, through fair and transparent processes, which will allow for the to count on pious, suitable and competent professionals[6].

On the other hand, it is a precedent that the national media reported extensively on the parliamentary process carried out to evaluate the separation of all members of the National Justice Board (Junta Nacional de Justicia, JNJ). One example highlighted on social media was the following announcement: "Congeso continuará investigando a miembros de la JNJ a pesar de orden del PJ que suspende proceso. Members of the Junta Naciona de Justicia announced that they will not participate in the session of the Parliament to which they were summoned by decision of the judiciary. The Board of Spokespersons of the Congress of the Republic decided this Tuesday, November 7, that they would continue the plenary session, scheduled for November 8, related to the investigation of the plenary session of the National Board of Justice (JNJ). Through the official account X of the Parliament, it was announced that in the next meeting

[5] https://elcomercio.pe/opiníon/columnistas/justícia-fiscalia-es-muy-importante-modificar-elministerio-publico-por-natale-amprimo-pla-poder-judicial-notícia/
[6] https://www.jnj.gob.pe/transparencia/DiagnosticoBrechasJNJ -PMI2025-2027.pdf

they will decide on the situation of the members of the JNJ, whose removal due to a serious fault was recommended by the Justice Commission"[7] This information, which was widely disseminated by various media outlets, shows that the Congress has the capacity to remove all members of the JNJ. This scenario highlights the need to protect the stability and continuity of the NJB. The possibility of a comprehensive removal puts at risk the institution's ability to fulfil its constitutional mandate, underlining the importance of our proposal to ensure its continued existence and functioning.

If the Congress of the Republic removes all members of the National Justice Board (Junta Nacional de Justicia - JNJ), this constitutionally autonomous institution would not be able to function. The important powers of the JNJ, such as appointing, ratifying and sanctioning the magistrates of the Public Prosecutor's Office and the Judiciary, would be suspended, which would cause a serious damage to the system of administration of justice. This would have a direct impact on the citizens who resort to the judicial system to resolve their legal disputes or uncertainties, who depend on suitable and efficient magistrates to attend to their needs.

The paralysis of the JNJ would not only affect those seeking justice but also undermine confidence in public institutions. An inoperative JNJ would compromise the state's ability to maintain an equitable and effective justice system, which is fundamental to social order and development. It is therefore crucial to ensure the stability and continuity of the JNJ in order to guarantee institutional solidity and protect citizens' rights, thus strengthening democracy and the rule of law in Peru.

The members of the National Board of Justice, as stipulated in Article 155, are seven (7), and to accede to this position they must meet the requirements set out in Article 156 of the Constitution. In view of the possibility that all members will be removed from their posts, we propose that the former presidents of the Constitutional Court (TC) who meet the requirements set out in the aforementioned article may temporarily occupy these posts, while the process of legal reconstitution of the entity is carried out.

Recently, requests for the removal of all members of the JNJ were processed in the Congress of the Republic; however, this measure did not materialise, although two of its members were recalled and another resigned beforehand. This left the body without the legal quorum necessary to make decisions.

Considering that the former members of the TC, especially its former presidents, are widely accepted by the other branches of government, lawyers and the population in general, due to their historical work in maintaining the good image and institutionality of the constitutional body, they would be a viable and respected option to temporarily fill the vacant positions in the JNJ. This would ensure a smooth transition and guarantee continuity in the functioning of this important institution charged with ensuring the independence and quality of the country's justice system.

As is public knowledge, according to the rules of procedure: "The judges of the Constitutional Court in plenary session and by secret ballot, elect, among their members, the president "[8]. This process ensures that the head of the body is democratically selected and has the consensus of his or her colleagues. The election among the TC judges themselves reflects the trust and support of their peers, which enhances the legitimacy and authority of the president elected to lead the institution. Such a system of internal election guarantees a management based on mutual trust and a deep understanding of the challenges and needs of the Constitutional Court of which he or she has presided over the good development of this institution and with such experience could manage the body of the JNJ.

[7] Congreso continuará investigando a miembros de JNJ a pesar de orden de PJ que suspende proceso - Infobae
[8] https://tc.gob.pe/wp-content/uploads/2018/09/ley_organica-1.pdf

If former Presidents of the Constitutional Court are recognised as honourable and respected figures in the legal field, it would be prudent to consider their participation in the leadership of the JNJ in exceptional circumstances. This could be the case if, due to a decision of Congress, the JNJ were to be removed in its entirety and lose its legitimacy, putting at risk the continuity of this fundamental institution.

In such situations, the experience and expertise of former presidents or TC members could be valuable in ensuring the stability and proper functioning of the JNJ during a transitional period. Their participation would lend credibility and institutional knowledge, helping to maintain the integrity and independence of the JNJ while the necessary actions are taken to restructure it and restore public confidence.

## III. EFFECTS OF THE RULE

This proposal aims to amend the constitutional framework related to the National Justice Board (NJB) to address the possible inoperability of this important public institution, which plays a fundamental role in the proper administration of justice in the country, including the supervision of the work of the magistrates of the Judiciary and the Public Prosecutor's Office. Consequently, this amendment will have a positive impact on constitutional legislation by guaranteeing the continuity of the JNJ and its role in the judicial system.

The approval of this constitutional reform will entail the need to amend Law No. 30916, Organic Law of the National Justice Board, to provide for the exceptional incorporation of the former presidents of the Constitutional Court as temporary members of the National Justice Board while its composition is being reconstituted.

Likewise, the approval of this proposal will require adjustments to the Rules of Procedure of the Congress of the Republic and other relevant regulations in order to implement the reform in an effective manner.

It is therefore important to highlight that this initiative is framed within the principles established in the Political Constitution and other legal regulations of the national system, in order to strengthen and ensure the proper functioning of the institutions responsible for guaranteeing justice and the rule of law in the country.

## IV. COST-BENEFIT ANALYSIS

The proposed Bill does not imply a significant increase in state expenditure or costs. The proposed reform simply seeks the temporary inclusion of the former presidents of the Constitutional Court, who will assume responsibilities in the National Justice Board (JNJ) until the incumbents are appointed through the established legal processes.

This draft law will benefit the JNJ by allowing it to continue to perform its functions without significant interruptions. The inclusion of the former presidents of the Constitutional Court will ensure the continuity of the work of the JNJ, thus preserving the stability and effectiveness of this important institution. In addition, this will prevent the scheduling and ongoing processes for the appointment or administrative prosecution of offending judges from being affected.

On the other hand, this initiative will also benefit the general public. The continuity of the work of the JNJ is crucial to maintaining the relevance and strengthening of the national justice system. By ensuring that the NJC can continue to operate without interruption, access to efficient and transparent justice for all citizens is guaranteed.

In this sense, the Draft Law represents a positive balance between costs and benefits, as it ensures the continuity of the JNJ's functions without generating greater expenses for the State, while benefiting both the institution and the population in general by maintaining the stability of the national justice system.

## V. LINK WITH THE NATIONAL AGREEMENT

This proposal is linked to the following State policies:

1. Strengthening the democratic regime and the rule of law.
2. Affirmation of an efficient and transparent state

**DRAFT LAW No. 6816/2023–CR**

**CONSTITUTIONAL REFORM BILL THAT CREATES THE NATIONAL SCHOOL FOR THE JUDICIARY, RAISES THE NATIONAL AUTHORITY FOR THE CONTROL OF THE JUDICIARY AND THE PUBLIC PROSECUTOR'S OFFICE TO CONSTITUTIONAL LEVEL AND CREATES THE INTER-INSTITUTIONAL COORDINATION COUNCIL FOR THE JUSTICE SYSTEM, AMENDING ARTICLES 142, 144, 147, 150, 151,152, 153, 154,155, 156, 156, 157, 158, 178, 182 AND 183 OF THE POLITICAL CONSTITUTION OF PERU**

The **PARLIAMENTARY GROUP RENOVATION POPULAR**, a initiative of the undersigned Congresswoman, **GLADYS MARGOT ECHAÍZ DE NUÑEZ IZAGA**, in exercise of the right of legislative initiative conferred on her by Article 107 of the Political Constitution of Peru, and in accordance with Articles 22(c), 75 and 76 of the Regulations of the Congress of the Republic, proposes the following draft constitutional reform law:

**LEGAL FORMULA**

**CONSTITUTIONAL REFORM BILL THAT CREATES THE NATIONAL SCHOOL OF THE JUDICIARY, RAISES THE NATIONAL AUTHORITY FOR THE CONTROL OF THE JUDICIARY AND THE PUBLIC PROSECUTOR'S OFFICE TO CONSTITUTIONAL LEVEL AND CREATES THE INTER-INSTITUTIONAL COORDINATION COUNCIL FOR THE JUSTICE SYSTEM, AMENDING ARTICLES 142, 144, 147,147, 150,151, 152, 153, 154, 154, 155, 156, 156, 157, 158, 158, 178, 182 AND 183 OF THE POLITICAL CONSTITUTION OF PERU.**

**Article 1.**
**Purpose of the Law**
The purpose of this Constitutional Reform Law is to create the National School of the Judiciary, as the only means and form of access to the judicial and prosecutorial career. Its purpose is the selection, education, training and appointment for the entry and promotion of judges and prosecutors. Its purpose is to improve the professional competence, as well as the attitudes and aptitudes of the magistrates in order to guarantee an independent, reliable, accessible and efficient administration of justice, and with this, the respect of the rights of the people and the effectiveness of its purpose, which is social peace in justice.

It also creates the Inter-institutional Coordination Council of the Justice Administration System, with the aim of ensuring that the institutions that make up this System function administratively in a coordinated and articulated manner, with agreed public policies in all matters that are common to them, respecting their own autonomy and functional independence.

In order to guarantee the functional independence of judges and prosecutors at all levels and thus the basic principles of the administration of justice, the process of ratification of magistrates is eliminated and the creation of the National Authority for the Control of the Judiciary and the Public Prosecutor's Office as an autonomous entity, but an integral part of the organic structure of each of these institutions, is elevated to the Constitutional level.

For these purposes, articles 142, 144, 147, 150, 151, 152, 153, 154 are modified,155, 156, 157, 158, 178, 182 and 183 of the Political Constitution of Peru.

Modification of articles 142, 144, 147, 150, 151, 152, 153, 154, 155, 156, 157, 158, 178, and 183 of the Political Constitution of Peru,156, 157, 158, 158, 178, 182 and 183 of the Political Constitution of Peru.

Articles 142, 147, 150, 150, 150, 151, 152, 153, 154, 155, 156, 157, 158, 178, 182 and of the Political Constitution of Peru are amended to read as follows:

**Article 142**.- The resolutions of the National Jury of Elections in electoral matters are not subject to judicial review.

**Article 144**.- The President of the Supreme Court is also the President of the Judiciary. The Plenary Chamber of the Supreme Court is the highest deliberative body of the Judiciary.

**The President of the Judicial Branch presides over the Inter-institutional** Coordination Council of the Justice System, which is also made up of the Public Prosecutor, the President of the Board of Directors of the National School of Magistrates, the heads of the National Authority for the Control of the Judicial Branch and the Public Prosecutor's Office, the Minister of the Interior, the Minister of Justice and Human Rights and the Minister of Economy and Finance.
The Inter-institutional Coordination Council of the Justice **Administration** System is the space for the coordination of public policies on the administration of justice. Its functioning is regulated by Law.

**Article 147.-** To be a Supreme Court Justice, the following are required:
1. To be Peruvian by birth;
2. To be a citizen in office;
3. Be over fifty years of age and under 75 years of age;
4. Have been a judge of the High Court or a High Prosecutor for ten years.

**CHAPTER IX**
**The National School of the Judiciary**

**Article 150.-** The National School of the Judiciary is the higher centre of high specialisation and academic research that is responsible for the selection and training of aspiring judges or prosecutors and their appointment; training for promotion purposes and their updating and improvement; as well as issuing the title that accredits them as judges or prosecutors at their corresponding grade and its cancellation in the cases provided for by the Law.
It is also responsible for selecting and appointing the heads of the National Authority for the Control of the Judiciary and the Public Prosecutor's Office after a public competition and a period of specialisation and induction.

The School is autonomous and is governed by its Organic Law.

**Article 151.-** The selection process for admission to the National School of the Judiciary is carried out by means of a public competition based on competition and merit.
Training for entry to the career is of the highest level, multidisciplinary and full-time for a period of two years followed by the provisional and supervised exercise of the post for a period of six months. It provides excellence, solidity and a high degree of jurisdictional and prosecutorial specialisation for both entry and promotion in the career. Training, updating and improvement is continuous.

The judicial career begins at the rank of Justice of the Peace and the prosecutorial career begins at the rank of Deputy Provincial Prosecutor.

Promotion is based on the principles of merit, objectivity and transparency, as well as suitability and specialisation.
Judges and prosecutors have the right to participate in promotion processes organised by the School. For their selection and appointment, they must first pass the corresponding special studies. For this purpose, the academic merit list, the results of the performance evaluation, the

reports of the National Authority for Disciplinary Control and any others that may be established by the Law shall be taken into account.

**Article 153.-** The governing body of the National School of the Judiciary is the Board of Directors, which is made up of:

1. A Supreme Court Judge, active or retired, elected by the Plenary Chamber of the Supreme Court of Justice.
2. A Supreme Prosecutor, active or retired, elected by the Board of Supreme Prosecutors.
3. A former Director of the Postgraduate Law Schools of the National Universities with more than 50 years of seniority, elected by their Directors in exercise.

The members of the Board of Trustees are elected for 5 years, are not eligible for re-election and hold office on a full-time basis. Alternate members are elected at the same time.
The Board of Trustees elects its Executive President for a period of two (02) years, extendable for an additional one (01) year, who is the head and executive director of the School.

**Article 154.-** To be a member of the Board of Directors of the National School of the Judiciary, the following are required:

1. To be Peruvian by birth.
2. To be a practising citizen.
3. Be over 55 years of age.
4. Be a lawyer and have been practising law for at least 25 years.
5. Hold a master's or doctorate degree.
6. The representative of the Judiciary and the Public Prosecutor's Office must have at least five years' experience as a Supreme Judge or Supreme Prosecutor.
7. For the former Director of the postgraduate law schools of the national universities with more than 50 years of seniority, to have exercised university teaching for no less than 25 years and to have served as Director of a Postgraduate Law School for no less than 5 years.
8. Have moral solvency, recognised professional, academic and democratic background.
9. Not have been convicted of a criminal offence or been dismissed or disqualified from public office.

The titular and substitute members of the Board of Directors hold office only until the end of the period for which they were elected.

Members of the Board of Directors shall enjoy the same benefits, rights and prerogatives and shall be subject to the same obligations, prohibitions and incompatibilities as supreme judges. Their function is incompatible with any other public or private activity, except university teaching in another entity.

They may be removed from office for serious reasons by the Congress of the Republic with the assent of two thirds of the legal number of its members.

Judges and prosecutors at all levels are subject to permanent evaluation of their functional performance by their own institutions and to disciplinary control by the National Authority for the Control of the Judiciary or the Public Prosecutor's Office, as appropriate. Their results are incorporated into the institutional and National School of the Judiciary merit table.

Judges and prosecutors are forbidden to participate in politics, to join trade unions and to go on strike.

**Article 157.-** Disciplinary control of supreme judges and prosecutors is carried out by their respective institutions, with the guarantees of due legal process. In the first instance, it is the

responsibility of a tribunal made up of three members, two (2) judges or supreme prosecutors as appropriate, selected by lot from among their peers and the head of the National Control Authority of each institution, who shall preside over it. The Plenary Chamber or the Board of Supreme Prosecutors shall act, respectively, in the last and final instance.

In the disciplinary proceedings provided for by law against judges and prosecutors at all levels, the sanctions of fines, suspension and dismissal may be imposed, respecting the principles of proportionality and prohibition of arbitrariness.

**Article 158.-** The Public Prosecutor's Office is autonomous. The Public Prosecutor presides over it. He/she is elected by the Board of Supreme Public Prosecutors. The office of Public Prosecutor lasts for three years, and may be extended, by re- election, for a further two years only.

The members of the Public Prosecutor's Office have the same rights and prerogatives and are subject to the same obligations and prohibitions as members of the Judiciary in the respective category. They are subject to the same incompatibilities.

**Article 178.-** It is the responsibility of the National Jury of Elections to
1. To supervise the legality of the exercise of suffrage and the holding of elections, referendums and other popular consultations, as well as the drawing up of electoral rolls.
2. Maintaining and guarding the register of political organisations.
3. To ensure compliance with the rules on political organisations and other provisions relating to electoral matters.
4. To administer justice in electoral matters.
5. To proclaim the elected candidates; t h e result of the referendum or other types of popular consultation and to issue the corresponding credentials.
6. Appoint the Head of the National Office of Electoral Processes.
7. Appoint the Head of the National Registry of Identification and Civil Status.
8. Any others indicated by the Iey.

In electoral matters, the National Jury of Elections has the initiative in the formation of laws.
The National Jury of Elections submits to the Executive the draft budget of the Electoral System, which includes separately the items proposed by each entity of the system. It supports it in that instance and before Congress.

The head of the National Office of Electoral Processes is appointed for a renewable period of four years. He/she may be removed for serious misconduct by the Plenary of the National Jury of Elections with the vote of the absolute majority of its members. He/she is subject to the same incompatibilities as the members of the Plenary of the National Jury of Elections.

It is responsible for organising all electoral, referendum and other popular consultation processes, including their budget, as well as the preparation and design of the ballot paper. It is also responsible for the delivery of the minutes and other material necessary for the vote count and the dissemination of the results. It provides permanent information on the count from the beginning of the vote count at the polling stations. It exercises the other functions assigned to it by the Law.

The head of the National Registry of Identification and Civil Status is appointed for a renewable period of four years. He/she can be removed for serious misconduct by the Plenary of the National Jury of Elections with the vote of the absolute majority of its members_ He/she is subject to the same incompatibilities foreseen for the members of the Plenary of the National Jury of Elections.

The National Registry of Identification and Civil Status is in charge of the registration of births, marriages, divorces, deaths, and other acts that modify the civil status. It issues the

corresponding certificates. It prepares and keeps the electoral roll up to date. Provides the National Jury of Elections and the National Office of Electoral Processes with the necessary information for the fulfilment of its functions. Maintains the identification register of citizens and issues the documents that accredit their identity.

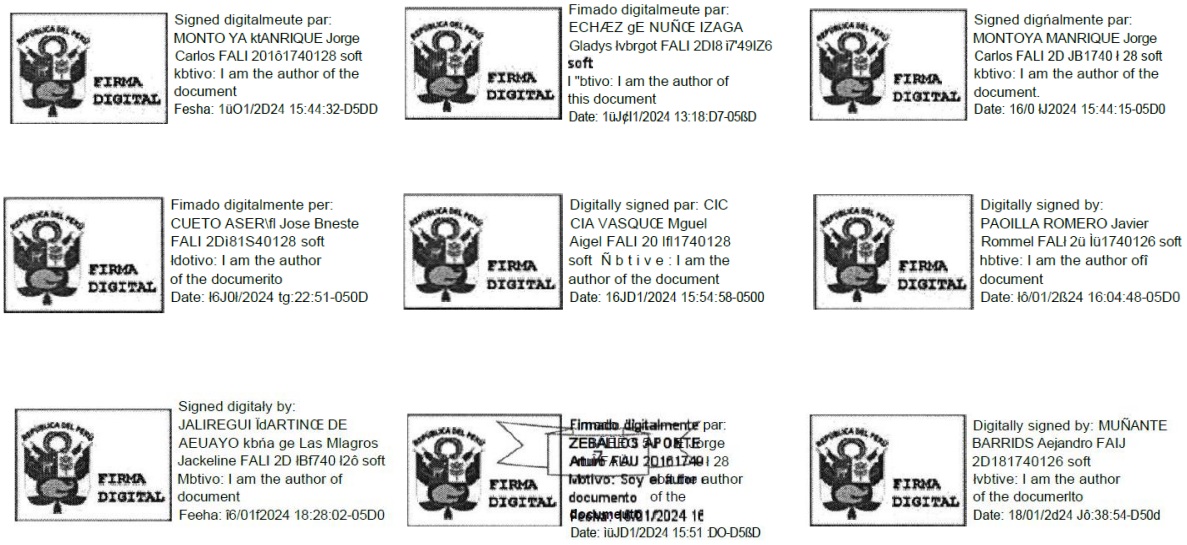
Exercises the other functions indicated by the law.

## COMPLEMENTARY TRANSITORY PROVISIONS

**FIRST:** The members of the first Board of Directors of the National School of the Judiciary are elected within 30 calendar days of the entry into force of its respective Organic Law.
**SECOND:** Once this constitutional reform has been enacted, the functions of the National Board of Justice and the Academy of the Judiciary shall be terminated, and the Office of the Comptroller General of the Republic shall be responsible, during the interregnum, for safeguarding the documentary and administrative heritage of both institutions and supervising their transition to the National School of the Judiciary, issuing the corresponding administrative provisions for this purpose.

## COMPLEMENTARY AND FINAL PROVISION

CHANGE OF THE NAME OF THE NATIONAL BOARD OF JUSTICE TO NATIONAL SCHOOL OF THE MAGISTRACY.
The name of the National Board of Justice is changed in all constitutional provisions and in all corresponding legal provisions to the National School of the Judiciary.
Lima, 9 January 2024.




## EXPLANATORY MEMORANDUM[9]

[9] Some of the approaches and proposals of this constitutional reform initiative have been developed with the support of the consultancy "Constitutional Reform of the Justice Administration System. National School for Judges and Prosecutors: Selection, Training, Appointment and Promotion. Disciplinary Control and Evaluation of the permanent performance of judges and prosecutors by their organisations", carried out by the Konrad Adenauer Foundation and CO Partners, under the direction of the author of this ley project, whose study was conducted by Dr. Sergio Palacio, an international expert in judicial schools. Sergio Palacio, international expert in judicial schools and former director of the Argentinean Judicial School; the team of national consultants comprising former judges of the Public Prosecutor's Office, Marla de Lourdes Loayza Gárate and Virginia Alcalde Pineda, Ernesto Lechuga Pino, and Lisbeth Arqque Garcla. Lima, December 2021.

## I. HISTORICAL BACKGROUND

The problem of the Administration of Justice has been a recurring theme throughout our republican history and has merited the permanent attention of all governments, which is why the Justice Administration System has undergone various constitutional and legal reforms, which, in accordance with the diagnoses that served as a basis for them at each moment, The essential objective was and still is to have professionally competent, independent and suitable judges and prosecutors. Since 1971, the "Council" or "Board" model has been adopted, which is widespread in various Latin American countries, without satisfactory and lasting results in our country.

On 23 December 1969, the military government of General Juan Velasco Alvarado ordered the reform of the Judiciary, the Agrarian Court and the Labour Court by means of D.L. 18060, with the aim of moralising these institutions, eradicating the slowness of the proceedings and selecting suitable professionals for the exercise of the function, consequently dismissing all the magistrates of first and second instance and replacing the supreme judges with magistrates appointed by Iey.

To achieve this purpose, Decree Law No. 18831 was issued on 13 April 1971, approving the Organic Law of the National Council of Justice, made up of seven members of civil society, who were assigned the function of selecting the new judges after an evaluation and submitting the corresponding proposal to the Executive for their respective appointment. Non-legal Justices of the Peace were exempted from this procedure.

In this way, the traditional system of selection and appointments by the Executive and the Legislative Branch based on shortlists drawn up by these bodies or by the Judiciary itself was left behind.

The initial incorporation of renowned academics from civil society as members of this National Justice Board set a good precedent. Although it gradually lost prestige as appointments became politicised over time, it was a new experience that, with some changes, could be functional, hence its incorporation into the 1979 Constitution to give it stability.

Thus, as an autonomous body within the structure of the Justice Administration System, the so-called "National Council of the Judiciary" (CNM) was created, with a different composition and functional competences to those of the JNJ, since not all its members were members of civil society and it no longer selected who should be appointed, but reverted to the system of subjects, and to the selection and appointment by the Executive.

The new Council was chaired by the Prosecutor General and was composed of two members of the Supreme Court, a representative of the National Federation of Peruvian Bar Associations, a representative of the Lima Bar Association and two representatives of the Law Faculties of the Republic. Its functions were twofold:

i) To make proposals to the President of the Republic, by means of a shortlist of three candidates, for the appointment of all Supreme and Superior Judges and Prosecutors, and,
ii) To receive complaints about the actions of Supreme Court magistrates, to qualify them, to forward them to the Public Prosecutor if there was a presumption of a crime and to the Supreme Court itself for the application of disciplinary measures (Arts. 245 and 247 of the 1979 Constitution).

In the case of Supreme Magistrates, the Senate was responsible for ratifying their appointments (Art. 245). For the selection of magistrates of First Instance and other positions of lower hierarchy, District Councils of the Magistracy were created in each Court, presided over by the most senior Prosecutor of the Court and composed of the two most senior members of the Superior Court

and two representatives elected by the Bar Association of the jurisdiction (Art. 247), being this body in charge of proposing the shortlist of three candidates to the Executive.

The CNM, as it was conceived in the 1979 Political Constitution, did not achieve the expected result, as it was the object of much criticism, with a consensus that judges and prosecutors were being selected and appointed through political influences of persons linked to the Executive or the Legislature, calling into question the autonomy of the Judiciary and the Public Prosecutor's Office as well as the independence of the judges.

The attempt to depoliticise the election of magistrates and reverse the dysfunctional aspects that affected the service was not achieved, as the mere fact that it was up to politicians to choose one of the three nominees led to compromises or subjugation of the magistrates to those in power.

Such was the level of questioning that it was used by President Alberto Fujimori in his "Manifesto to the Nation" to justify the coup d'état he carried out on 5 April 1992 to establish the so-called "Government of Emergency and National Reconstruction", which two days later published Decree Law No. 25418.° 25418, article 2 of which stated that the fundamental objective of the Government of Emergency and National Reconstruction was the institutional reform of the country, providing in paragraph 2) for the Comprehensive Reorganisation of the Judiciary, the Court of Constitutional Guarantees, of the National Council of the Judiciary, the Public Prosecutor's Office and the Office of the Comptroller General of the Republic.

The purpose of this reorganisation, it was said, was to moralise the administration of justice and the institutions linked to it and turn them into democratic institutions at the service of the pacification of the country, allowing the great majority to have access to a correct administration of justice and definitively eradicating the prevailing corruption in the judicial apparatus, in order to avoid impunity for crimes perpetrated by terrorism, drug trafficking and organised crime.

In this context, on 9 April 1992, Decree Law No. 25422 was published, which dismissed the members of the Tribunal of Constitutional Guarantees, Decree Law No. 25423, which dismissed thirteen members of the Supreme Court of Justice of the Republic, and Decree Law No. 25446, which dismissed the members of the Supreme Court of Justice of the Republic.25423, which dismissed thirteen members of the Supreme Court of Justice of the Republic, and Decree Law No. 25446, which dismissed senior judges, senior prosecutors, and judges and prosecutors of lower rank, temporarily suspending the judicial and prosecutorial offices, as the Armed Forces were responsible for preventing access to them.

Subsequently, by Decree Law No. 25447 published on the 25th of the same month and year, 13 provisional members of the Supreme Court were appointed, and then by Decree Law No. 25454 established the inadmissibility of the amparo action aimed at challenging the effects of the arbitrary dismissals, thus depriving the magistrates of their right to effective judicial protection.

As was to be expected, the politicisation of the judiciary and corruption were not overcome; on the contrary, it increased to the point of almost losing its total independence and credibility, as was demonstrated in the audios and videos that became known at the end of the year 2000.

The blatant intervention of the bodies of the Administration of Justice by the political power, together with corruption, delays in the resolution of cases submitted to jurisdictional decision, as well as the lack of predictability, reinforced the need for a real reform to make the independence of judges and prosecutors effective and the service of justice functional, and different projects were presented for this purpose.

Thus, in 1992, the Comisiones Interventoras del Gobierno de Facto themselves, aware of this reality, presented the "Anteproyecto de Reforma Constitucional del Poder Judicial" which was prepared by the Comisión de Reforma Constitucional del Poder Judicial de la Corte Suprema

which, among other issues, dealt with the requirements for access to the function, promotion and removal of judges, maintaining the model of the Consejo Nacional de la Magistratura for the selection and appointment of magistrates.

Similarly, once the Constituent Congress was installed, when the issues related to the judicial system were debated, there was a general opinion that the National Council of the Magistracy as conceived in the 1979 Constitution had failed in its attempt to depoliticise the election of magistrates.

In the words of Lourdes Flores Nano, "(...) *Unfortunately, the National Council of Magistrates, particularly in the previous five-year period, underwent a process of politicisation and political infiltration which, as happened with many institutions, undermined the technical quality and autonomy that the constitutional legislator had envisaged. (...) That is why we endorse, in general terms, with some clarifications that I will make now, this significant change in relation to the 1979 Constitution: to give confidence to the District Council of the Judiciary and the National Council of the Judiciary, so that they may be the channels through which magistrates of the various courts are appointed, removed and ratified."*[10]

Thus, in the 1993 Constitution, the selection process for magistrates was substantially modified, by establishing in Article 150 that the National Council of the Magistracy had the function of not proposing, but selecting and appointing judges and prosecutors, except when they were elected by popular vote. Similarly, the Academy of the Magistracy was created, responsible for the education and training of judges and prosecutors at all levels, for the purpose of their selection. In this way, for the first time, the selection and appointment of magistrates is separated from political power.

It should be noted that the original proposal included the obligation to pass studies at the Magistrates' Academy in order to become a magistrate. However, this proposal, in the terms in which it was put forward, was the object of criticism and opposing positions during the 1993 Constitutional Debate in the Committee on the Constitution and Rules of Procedure[11], as can be seen from the following interventions:

**Mr Herrero Cosfa's intervention (p. 1577):**

"Any lawyer who becomes a judge requires months, sometimes years, to understand how to exercise his function properly. That is why the failure of provisional judges occurs, who serve for six months or a year, because they do not know how to be judges and are used to another type of work, and they do not even know the process, which is the elementary part that, in the case of a judge, is sometimes as important as the substantive issue.

So, what would happen? Candidates for judgeships have to have passed through the Academy. It can be one year, it can be two years, but it is indispensable to have been in the Academy to be a candidate judge. This does not happen in all cases. Because lawyers who have been practising for a long time can get to the Supreme Court, and perhaps a percentage to the Supreme Court, and they could get to the Supreme Court, for example, and in any case to the Supreme Court, only with a certain amount of time of professional practice.

In other words, the possibility of reaching the Supreme Court as a judge, or the Supreme Court as a judge, without having been a judge before, is not closed, as long as certain requirements of

[10] Democratic Constituent Congress (1993). Plenary Constitutional Debate-1993. Volume II. Retrieved https//www4 congreso gob pe/dqp/constitución/Const93DDD/PlenoCCD/Tomocompleto93/DebConst- Pleno93TOMO2 pdf p.1337
[11] DEMOCRATIC CONSTITUENT CONGRESS (1993). Debate Constitucional -1993 Comisión de Constitución y Reglamento. Volume III. Retrieved from https://www4.congreso.gob.pe/dgp/constitucion/Const93DD/ComiConstReglа/TomoCompleto/TomolII.pdf

years are met, and as long as this is a percentage no greater than that of the judges who, for this position, come - let's say - from the external part of the administration of justice.

The fundamental thing - and I would ask Dr Fernández Arce to contribute his knowledge on this point - is that if we want to have good judges, they have to be trained judges, and if they are trained judges, we have to make training compulsory for them to enter the judiciary. This will make up for the deficiency that the knowledge of other subjects by the Executive and Legislative Branches, which are excluded, from this Constitution, in the appointment of judges, which is probably one of the most important achievements".

**intervention by Mr Fernández Arce (p. 1578):**

"As for the Academy of Magistrates, we consider it indispensable. It is one of the innovations in our project, and I think it takes up the concerns of the citizens. Because although a judge must be a lawyer - except in the case of non-lawyer justices of the peace - in order to attain this status, university studies are not enough to perform the role of judge efficiently. Those of us who have held the position for a number of years, and also lawyers who have eventually practised it, will realise the great difference that exists, because the judge has to learn to evaluate evidence, has to learn to handle a case file, has to learn to appreciate the resources, the terms, the legal expressions and a series of mechanisms that are not currently studied at university. This also reflects a concern of the man who now rests in peace, Dr. Mario Alzamora Valdez. Many, many years ago, he also considered it essential to establish an Academy of the Magistracy, and at the University of San Marcos, I believe it prospered, but this institute only functioned for two years. I think it is indispensable".

**Intervention by Mr. Chirinos soto, addressing Mr. Fernández Arce:**

"I don't know how Peru had as good judges as you have without this Academy, and it had them; and, on the other hand, Dr Fernandez himself seems to give weight to the argument I have made, that this body is a centralising body. There are thousands of judges all over the country, and hundreds of vocals. They all have to go through a new, fantastic body, the National Academy of the Judiciary. Or should we empower law schools to open special studies on the judiciary? That is, each university could have an annex for those who want to be candidates for magistrates, and even studies that can be followed by those who do not want to be magistrates".

**Intervention by Ms. Flores Nano (p. 1580):**

"In our view, the institutions that have been in force in Peru, as well as a prestige throughout republican life - for example, the Diplomatic Service, the Armed Forces - have, in effect, built a career on the basis of a specialisation born of some kind of specialised study centre. We would like to see a similar scheme for the judiciary. That is why we hope that this requirement will be maintained as a condition for access to the judicial career, leaving it up to the law to determine whether these specialised studies for pursuing a career as a judge can be completed either at a central institute or through various academic centres in the country with which this central institute has agreements. Therefore, Mr President, we believe it is important to maintain the requirement here and then develop the institution of the Academy, and even the possibility of specialised studies, through agreements, in the following article.

Finally, and despite all that has been argued, the 1993 Political Constitution only established the obligation to approve the AMAG's Training Programme for Promotion for those career magistrates who wish to participate in promotion competitions. The "Training" programme for entry to higher ranks, on the other hand, was not made compulsory. Lawyers who had been selected were only required to take the induction or qualification courses that AMAG would set up for this purpose.

Subsequently, in 1994, with the 1993 Constitution in force, the Commission for the Restructuring of the Administration of Justice in Peru, of the Ministry of Justice, published the document "New Perspectives for the Reform of the Administration of Justice", considering among its most relevant diagnoses the jurisdictional institutionality, the education and training of magistrates.

Similarly, the Strategic Plan for Modernisation and Reforms for the period 1997-1998, drawn up by the Judiciary with a vision of the future, designed a series of strategies for this reform, one of which was focused on "training and the judicial career", as it warned that the basis of the problems lay in deficient professional training.
After the fall of the Fujimori regime in 2001, understanding that justice is one of the basic factors for the development of a country, the Ministry of Justice and Human Rights created the "Study Commission on the Basis of Constitutional Reform", which proposed in its "Guidelines for Constitutional Reform" the modification of the structure and functioning of the Judicial Power, the Public Ministry, the National Council of the Magistracy and the Constitutional Court.

In 2001, the Technical Secretariat of the High Level Working Group for the Modernisation of the National System of Administration of Justice drafted the document "Modernisation of the National Justice System" in which eight thematic areas were addressed, among them the one related to human resources policy and programmes for the modernisation of the justice system, which undoubtedly involves selection, education and training.
Subsequently, in October 2003, the Judicial Power created the programme "NATIONAL AGREEMENT FOR JUSTICE", which a year later presented the document "State Policies for Structural Change in the Judicial Power", the most important of which, from our point of view, were those referring to personnel, human resources, the teaching of law, the training of magistrates and the recommendations for the creation of a Network of Universities focused on the training of magistrates, The most important of these, from our point of view, are those relating to personnel, human resources, legal education, the training of magistrates and the recommendations for the creation of a network of universities for the training of magistrates, since it is people who make and give life to the institutions and therefore only with good human resources will the structural changes sought be achieved.

It should be noted that at the same time, by means of Law 28083 and due to the general concern about the serious crisis that the justice administration system was going through,

the "SPECIAL COMMISSION FOR INTEGRAL REFORM OF THE ADMINISTRATION OF JUSTICE" (CERIAJUS) was created.

The Commission approved the "National Plan for the Comprehensive Reform of the Administration of Justice" in 2004, which became an important roadmap for the institutions of the justice system and those linked to it.

As a result of its research work, CERIAJUS highlighted the need for legal education and training of magistrates (2004, pp. 383-390). 383-390), however, it did not realise that this entailed changes in the process of selection and appointment of judges and prosecutors, since maintaining and strengthening the model of the National Council of the Magistracy, as it did, did not consolidate or help to overcome the deficient professional or academic training of many magistrates, despite the fact that this was identified as the determining cause of the justice system's problems.

It is worth noting that the proposals for reforming the judicial system came not only from the institutions or the government itself, but also from civil society, especially the Konrad Adenauer Foundation (KAS) and the Peruvian Institute of Social Market Economy (IPESM), which commissioned Dr. Javier de Belaunde López de Romaña to carry out the corresponding study and present proposals, the results of which are set out in the book entitled "La Reforma del Sistema de Justicia, ¿en el camino Correcto?" presented in 2006, point 3.2 of which deals

specifically with the Judicial and Prosecutorial Career, outlining the shortcomings of the system for selecting and appointing magistrates and basically the lack of a preliminary training stage that would provide adequate training for the exercise of the judicial or prosecutorial function.

Similarly, within the framework of the "National Agreement for Justice"4, the document "Context, problems and justification of the National Agreement for Justice" was drawn up, which considered among its main thematic axes the need for the training, education and selection of magistrates, always under the concept of the constitutionally designed model, that is, the National Council of the Judiciary.

In 2019, and in a complex social and political context, with the dissemination of audios and recordings of irregularities between members of the National Council of the Judiciary[12] (CNM) and magistrates, political authorities and businessmen, on 10 January 2019, the Constitutional Reform Law No. 30904 was published, replacing the CNM with the National Justice Board (JNJ), thus modifying articles 154, 155 and 156 of the Constitution.

This modification, however, does not introduce any reform or substantial change in practice, as it only replaces one name with another, while the model of the Council for the selection and appointment of magistrates remains the same.

Finally, on 8 May 2019, the Law Creating the Council for the Reform of the Justice System - Law No. 30942 - was published, with the aim of promoting the reform of the justice system.

The Council has published in July 2021 the book entitled "PROPRIETARY PROPOSALS FOR THE DEVELOPMENT OF A NATIONAL POLICY FOR THE JUSTICE SYSTEM", which is the first of its kind in the country.

This Council has published in July 2021 the book called "PROPOSAL FOR PUBLIC POLICY FOR THE REFORM OF THE JUSTICE SYSTEM" in which as Priority Objective Number 5 it is recommended: "Strengthen the human resources of the institutions", with the Judiciary itself proposing, in its Report on Proposals in Thematic Axis 2 Selection and appointment of Judges and 3 Education and training, respectively, to establish competency-based profiles based on the skills, abilities and aptitudes required by the jurisdictional function and THE CREATION OF A JUDICIAL SCHOOL and to establish a new training model for candidates with exclusive dedication and a duration of two years. Recommendation taken up by the Council in its Priority Objective No. 5, recommending that the Spanish Judicial School model be taken into consideration.

The present proposal for Constitutional Reform coincides with the last recommendation, which also dates back to the 1980s, as initially outlined, and is a long-awaited one by Judges and Prosecutors and is presented as the most appropriate for the solution of the historical problems of the Administration of Justice.

## II. LEGISLATIVE BACKGROUND

There are no legislative precedents related to the proposed creation of a School for the Magistracy or other similar body that would be officially and exclusively responsible for the selection, differentiated, specialised and full-time training of judges and prosecutors for the purpose of their appointment for access to the judicial or prosecutorial career, as well as for training, updating and improvement for promotion.

[12] Formed by an inter-institutional agreement, on 2 November 2016, between the Judiciary, the Public Prosecutor's Office, the National Council of the Judiciary, the Ministry of Justice and Human Rights and the Academy of the Judiciary.

## III. LEGAL FRAMEWORK.

1. Agreement 527-0303 of 25.06.1986 of the Supreme Court with DAI. Plenary Chamber Agreement of 1986 that creates a Judicial Academy as another dependency of the Judiciary.
2. Organic Law of the Judiciary approved by Legislative Decree N° 612.
3. Decree Law N° 25726 of 2.09.1992 creating the "Academia de Altos Estudios en Administración de Justicia" under the Ministry of Justice, empowered to grant degrees on behalf of the Nation. It repeals Legislative Decree 612 with regard to the Academy of the Judiciary.
4. Decree Law No. 18831, Organic Law of the National Council of Justice.
5. Political Constitution of 1979.
6. Legislative Decree No. 052-81 of 16 March 1981, Organic Law of the Public Prosecutor's Office.
7. Decree Law No. 25726 of 2.09.1992, which creates the Academy of Higher Studies in the Administration of Justice.
8. Organic Law of the Judiciary approved by Legislative Decree N° 767, modified by D.S. 017-93-JUS of 2.06.93.
9. Political Constitution of Peru of 1993.
10. Law N° 26335 of 21.07.94. Organic Law of the Academy of the Magistracy.
11. Law N° 30916. Organic Law of the National Justice Board.
12. Law N° 29277 of 7 Nov. 2008. Law on the Judicial Career.
13. Law No. 30483 of 27.05.2016, Law on the Prosecutorial Career.
14. UNODC Bangalore Principles of Judicial Conduct.
15. American Convention on Human Rights.
16. Priority Objective N° 5, of the "Informe de Propuesta de Política Pública de Reforma del Sistema de Justicia" prepared by the Council for the Reform of the Justice System created by Law N.° 30942, published by the Ministry of Justice in July 2021, Pp 156- 175.

## IV. JUSTIFICATION

The reasons why the selection and appointment of judges is a recurring issue are related to the essential objective of having independent, suitable and competent magistrates to guarantee an independent, reliable, accessible and efficient administration of justice that ensures respect for the rights of individuals and the purpose of justice, which is social peace.

For this reason, in recent times, in response to the criticism that under the scope of the 1979 Constitution judges and prosecutors were being recruited and appointed through the political influence of persons and institutions linked to the Executive and the Legislature, compromising the autonomy of the Judiciary and the independence of its magistrates, the constituents of 1993 introduced some reforms to the "Council" model adopted in the 1979 Constitution, expanding its functions and simultaneously creating the Academy of the Magistracy.

In effect, in the current Constitution of 1993, (arts. 150, 155 and 154), the Council of the Magistrature is now made up of seven members, elected by secret ballot by the following entities: One by the Supreme Court, one by the Board of Supreme Prosecutors, one by the Bar Associations of the Country, two by the other Professional Associations, one by the Rectors of the National Universities and the last by the Rectors of the Private Universities, and new functions were added such as:

i) Appointing, after public competition of merit and personal evaluation, judges and prosecutors at all levels.
ii) Ratifying judges and prosecutors at all levels every seven years.
îií) To apply the sanction of dismissal to Supreme Court and Supreme Prosecutors and, at the request of the Supreme Court or the Board of Supreme Prosecutors, respectively, to judges and prosecutors at all levels.

iv) To provide judges and prosecutors with the official qualification that accredits them.

In addition, the Judicial School is created (art. 151) under the name of the "Academy of the Magistracy", with the mission of carrying out the education, training and improvement of judges and prosecutors at all levels, for the purposes of their selection and promotion respectively by the CNM. In this way, t h e election of magistrates is separated, at least formally, from the political power.

It cannot be denied that the first few years the Council of the Magistracy functioned in accordance with the demands and expectations of its creation, however, after some time the selection of representatives ceased to be rigorous and lost its initial prestige and seriousness, so much so that between July and August 2018, the Peruvian press published a series of audios and recordings that revealed acts of corruption committed in the selection processes of magistrates, by some active members of this body in coordination with judges and prosecutors.

In response to this, on 20 July 2018, the Congress of the Republic removed all its members from their positions and four days later, declared the Institution in emergency and suspended its functioning (Law No. 30833).

It was as a consequence of these acts and provisions that, in December 2018, a hasty constitutional reform was approved and entered into force on 10 January 2019 (Law No. 30904). Thus, the CNM was replaced by the "Junta Nacional de Justicia" (JNJ) composed of seven members, elected almost immediately through an eventful public competition.

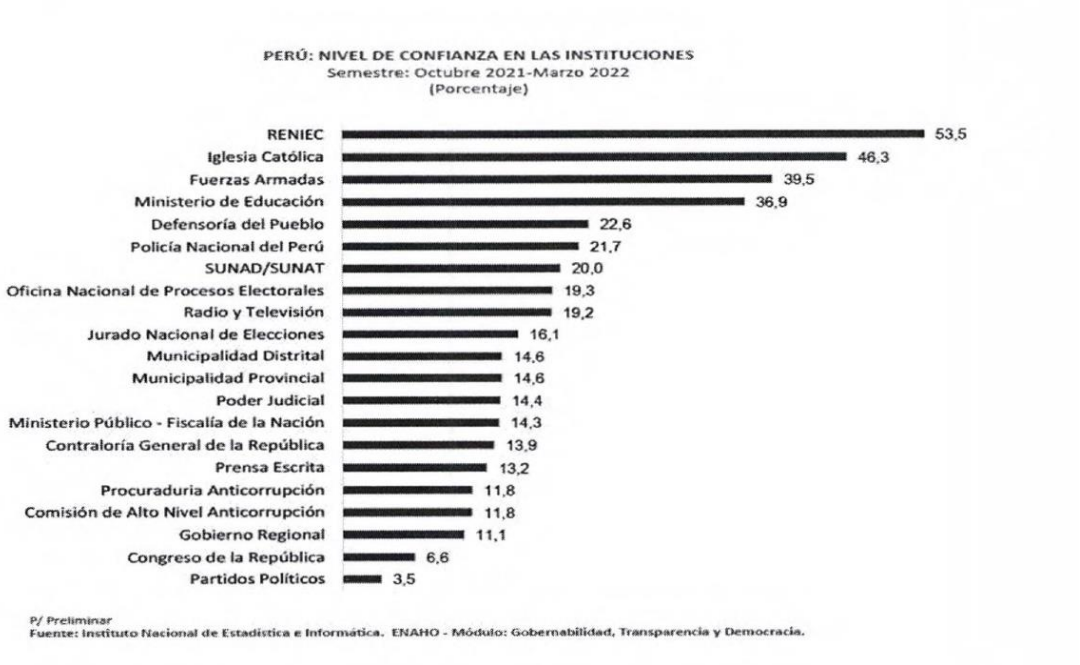
The current members of the JNJ are lawyers who, although they meet the general requirements set out in the Constitution after the aforementioned reform, most of them (5 of them) are teachers or have held some public or second-level jurisdictional posts, and are therefore unaware of national judicial and prosecutorial practice, as well as the real problems of these institutions of the Justice Administration System, not only due to their lack of experience in the free practice of their profession and lack of connection with the justice system in its entirety, but also because none of them can prove that they have been involved in the study or investigation of these problems. study or investigation of this problem.

In this sense, we can affirm that this new conformation is only a variant of the previous CNM, which maintains, therefore, the failed model of selection, appointment, promotion, ratification and disciplinary control, the results of which Peruvian society has been suffering and which is reflected in a slow, mediocre, corrupt justice, far from reality and with no empathy with the interests of the citizens.

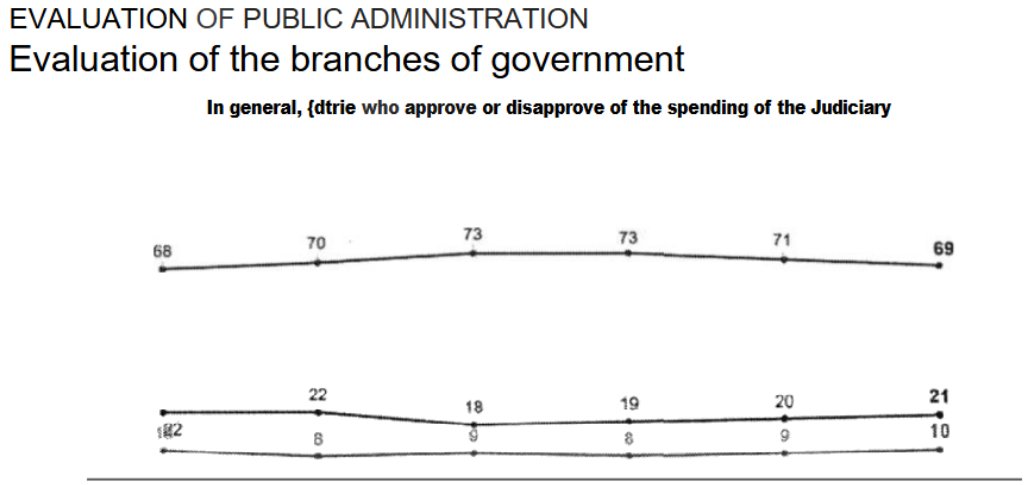
Thus, the current model has not produced the expected results, nor has it promoted the formation of a judicial and prosecutorial culture based on ethical paradigms and public service.

On the contrary, corruption has been on the rise according to the latest surveys of INEI, IPSOS, PROETICA and the GLOBAL BAROMETER OF CORRUPTION FOR LATIN AMERICA and the CARIBBEAN 2019, as can be seen in the figures they have published, which we insert below

According to the National Household Survey - ENAHO, conducted by the National Institute of Statistics and Informatics -INEI in the Semester October 2021 to March 2022, only 14 out of every 100 people trust the Judiciary, as shown in the following graph:




Likewise, according to the Opinion Poll conducted in November 2023 by IPS(OS, 69% of those surveyed disapprove of the management of the Judiciary.

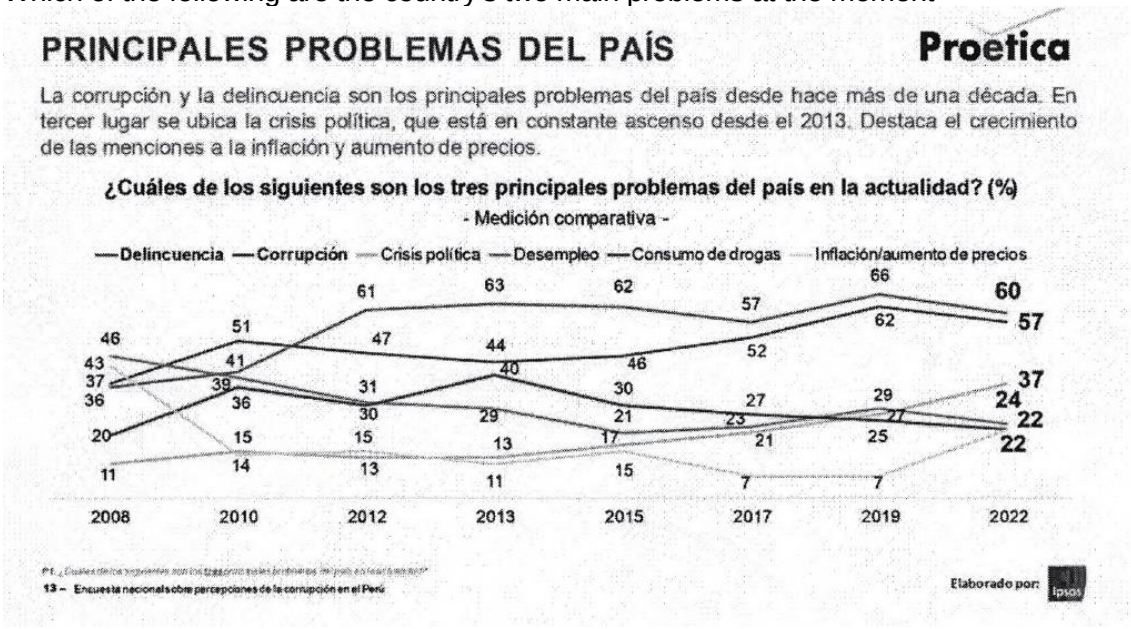



For its part, PROÉTICA, in the XII National Survey on Perceptions of Corruption in Peru published on 23 September 2022, a study commissioned from Ipsos Peru, found that corruption (57%) and crime (60%) have been the main problems in the country for more than a decade, according to a survey of Peruvian men and women over the age of 18.

Peru found that corruption (57%) and crime (60%) have been the country's main problems for more than a decade. The survey was conducted among Peruvian men and women over the age of 18 residing in urban areas of all socioeconomic levels and macro-regions of the country, and produced the following table:

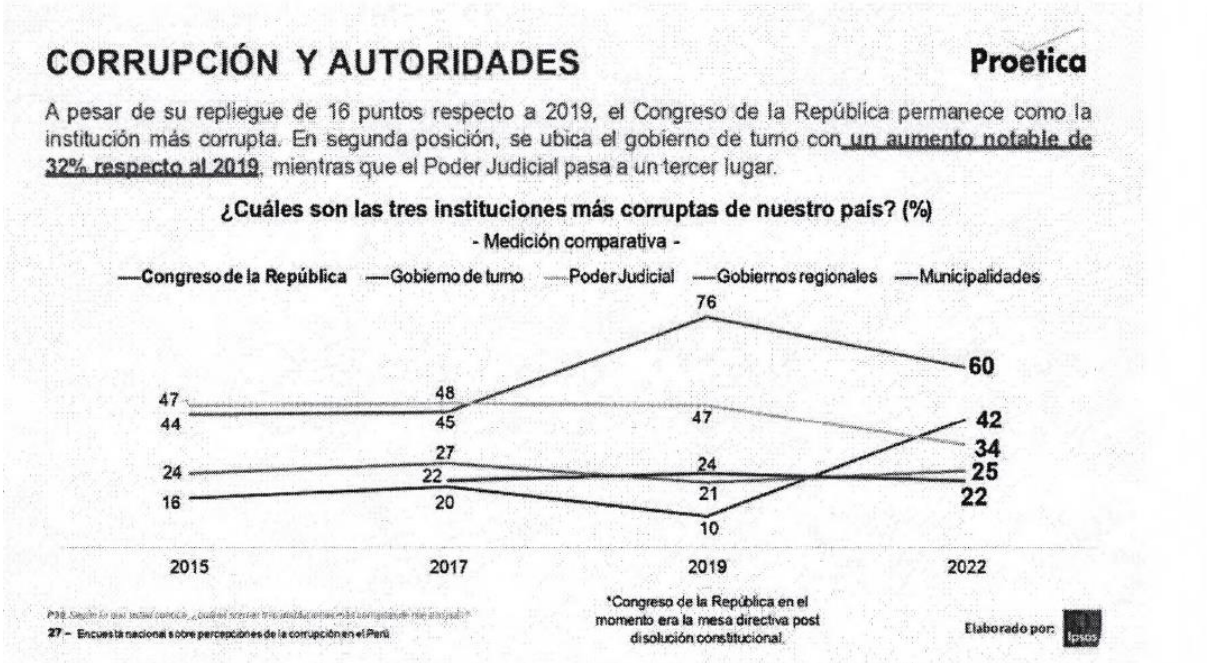
MAIN PROBLEMS OF THE COUNTRY
Corruption and crime have been the country's main problems for more than a decade. In third place is political crisis, which has been rising steadily since 2013. the country's main problem is inflation and rising prices.

Which of the following are the country's two main problems at the moment




The perception of corruption in the judiciary ranked third in 2022, as shown in the following table:

CORRUPTION AND AUTHORITIES
Despite its 16 point drop compared to 2022, the Congress of the Republic remains not the highest-ranking institution. In second position, the government in office is in second place, while the judiciary is in third place. while the Judiciary is in third place.




According to the 2019 Global Corruption Barometer for Latin America and the Caribbean, 65% of people in Peru believe that corruption has increased in the last 12 months, and as for the percentage of people who believe that most or all people in institutions are corrupt, in 2017, 63% considered judges and magistrates to be corrupt, and in 2019, 68% did, as shown in the following table:

**CORRUPTION BY INSTITUTION**

*-Porc entoj* e of people who claim that ło møyorio or all łos performs of these

| IHSTITUTION | 2017 | 2019 |
|---|---|---|
| President/prime minister | 65 °/o | **59 °/o** |
| Members of Parliament | Œ°/" | **80 °/a** |
| Civil servants | 53 °/a | **57 °/a** |
| Local public employees | 59 °/a | **60 °/a** |
| Police | | **41** *°/a* |
| judges and magistrates | 63 % | **68 °/a** |
| Religious leaders | 35 °/o | **31 °/a** |
| NGOs | | **32 °/a** |
| Business executives | 48 °/o | **4 î °/a** |
| Bankers | | 36 *°/o* |
| Journalists | | 29 % |

Additionally, it should be noted that the MAGISTRACY ACADEMY (AMAG) was established in the 1993 Constitution as a body dedicated exclusively to the education and training of judges and prosecutors[13], because, as Dr. Sánchez Palacios has rightly said, the law faculties of the country's universities are oriented towards the knowledge of law and legislation, but not towards the training of judges and prosecutors.

It is undeniable, he says, that judges and prosecutors must first be It is undeniable, he says, that judges and prosecutors must first be lawyers, but to perform such a lofty and delicate function, something more is needed, something different and additional to the training provided by law schools[14].

Nevertheless, AMAG was created as a sub-public agency of the Judiciary, small in size and lacking the necessary budget for the proper training of judicial or prosecutorial aspirants, limiting itself to giving periodic courses, albeit at a high level, to train judges and prosecutors of all instances, It does not provide training for selection purposes, as the Training Programme for Applicants (PROFA), which was created for this purpose, ceased to be compulsory due to a Constitutional Court ruling in the PROFA case - STC N° 0045-2004-AI/TC, and became a series of lectures given for a week or a month after appointment.

Due to this reality, and after having worked in the institutions of the Administration of Justice for more than thirty years, and therefore, having been a passive subject of the different reforms and also active in having led the Public Prosecutor's Office in a period of changes such as the implementation of the New Code of Criminal Procedure, it has been possible to identify the need to introduce profound changes to the current model of selection, training and appointment of magistrates.

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[13] The closest antecedent of the current Academy of the Magistracy is to be found in the Academy of Higher Studies in the Administration of Justice, created by Decree Law N° 25726 (of 2 September 1992). This institution was supposed to develop postgraduate programmes, the study and approval of which was considered a mandatory prerequisite for entry into the judicial and prosecutorial career. However, such an institution, objectionable for being a dependency of the Ministry of Justice, was never put into operation: Article 2. The Academy of Higher Studies in Administration of Justice is a body with academic, legal and economic autonomy, part of the Justice Sector, closely linked to the Peruvian University for the development of its activities; empowered to grant the respective degrees, professional titles, mentions or certifications in the name of the Academy.
Article 3. It is a prerequisite for entry to the Judicial Career or as a Public Prosecutor of the Public Ministry, in addition to Public Prosecutor's Office, in addition to that established by law, shall be the satisfactory completion of higher postgraduate studies, in the respective programme, of the Academy of Higher Studies in the Administration of Justice

[14] SÃNCHEZ-PALACIOS PAIVA, Manuel (1994). Academia de la Magistratura. Derecho & Sociedad, (8-9), 57-61. p. 58.

Personal experience and the consensus of researchers tells us that it is only through time that the aptitudes, attitudes and values of professionals and people in general can be perceived or known, which is why it is necessary to adopt reforms that entail a process of a certain duration that allows for the comprehensive observation of aspiring judges or prosecutors, so that the best can be selected from among the best.

This process can only take place in a specialised Academic Training Centre, as occurs in other professional careers such as diplomacy, the military, the police, the priesthood and even medicine, etc.; a fact which requires the creation of a National School for the Magistracy and the regulation of a closed career, in which entry to the Judiciary and the Prosecutor's Office would be from the first step, that is, as a Justice of the Peace Judge or Deputy Provincial Prosecutor respectively.

A written knowledge test is insufficient to measure the level of competence and attitude of an aspiring judge or prosecutor at the different levels, as is an interview with a psychologist or psychiatrist or a curricular evaluation, and even less so a personal interview which is said to seek to demonstrate values, as is currently the case.

It is a known fact that a person who is a memorist will pass any test. That a Curriculum Vitae is built these days, buying degrees and certificates as was denounced by the media and the only interview with psychologists and psychiatrists is insufficient to determine mental health, so much so that when appointments have been made, some cases of schizophrenia have been detected at least in the Public Ministry and finally values are not measured in an interview where everyone seeks to show what they are not, a fact that is demonstrated by the number of complaints and denunciations in the Control Bodies of each Institution.

In this sense, the present Constitutional Reform Bill proposes the creation of the NATIONAL SCHOOL OF THE MAGISTRATURE where training will be full-time and the training, specialisation and improvement of judges and prosecutors will be carried out on an ongoing basis. In this way, the determination of merit will be objective.

This proposal amalgamates academic training with institutional values and the experience gained from provisional appointments, with the aim of strengthening the institutional framework (making it participate in the selection process, through the supervision of the provisional exercise of the post), raising the level of competence of the magistrates and developing the human sense of those who hold such high positions, in order to regain the confidence of the users of the service and make the longed-for justice a reality.

It should be noted that in order to draw up this proposal for Constitutional Reform, we have taken as a reference the model of the Spanish School, from which we have selected what we consider could be useful for reversing the problems that have led us to make this proposal, adapting all of this, of course, to our reality

## V. DESCRIPTION OF THE PROBLEM

### 5.1 THE MODEL OF THE COUNCIL OF THE MAGISTRATURE OR NATIONAL BOARD OF JUSTICE.

After having tried, without success, many variables of the models for the selection and appointment of magistrates in the 1993 Political Constitution, the constituents, aware of the problems of the institutions that make up the Administration of Justice, opted to maintain the model of the Council of the Magistracy (CNM) introduced in the 1979 Constitution, but with some modifications or reforms, having been granted additional powers such as appointment and ratification, and in turn complemented by the creation of the Academy of the Magistracy, on the

understanding that this guaranteed functional independence and institutional autonomy and satisfied the necessary and indispensable improvement of the professional competence of judges and prosecutors, considered to be one of the essential elements for the exercise of the function.

Thus, in articles 150 and 154, the National Council of the Magistracy (CNM) is conceived as an autonomous and independent body and is assigned as its main attributions the selection and appointment of judges and prosecutors, their ratification every seven years and their administrative sanction, which includes dismissal.

The CNM was thus born as an apolitical body, which banished the intervention of the political power in the appointment of magistrates. Its regulation as an external entity with powers to exercise control over judges and prosecutors at all levels held out the hope of change, since, unlike the 1979 Constitution, which entrusted the appointment of magistrates to the President of the Republic, this one was assigned to an external entity with no links whatsoever to the political authorities and, furthermore, implicitly carried the mandate to ensure that professional training, experience and ethical values prevailed in public competitions, as was later enshrined in its Organic Law.

However, the gaps and defects of a structural and functional nature that affected the achievement of the purposes for which the new CNM was created were not noticed, the most important being those objectively specified by Javier de Belaunde López de Romaña[15] and his team, in Chapter 3 of the book containing the result of their research on the reforms of the justice system, which refer to its composition, speciality and representativeness, the lack of special requirements to be a member of the CNM and its non-registered election process, and the absence of a disciplinary regime for its members.

Indeed, establishing in Article 156 of the Constitution that "to be a member of the National Council of the Judiciary, the same requirements are required as to be a member of the Supreme Court, except as provided for in Article 147(4)" meant that the representatives of the professional associations did not necessarily have to be lawyers. As a result, the rectors of the universities came to elect an agronomist and a biochemist, changing the original composition of their members, in such a way that four of their seven members were not legal professionals.

On the other hand, the lack of regulation in the Organic Law of the CNM of the procedure and special requirements for the selection of its members distanced the comparison with the magistrates of the Supreme Court that the constitutional norm makes, since to be a Supreme Judge it is required to prove in a public procedure, with the intervention of the civil society, to have solvency and professional experience and moral integrity, which is why Councillors were elected who did not have the profile required for the position.

Likewise, the lack of a pre-established rule and of identification of non-permissive conduct in the actions of the members of the CNM meant that it was not known whether certain actions could be subject to internal control and who were those called upon to prosecute them, having reached extreme situations that demanded the intervention of the Congress of the Republic and the use of the figure of removal provided for in Article 157 of the Political Constitution.

It should be noted that the creation of the CNM at the constitutional level was supported by the community, it was considered a viable alternative for the solution of the problems of the administration of justice, however, the questioning of its members did not take long to arrive and

[15] DE BELAUNDE LOPEZ DE ROMAÑA, Javier: "La Reforma del Sistema de Justicia ¿en el camino correcto? Published by the CONRAD ADENAUER Foundation and the INSTITUTOPERUANO DE ECONOMIA SOCIAL DE MERCADO in February 2006. pp 65.

increase to the extreme of being attributed influence peddling, adulteration of marks in public competitions in order to change the final results of the competitions for entry or promotion in the judicial or fiscal career for the benefit of their close friends, etc. These conducts, which were reported by various media, led to the removal of Councillor Efraín Anaya Cárdenas from his post as Councillor in April 2010 by the Congress of the Republic.

Removal that did not have any preventive effect, as in 2018, a set of audios obtained in the course of a prosecutorial investigation against a criminal organisation, which revealed irregular dealings between members of the CNM and magistrates of the Judiciary, political authorities and businessmen, were disseminated through the media. The strength of these revelations led the Congress of the Republic to reactivate the removal procedure for the members of the CNM, who resigned before the final decision of the Plenary.

In this complex social and political context, following the resignation of the Alternate Councillors, a constitutional reform process was initiated in the Congress of the Republic at the request of the Executive. Thus, due to citizen and political pressure, articles 154, 155 and 156 of the Constitution were hastily modified, creating the NATIONAL JUSTICE BOARD as the new body in charge of appointing, ratifying or dismissing Supreme Court judges and Supreme Prosecutors, and ex officio or at the request of the Supreme Court or the Supreme Prosecutors Board, prosecutors and judges of the lower courts, with its organisation, functions and attributions being regulated in its Organic Law approved by Law N. 30904, of 10 May 2004.° 30904 of 10 January 2019.

Although it is established who will be in charge of carrying out the process of selection, appointment and swearing in of the members of the National Board of Justice (Special Commission chaired by the Ombudsman and composed of the President of the Judiciary, the Prosecutor General, the President of the Constitutional Court, the Comptroller General of the Republic, a rector of the public universities and a rector of the public universities), it is not determined which institutional body will assume the disciplinary control of the same, so the existing vacuum in the Political Constitution of 1993 is maintained.

In addition, the members of the Special Commission for the Selection and Appointment of the members of the National Justice Board include the President of the Judiciary and the Prosecutor General; magistrates who will then be subject to ratification processes, performance evaluation and, if necessary, disciplinary procedures, in such a way that the impartiality and objectivity of these procedures is called into question.

On the other hand, it has been established as a condition for holding the position of member of the National Board of Justice to be a lawyer by profession, but the selection process is not rigorous in measuring the professional competence, experience and values of the applicants, nor the knowledge they may have about the problems of the institutions of the judicial system, let alone the desired profile for the performance of the different positions in these institutions; This situation leads to the repetition of the mechanism of contracting third party lawyers to evaluate, qualify and review the tests in the case of the applicants and the sentences and rulings of the judges or prosecutors who participate in any of the other processes under the responsibility of the National Justice Board, which leads to two serious situations:

i The probable appointment of professionals who are unsuitable to exercise the judicial or prosecutorial function, and,
ii) The subjection of magistrates to the evaluation of barristers, whose identity and professional competence and moral suitability is unknown to those being evaluated, who are deprived of the option of being able to make use of some of the mechanisms established by law to guarantee impartiality and objectivity in proceedings of any nature.

It should be noted that the Judiciary and the Public Prosecutor's Office are not represented on the National Justice Board, and therefore, being autonomous and independent entities, they cannot interfere in the functions that correspond to them, but they cannot interfere in their own functions.

The JNJ is also unable to observe or return appointees who do not meet the requirements of the positions, hence they are passive recipients of the human resources selected by the JNJ and of the disrepute that their performance may generate.

In this sense, it is dysfunctional to maintain a model of Council or Board for the selection of magistrates, as they have not contributed to the solution of the problems of the institutions of the justice system and, on the contrary, have accentuated the delay in the handling of the procedural burden due to the lack of experience and specialisation of many of those appointed and have delegitimised the judges and prosecutors appointed, as they themselves have been involved in irregular acts and have deployed actions tending to politicise the justice system.

The situation becomes more acute if one evaluates the execution of the budget allocated for the fulfilment of its institutional mission, since, according to what is published on its institutional website, it has not fulfilled the obligation to call for competitions for all vacant positions, nor the other functions entrusted to it, despite having the budget allocated for this purpose, as is corroborated by the statistical tables prepared and published by the JNJ itself.

It should be borne in mind that the JNJ was installed on 06 January 2020 and had to fulfil two substantial axes:

i) To review the appointment, ratification and disciplinary processes carried out by the members of the National Council of the Judiciary removed by the Congress; and
ii) To elect the National Control Authority.

However, it did not deliver on either of the two axes in a timely manner.

In 2020 the JNJ updated its 180-day work plan, because the deadlines had been altered due to the pandemic, and established the following activities:
i) Revision of the prioritisation criteria for the CNM's disciplinary proceedings, deadline one hundred and forty-two (142) to one hundred and seventy (170) days.
ii) Opening preliminary investigations ex officio or at the request of a party in cases where the interests of the justice system and public confidence are seriously affected.
iii) To hear and resolve requests for removal from office made by the Supreme Court of Justice, the Board of Supreme Prosecutors or the competent body within one hundred and seventy (170) days.
iv) Establish the objective criteria on the basis of which the JNJ creates disciplinary precedents for judges and prosecutors who are not supreme prosecutors. Sixty (60) days.
It has been verified that, only on 25 May 2023, the Plenary of the National Board of Justice (JNJ) unanimously elected Roberto Alejandro Palacios Bran as head of the National Authority of Control of the Judiciary, after he reached the passing score of 83.46 in the merit table of the call, demonstrating an inability to do so in a timely manner.

Similarly, the JNJ appointed Juan Antonio Fernández Jerí as the first head of the National Authority of Control of the Public Prosecutor's Office, who was ranked first in the merit list of the call for applications No. 002-2021-SN/JNJ, with a final average of 89.22 points, i.e. 2 years after the competition and 4 years after the issuance of Law No. 30844 published in 2019, a process that is even currently being questioned.

In conclusion, the defects and errors that the CNM had in its structural and functional design have been repeated by the National Board of Justice, being that, currently it is even more delegitimized

and questioned, to the point that its actions have given merit to the Agenda Motion No. 7565, which calls for the removal of all its members for having incurred in serious cause under Article 157 of the constitution and where they are accused of:

a) Having issued a pronouncement invoking further reflection to the Congress of the Republic in favour of a Supreme Prosecutor who is under its disciplinary control in a process of impeachment and impeachment in the Congress of the Republic, violating the principle of separation and independence of powers.
b) To have directed the interpretation of Article 156 (3) of the Political Constitution to favour one of its members who is over the age limit for holding office, thereby incurring in the grounds for removal provided for in Article 157 of the same political charter;
c) Not having complied with his constitutional duty to present his annual report to the Plenary of the Congress of the Republic, in violation of article 154, paragraph 6 of the Political Constitution of Peru;

Likewise, in the Motion of Agenda No. 8494, the removal of all its members is requested for having incurred in serious cause according to article 157º of the Constitution, as they are accused of affirming a non-existent fact in the sense that the Comptroller General of the Republic participated in the Public Competition for the Selection and Appointment of the National Authority of Control of the Public Ministry when the Comptroller General of the Republic itself participated in concurrent control in the Public Competition for the Selection and Appointment of the National Authority of Control of the Public Ministry, on October 3, 2023, has strongly denied this assertion, stating that it has not carried out any concurrent control services in the Public Tender N° 002-2021-SN-JNJ.

Then it has been the subject of another motion to remove it from the agenda for not having been removed in the case of Patricia Benavides, despite the fact that all of its members were found to be guilty of disqualification under article 14, paragraphs g) and h) and the consequent sanction established in article 15 of the Organic Law of the National Public Prosecutor's Office.

In other words, the members of the JNJ, and therefore the institution itself, have failed in their mission to provide the Public Prosecutor's Office and the Judiciary with suitable personnel to ensure respect for the rights of individuals and the satisfaction of the users of the service, and thus ensure that the administration of justice achieves its ultimate purpose, which is to guarantee social peace in justice. On the contrary, their image has been tarnished in the eyes of public opinion, which calls into question their very survival.

**5.2 ACADEMY OF THE MAGISTRACY.**

As has already been pointed out, the Academy of the Magistracy (AMAG) was born weakened, not only because it is a sub-folding of the Judiciary, therefore with economic limitations, but also because it was structured not to train magistrates,

as mandated by the Constitution, but to complement their academic training, since the training courses prior to entry to the career became non-compulsory as a result of the Constitutional Court's rulings in Ex. N° 0025-2005-PI/TC and N° 0026-2005-PI/TC, FJ. 109, in which it is not taken into account that among the objections or questionings to the justice service was the non-identification of the litigants with the jurisdictional decisions, a fact directly linked to professional competence.

In this judgement, which arose as a result of complaints from those who claimed that the compulsory nature of training studies at the Academy of the Judiciary would affect the right of access to public service of those who had decided not to take such studies, the Constitutional Court stated that "Persons who manage to enter the judiciary and who have already completed the PROFA may be exempted from it and assume their functions; On the other hand, those who

have not taken the course, in the event that they do enter, will not be able to exercise the post until after they have taken the course. In the event that the PROFA is revised and extended, it will be up to the Academy of the Judiciary to determine whether or not those who have already completed the course must complete the required training cycle. In any case, to this end, the Academy must ensure, on the one hand, that it avoids duplication of the course for those who have already taken it, but on the other hand, that this does not imply neglecting the full and very high level of training required by the suitability of the magistracy. Of course, this situation is temporary and is justified only to mitigate the consequences of the change - the lack of need for the PROFA in order to apply for the magistracy - for people who have already taken it, a situation which, once overcome, will not require any exception to the completion of the course before the exercise of functions of those who have entered the magistracy" (STC Expediente N° 0025-2005-PI/TC and N° 0026-2005-PI/TC, FJ. 109).

Due to this decision, it was "temporarily" established that the approval of the Training Programme for Aspiring Judges (PROFA) was not compulsory and the Habilitation and Induction Courses were created, which were compulsory for those judges and prosecutors, selected by the CNM, who had not accredited the approval of the Training Programme for Aspiring Judges.

From this interpretation, one of the main contradictions in the functioning of the Judicial Academy can be extracted. We refer to the fact that the professionals who compete for a position in the Training Programme for Judicial Candidates do not necessarily aspire to enter the judicial or prosecutorial career, that is to say, there is no correlation between the initial training offered by the Judicial Academy and the appointments made by the now defunct National Council of the Judiciary. Therefore, the Training Programme for Judicial Candidates does not fulfil the objective for which it was created.

Likewise, there is no equivalence between the Training Programme for Prospective Magistrates and the Qualification and Induction Courses, while the former lasts for more than six months, the other courses are carried out in weeks as a prerequisite for the appointment ceremony. Therefore, the magistrates who were appointed by the National Council of the Judiciary have not received the same level of initial training for the exercise of the judiciary and the prosecutorial function.

The differentiated type of training received in the PROFA is reflected in the institutional budget of the Academy of the Magistracy (2015-2018), in that the expenditure allocated to training (PROFA) was significantly higher than the amount allocated to the Qualification and Induction Courses.

The training activity for judicial aspirants, i.e. the implementation of the Training Programme for Judicial Aspirants, involved the execution of between 1.3 and 2.8 million soles. On the other hand, the implementation of the Qualification and Induction Courses for judges and prosecutors selected by the CNM and now by the JNJ, who have not previously taken the PROFA, represents a much lower budget, which fluctuates between 50 thousand and 387 thousand soles.

| Actividad / PIA | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|---|---|---|---|
| ABOGADOS ASPIRANTES A JUECES Y FISCALES FORMADOS | 2,369,990 | 2,098,723 | 3,561,167 | 2,823,901 | 2,366,290 | 1,446,626 | 1,585,807 | 1,894,941 | 1,483,959 | 1,288,930 |
| JUECES Y FISCALES NOMBRADOS POR EL CONSEJO NACIONAL DE LA MAGISTRATURA ACREDITADOS PARA EL EJERCICIO DE SU FUNCION | 387,380 | 192,669 | 106,422 | 51,820 | 0 | * | * | * | * | * |

Fuente: Transparencia económica MEF - 8 de enero de 2024

* NO FIGURA LA ACTIVIDAD

There is no doubt that due to the small size of the AMAG, both in terms of budget and function, it is far from being a training school for aspiring judges or prosecutors, The Academy should have been a determining factor in raising professional standards and not encourage the former CNM and the current JNJ to ask applicants for accreditation of having followed diplomas, master's degrees, doctorates, literary production, etc., which, although they serve to accredit the updating of knowledge, are not necessarily suitable to demonstrate that one has the personal conditions to be a magistrate.

| ACADEMIA DE LA MAGISTRATURA | Año | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | PIM | 19,298,875 | 17,212,416 | 20,715,490 | 20,518,326 | 19,109,822 | 18,699,677 | 15,322,783 | 16,508,485 | 14,053,474 | 13,563,263 |
| | Ejecución | 79.80% | 86.70% | 91.10% | 75.50% | 73.20% | 63.40% | 81.00% | 85.70% | 95.60% | 0% |

Fuente: Transparencia económica MEF - 8 de enero de 2024

AMAG's institutional budget has been decreasing year by year, which is in line with its leading role in the process of selection, training and appointment of judges and prosecutors.

## VI. RATIONALE OF THE NORMATIVE FORMULA

### CHAPTER VIII
### THE JUDICIARY

**"Article 142.-** The resolutions of the National Jury of Elections in electoral matters are not subject to judicial review.

National Jury of Elections in electoral matters.

Basis of the proposal:

In the proposed text of the constitutional reform, the expression "(...) nor those of the Council of the Judiciary in matters of evaluation and ratification of judges" is eliminated from article 142 of the Political Constitution.

This is due to the fact that it is being proposed to eliminate the figure of the "Partial Evaluation and the integral Ratification every seven years", contained in numeral 2) of article 154 of the same political charter in consideration of the fact that they affect the functional independence of judges and prosecutors, as well as the independence of the Judicial Power and the autonomy of the Judiciary, the independence of the judiciary and the functional autonomy of the Public Prosecutor's Office, as they are entrusted to an external body outside the judicial and prosecutorial function, and are therefore contrary to the democratic principles that underpin our rule of law, such as the separation of powers contained in Article 43 of the Political Charter, and are therefore harmful to the judicial and prosecutorial careers.

Furthermore, from the point of view of constitutional control of laws, it is pointless to maintain this prohibition because both the IACHR in the case of Luis Cuya Lavi et al. v. Peru and the Constitutional Court itself have stated in various judgments that there are no spheres exempt from control or jurisdictional protection (Exp. N° 1230-2022-HC/TC fy. 4; Exp. N° 2488-2022-HC/TC, fj.22.), and in the specific case of ratification and performance evaluation, it has stated EXP. N.° 2409-2002-AA/TC that:

*"(...) it is clear to this Court that when Article 142.° of the Constitution establishes that the resolutions of the National Council of the Judiciary in matters of evaluation and ratification of Judges are not reviewable in the courts, a limitation that does not apply to the Constitutional Court for the reasons mentioned above, the prerequisite for the validity of this statement is based on the fact that the well-known functions that have been entrusted to this body are exercised within the limits and scope that the Constitution grants it, and not to other different ones, which could turn it into an entity that operates outside or at the margin of the same rule that supports it.*

*Basically, it is nothing more than the same theory of the so-called constituted powers, which are those that operate with full autonomy within their functions, but without this characteristic turning them into autarchic entities that ignore or even contravene what the Constitution itself imposes on them. The Council of the Judiciary, like any organ of the State, has limits to its functions, as it is indisputable that these do not cease at any time to be subject to the guidelines established in the fundamental norm.*

*Consequently, its rulings are constitutionally valid as long as they do not contravene the set of values, principles and fundamental rights of the individual contained in the Constitution, which implies, a contrario sensu, that if they are exercised in such a way as to distort the framework of fundamental values and principles recognised therein, there is and can be no reason to invalidate or delegitimise the constitutional review granted to this Court in Articles 201.0 and 201.1 of the Constitution or fundamental rights recognised therein, there is and can be no reason to invalidate or delegitimise the constitutional control granted to this Court in Articles 201.0 and 202.0 of our fundamental text" (emphasis added).*

We must remember that, for the aforementioned reasons, since its incorporation in the Constitution, the Ratification has been seriously criticised, especially if its use by the governments in power -dictatorial or democratic-, was evidenced in practice, due to the fact that they indirectly interfered in the CNM -JNJ in order to remove the magistrates who were not in line with their interests, This fact demanded the immediate intervention of the corresponding jurisdictional bodies, as, in fact, many of them did, obtaining favourable pronouncements, not only at the national level but also from international bodies. It is therefore appropriate to make the respective modification.

**Article 144.-"**The President of the Supreme Court is also the President of the Judiciary. The Plenary Chamber of the Supreme Court is the highest deliberative body of the Judiciary.

The President of the Judiciary presides over the Inter-institutional Coordination Council of the Justice System, which is also composed of the Public Prosecutor, the President of the Board of Directors of the National School of Magistrates, the heads of the National Authority for the Control of the Judiciary and of the Public Prosecutor's Office, the Minister of the Interior, the Minister of Justice and Human Rights and the Minister of Economy and Finance.

The Inter-institutional Coordination Council of the Justice Administration System is the space for the coordination of public policies on the administration of justice. Its functioning is regulated by law.

Basis of the proposal:

It is proposed that an inter-institutional coordination body called "Consejo de Coordinación Interinstitucional del Sistema de Justicia"" be created at the constitutional level with the aim of creating a space where the institutions of the Justice System can interact as part of the same. Where the institutional plans and policies that commit all of them are agreed and have the same vision and horizon in order to converge and make possible the final objective they set out to achieve. Transparent, reliable justice with satisfactory results is only possible if all the institutions involved in this task act under uniform management guidelines. The challenge must be to find joint solutions to common problems that affect the timely and fair administration of justice.

It should be clear, however, that these coordinations should not affect the corresponding administrative and economic autonomies and especially the functional independence of the bodies in charge of exercising the judicial and prosecutorial functions.

The Inter-institutional Coordination Council of the Justice System therefore constitutes a space for permanent interrelation, analysis and coordination which, while respecting the autonomy and independence of each of the institutions that make up the Justice Administration System, makes it possible to outline or formulate and implement public policies in a coherent and concatenated manner that effectively guarantees the operability of the Justice System.

It is a question of generating a space for evaluation and formal debate on the problems of justice that transcends the goodwill and symbolism with which the spaces for interaction between the different entities of the Justice System have functioned until now, which has often led to disagreements and late implementation of the Iey, as would be the case, among others, of:

- The unbalanced implementation of the new C.P.P. due to the resistance of the National Police,
- The unilateral decision of any of the institutions, for example, to create Criminal Courts or Chambers by the Judiciary without coordinating with the Public Prosecutor's Office, despite the fact that a Criminal Chamber or Court cannot function without the presence of a Prosecutor. What happens if the Public Prosecutor's Office has not foreseen the creation of posts and therefore does not have the budget for this purpose. There is an institutional imbalance.
- The National Police considers the permanent presence of a prosecutor and public defender in certain police stations to be necessary, only to find that administrative provisions prevent this.
- It is necessary or indispensable to analyse the problem of deadlines, the causes of non-compliance, the non-contamination of evidence and its storage, the problem of confidentiality during the police investigation, etc., which have often led to the release of detainees due to late or defective action, generating comments that damage the image of the institutions and increase discontent and distrust in the institutions of the justice system.

This space will also allow for a comprehensive and conscientious analysis of the problems of the administration of justice by the representatives of the institutions responsible for these services in their different phases, in such a way that they can present joint and reliable proposals for solutions, since, being knowledgeable about the causes of the problems of their institutions, they will be able to find valid solutions, which will be effective by having the representative of the Ministry of the Economy for everything that requires expenditure.

**"Article 147.-** To be a judge of the Supreme Court, the following are required:
1. To be Peruvian by birth;
2. To be a practising citizen;
3. Be over 50 years of age and under 75 years of age;
4. To have been a Superior Court magistrate or Superior Prosecutor for ten years."

Basis of the proposal:

The modification of Article 147 of the Constitution is justified by the need to change the judicial career model in Peru. Its original wording establishes the open access system for the Supreme Court of Justice of the Republic, a criterion that has been developed in the norms of the constitutional block, extending it to all levels of the judiciary.

Indeed, Article 147, paragraph 4) of the 1993 Constitution establishes that: "To be a Supreme Court judge, one must have been a Superior Court judge or senior prosecutor for 10 years or have been a lawyer or university professor in legal matters for 15 years".

This rule establishes the open career model, in that it allows entry to the judiciary at any of its grades or hierarchical levels. As a result of this, various internal situations have arisen which have increasingly undermined the institutional image, confidence and credibility of judges.

Thus, we find that:

i) Career judges and prosecutors are treated differently among themselves from those who are not. This separatist situation becomes more notorious when the professional competence and academic quality of the latter is not up to the required or desired level.
ii The new generations of judges and prosecutors hired under the open career model, due to their lack of specialisation and almost no knowledge of the issues, formalities and internal procedures of the judicial and prosecutorial function, generate delays in their work. Their lack of coordination with the judicial organisation, their lack of knowledge of the protocols and organisational culture of the system's institutions and their low concept of public service and attention to citizens have a negative impact on the image of the institutions themselves and increase the mistrust of the users of the service, thus becoming one of the contributing factors in the deterioration of the institutions of the justice administration system.
iii The fact that the application to become a member of the Supreme Court is open to legal professionals who practice law independently or who teach law at the university level has meant that this rule has been transferred to all other levels of the judicial hierarchy, allowing the incorporation of large contingents of lawyers without the proper training and knowledge of the judicial corporation, since seniority and experience are only accredited by the date of the Bar Association and university teaching with the corresponding certifications.
However, this should not be enough; we believe that it is essential to bear in mind that universities are centres of research and permanent debate where free and critical thought flows; here there are no ties or submission of the specific case to the law, as is the case with a judge or prosecutor. Therefore, their professional profile is different from that of a judge. Moreover, it is not enough to prove that one is a teacher; it is necessary to prove which subjects were taught, in which universities and what were the results of their research work, among others...
IV Empowering judges to apply to the highest instance of the Public Prosecutor's Office or vice versa, just because a vacancy arises, does not contribute to the strengthening of institutions, but rather to the forging of unstable magistrates or magistrates who do not identify with the function they perform.

We must remember that the judge is the depositary of the trust of the State and society for the resolution of conflicts and guarantor of fundamental rights. The judge must be a subject who enjoys social credibility due to the important work he/she performs as guarantor of the application of the laws and the Constitution (F. 40 in fine of STC 00006- 2009-Pi/TC), which obviously implies stripping him/herself of any particular interest or external influence. Therefore, his own statute requires him to observe a series of duties and responsibilities in the exercise of his functions.

A lawyer in the free exercise of his profession or in the professorship (where he is a free thinker) can easily observe these rules. Perhaps this does not require a special and ironclad training that takes time to internalise. There are many examples of the failure of great masters in the practice of the judiciary, which should be recorded in the judicial annals.

To this extent, it is essential to amend this constitutional article in order to close the judicial career and consequently the prosecutorial career, since the rules applicable to the Judiciary are extended to the members of the Public Prosecutor's Office in application of Article 158 of the current Political Charter.

The effect of closing the judicial and prosecutorial careers will be that access will be by the lowest ranking position in the respective organisational structure: Justice of the Peace in the Judiciary and Deputy Provincial Prosecutor in the Public Prosecutor's Office, which must be filled in strict order of merit, and after a selection and training process at the "National School of the Judiciary".

Adequately trained and prepared professional cadres to assume functions in the justice system will guarantee a better service and also ensure that the higher positions in the judicial and prosecutorial structure will be occupied in the future by professionals of recognised professional

and ethical solvency, with sufficient experience and specialisation and identified with the service they provide, as occurs in the diplomatic, military and police careers and even in private practice, in the seminaries that train priests.

To this extent, it is proposed to amend paragraphs 3) and 4) of article 147 of the Constitution, changing the original meaning of the qualifying requirements to be a Supreme Court judge.

The age for accessing the position of Supreme Judge is raised by five (5) years, that is to say that from now on one must have reached 50 years of age, and the age of retirement is increased to 75 years.

This increase in the minimum and maximum age is based on the need to have professional cadres at the highest level of the justice system who have attained sufficient maturity, weight, serenity and personal and professional solidity to enable them to be moderators and not creators of conflicts. Their knowledge of the national reality and social changes should enable them to seriously evaluate the effects of their decisions and make the purpose of justice possible.
We are convinced that with the acquired ethical and professional solvency, corruption and other problems afflicting justice and the nation will have been eradicated. For a strong and reliable judiciary contributes to the legal security and economic development of a country. Of course, all this will depend on the effort and commitment of each and every member of these institutions and the way in which they are managed.

**CHAPTER IX**
**The National School of the Judiciary**

"Article 150.- The National School of the Judiciary is the higher centre of high specialisation and academic research that is responsible for the selection and training of a s p i r i n g judges or prosecutors and their appointment; training for promotion purposes and their updating and improvement; as well as issuing the title accrediting them as judges or prosecutors in their corresponding grade and its cancellation in the cases provided for by the Law.

It is also responsible for selecting and appointing the heads of the National Authority for the Control of the Judiciary and the Public Prosecutor's Office after a public competition and a period of specialisation and induction.
The School is autonomous and is governed by its Organic Law."

Basis of the proposal:

The current Constitution (1993), for the first time, detaches the selection of magistrates from the political power by adopting the model of Councils, creating for this purpose the National Council of the Magistracy (today the National Board of Justice) for the purpose of selecting and appointing judges and prosecutors, except when they are elected by popular vote. This reform was reinforced by Article 151, with the creation of the Judicial School, which it calls the "Academy of the Magistracy", whose mission is the education, training and improvement of judges and prosecutors at all levels, for the purpose of their selection.

Article 151 of the 1993 Constitution determines the functions and attributions of the Academy of the Magistracy, stating that it is the official academic institution of the justice system. However, contrary to expectations, it has played a marginal role in the process of selection and appointment of magistrates, due to the limited political space for action it has had in the institutional sphere, its reduced budget, the excessive conflicts and power disputes in its administrative and management bodies, as well as the lack of will and collaboration by the institutions themselves to promote the academic services of training, updating and improvement of the magistrates of the justice system, expressed, for example, in the reluctance to grant leaves of absence with the enjoyment of the rights of the magistrates, as well as the lack of will and collaboration by the

institutions themselves to strengthen the academic services for the training, updating and improvement of the magistrates of the justice system, expressed for example in the reluctance to grant paid leave and other facilities for the development of academic activities, a situation that turned the Academy of the Magistracy into a sort of "little night school", as the prominent constitutionalist Domingo Garcia Belaunde pointed out.

It should be pointed out that it had originally been proposed to include in the Constitution the obligation to pass studies at the Academy of the Magistracy in order to enter the judicial or prosecutorial career, as it appears in the Constitutional Debate that took place in the Constitution and Regulations Commission, which can be found in the Diario de Debates (Journal of Debates), The same is valid and therefore it is necessary to take into account especially in the speeches quoted on pages 11, 12 and 13 of this draft constitutional reform, referring to Mr. Ferrero Costa, Mr. Fernández Arce, Mr. Chirinos Soto, addressing Mr. Fernández Arce, and Mrs. Flores Nano. Flores Nano.

Subsequently, and despite all the arguments, the 1993 Political Constitution only made it compulsory to pass the AMAG's Training Programme for Promotion for those magistrates who wished to advance in their careers through promotion competitions, as it was determined that the Training Programme for Applicants (PROFA) was not compulsory for those who wished to enter the judiciary; Those selected who have not taken it must subsequently take it as an induction or qualification course, as appropriate, which means that the Judicial Academy did not achieve its objective, especially if the selection and appointment of judges and prosecutors was entrusted to another autonomous body which established its own rules and requirements.

To this extent, the present proposal for constitutional reform is aimed at establishing a new National School of the Judiciary to replace the existing Academy of the Judiciary, granting it constitutional autonomy and replacing the current National Board of Justice, so that it can exercise its leadership as the official academic body of the Peruvian judiciary in charge of selecting, educating, training, improving and appointing magistrates for both entry and promotion in the judicial and prosecutorial careers.

In this way, our country would join the continental European model of training magistrates, as in the experience of the Judicial School of Barcelona, Spain, the National School of the Magistracy of France and the German Judicial Academy, among others.
Finally, it should be noted that, in accordance with the rights and guarantees enjoyed by magistrates by virtue of Article 146 of the Political Constitution of Peru, especially that of independence and irremovability in the office, the figure of the

RATIFICATION, even more so, if the requirements of suitability and capacity in the exercise of their functions that this institution seeks to safeguard are guaranteed by having opted for a career based on meritocracy and continuous and specialised high- level training accompanied by permanent evaluation of performance, therefore, there is no point in maintaining it, especially if at the time such elimination was proposed by the CERIAJUS (2004).

Moreover, along the same lines, the Inter-American Commission on Human Rights (IACHR) "has observed as a factor of fragility in the independence of judges and magistrates, the legal possibility of being subject to subsequent confirmation in order to remain in office"; so it considers that it is preferable for judges "not to be subject to re- election or ratification[16] procedures".

Consequently, this proposal also seeks to give effect to the guarantees and rights that the Constitution recognises for judges.

[16] idem, paragraph 87

**Article 151.-** "The selection process for entry to the National School of the Judiciary is carried out by means of a public competition based on competition and merit.

Training for entry to the career is of the highest level, multidisciplinary and full-time for a period of two years followed by the provisional and supervised exercise of the post for a period of six months. It provides excellence, solidity and a high degree of jurisdictional and prosecutorial specialisation for both entry and promotion in the career. Training, updating and improvement is continuous.

The judicial career begins at the level of Justice of the Peace and the prosecutorial career begins at the level of Deputy Provincial Prosecutor.

Basis of the Proposal:

The creation of the National School of the Magistracy at the Constitutional level entails the merger of two of the Institutions of the Justice System, The Academy of the Magistracy and the National Board of Justice, inasmuch as the functions of each of them have been subsumed in this one.
From the point of view of the normative content, this means the modification of several provisions of the Constitutional Text in order to adapt them to the new organisational structure of the institution that will assume the functions of selection, training, education, improvement and appointment of judges and prosecutors at all levels, including Article 151, which establishes the bases and outlines the objectives of the School.

These are therefore the guidelines that must necessarily be observed and developed in the corresponding organic law in order to achieve the objectives of the School, which are aimed at training future specialised magistrates with a high level of competence so that, once they are exercising their jurisdictional or prosecutorial functions, they can effectively guarantee the rights of the individual, legal certainty and the aims of justice in general.

In effect, the new legal formula of Article 151 proposes that the selection of candidates to enter the School of Magistrates should be rigorous, as should the training of those who enter, and that subsequent appointments should be made in strict order of merit after a period of provisional exercise of the post for a period of six months, which will be duly supervised by the titular magistrate designated by the respective institution.

The purpose of the latter is to ensure that it is the institutions themselves that give their approval to the professional profile of the human resources selected by the National Judicial Academy for their institutions.

This proposal requires close coordination between the school and the institutions of the justice administration system and vice versa, insofar as, in order to achieve the objectives of each of them, inter-institutional strategic planning should be carried out in line with their vision and mission.

The National School of the Judiciary thus becomes the breeding ground for future magistrates, the forger of the judicial and prosecutorial career, which represents a basic issue for the development of both the legal person, i.e. the judicial or prosecutorial organisation, and the magistrate as an individual person.

Indeed, from the point of view of the individual, it will be the person who personally assesses the professional competence, abilities, skills and attitudes required to join the judicial or prosecutorial career, as well as his or her own potential, which he or she will have to demonstrate in the course of his or her training if selected.

On the other hand, it will be the organisation that will make career development possible by providing the magistrate with the tools and logistical support necessary or required not only for the performance of the function but also for his or her development within it, which must be in harmony with his or her expectations and institutional needs.

Since the Judiciary and the Public Prosecutor's Office are classic functionalist institutions, the hierarchical pyramidal structures facilitate the management of the career, but at the same time it is also a limitation in that not everyone can reach the top and this can be an obstacle for good professionals to choose not to enter it. Thus, all institutions in the system should develop policies with sufficient incentives so that everyone feels fulfilled, recognised and encouraged to choose and remain in the judiciary.

One of these incentives is precisely that of functional independence, which, together with irremovability from office and permanence in service, are rights established at the constitutional level (Article 146 of the Political Constitution) to guarantee their stability in office as long as they observe the conduct and suitability appropriate to the function. Accordingly, no judge may be removed from office without their consent, since, as Diez-Picazo points out, irremovability is one of the maximum guarantees of judicial independence and is intended to prevent unwanted or forced transfers[17]. Additionally, given the high level of responsibility and risky functions they perform, adequate remuneration must be guaranteed, ensuring a standard of living worthy of their mission and hierarchy, among other things.

It should be noted that all these rights, guarantees and benefits that are guaranteed to magistrates serve as an incentive to opt for a closed judicial or prosecutorial career, with a single entry, despite the pyramidal structure of their institutions, as it not only offers them the development of a career, but, the progress and continuous improvement of personal competencies (constant training and further training) that give them a differentiating advantage, i.e. know-how, experience and specific skills, as well as the attitude and willingness to face the challenges and challenges that can open the doors to other possibilities in the future if they so decide.

Thus, this reform process constitutes a radical change in the process of selection, training and appointment of judges and prosecutors, because unlike the open system, which is based on a public competition for any level, in which each applicant is responsible for his or her training, which depends on the university of origin; in the closed, single-entry career, the training process comes from the same source of knowledge, identification of values and identification of his or her institution.

We know that, despite knowing that the open career is an institutional weakness, it has been maintained to date for budgetary reasons and not because it is the best option, since there have been many voices and internal and external institutional manifestations, as stated in the background of this project, which advocated the creation of a Specialised School as the only entry to the magistrates' career.

However, the Executive preferred to opt for the Councils model despite the cost, not only budgetary but also political, of maintaining the problems suffered by both the Judiciary and the Public Prosecutor's Office in terms of quality of work, non-compliance with procedural deadlines, procedural burden and suitability for the exercise of the function, among others, and the users of the service themselves.

In this sense, our proposal aims at the creation of the aforementioned school and the establishment of a single-entry closed career, in order to professionalise, specialise and train future magistrates, with full identification with the institution they aspire to join, and thus guarantee

[17] Jiménez Mayor Juan Federico. In: "Carrera Judicial y Evaluación del Desempeño Pags.3

a quality justice service, On the other hand, to ensure that vacancies are filled by highly qualified professionals in suitable positions and thus ensure that all areas function efficiently, to the satisfaction of the users of the justice service and for the sake of the legal and social security of the country.

**"Article 152.-**Promotion is based on the principles of merit, objectivity and transparency, as well as suitability and specialisation.

It is the right of judges and prosecutors to participate in promotion processes organised by the school. For their selection and appointment, they must first pass the corresponding special studies. For this purpose, the academic merit chart, the results of the performance evaluation, the reports of the National Authority for Disciplinary Control and others indicated by the Iey will be taken into account."

Basis of the proposal:

Since the basis and foundation of this Reform Project is specialised and high-level training for magistrates, the logical consequence is that promotions should be achieved by the most outstanding magistrates, i.e. by those who have not only been at the top of the corresponding academic evaluations but who are recognised for the good results of their work in the evaluation of their functional performance, complemented by the record of complaints and/or denunciations and sanctions, as the case may be.

It should be borne in mind that, in the case of institutions with a pyramidal structure, it is important to ensure that the best cadres are those who occupy the higher levels, which is why the proposal incorporates as a measurement indicator the Evaluation of Functional Performance from entry into the career, which should be carried out at 360º and on a permanent basis, which should include the quality of the resolutions, the opinion of the applicant by his superiors, his peers, his subordinates and the users of the service he has provided, among other things.

This is a permanent and arduous task, but it is necessary if we really want to overcome the dysfunctional aspects of each of the institutions of the Justice Administration System.
The result of this internal evaluation will undoubtedly allow each institution to draw up a list of merits, which should be shared with the National School of the Judiciary, so that it can be weighted together with the list of academic merits and reports that will be required from the respective Control Authority. In this way, the school will be able to make appointments objectively, transparently and in an effective order of merit.

It is hoped that this proposal will not only cover the vacant positions immediately, but also overcome the current state of affairs regarding the training for promotion provided by the current Judicial Academy, the results of which demonstrate the total disconnection of the CNM and the current JNJ with the institutions of the justice system, The table below shows that they have been selecting and appointing professionals with the profile of teachers or academics from postgraduate schools but not of magistrates, as shown by the information published on the institutional websites of these institutions and the requirements demanded of the applicants in the public competitions.

| Año | Magistrados capacitados para el ascenso (AMAG) | Magistrados que ascendieron (JNJ o CNM) |
|---|---|---|
| 2020 | 622 | 0 |
| 2019 | 608 | 0 |
| 2018 | 764 | 21 |
| 2017 | NHD | 0 |
| 2016 | 1013 | 0 |
| 2015 | 777 | NHD |

Magistrates trained in the academy of the magistracy vs. magistrates selected in promotion competitions. Table based on information published on the institutional portals of the AMAG and the JNJ.

In accordance with the principle of meritocracy, it is foreseen that vacancies will be filled in strict order of merit, with the most qualified candidates having the option to choose the place where they will occupy their post.

The legislative development should include incentives for the allocation of positions that are difficult to fill in order to guarantee that the most remote places can count on sufficient judges and prosecutors, duly prepared for the exercise of their functions.

Likewise, in order to enable smooth promotion in the judicial and prosecutorial career, it has been established as a right and obligation of magistrates to participate in competitions for promotion in their respective category.

**"Article 153.-** The governing body of the National Judicial Academy is the Board of Directors, which is made up of:

1. A Supreme Court Judge, active or retired, elected by the Plenary Chamber of the Supreme Court of Justice.
2. A Supreme Prosecutor, active or retired, elected by the Board of Supreme Prosecutors.
3. A former Director of the Post-Graduate Law Schools of the National Universities with more than 50 years of seniority, elected by their current Directors.

The members of the Board of Directors are elected for 5 years, are not eligible for re-election and hold office on a full-time basis. Substitute members shall be elected at the same time.

The Board of Trustees elects its executive president for a period of two (02) years, extendable for one (01) additional year, who is the head and executive director of the school".

Rationale for the proposal:

The National School of the Judiciary is a constitutionally autonomous body, whose autonomy and independence constitute the axis for the construction of the academic excellence to which we aspire.

To this extent, its highest governing body is the Board of Trustees, which has executive powers for the governance and administration of the institution. It should be noted that the composition of this governing body must inevitably take into account a profound knowledge of judicial and fiscal activity, as well as of the management of higher education institutions.
Comparative experience in the management of academic institutions, which aspire to excellence in their activities, has shown that this is intrinsically linked to the autonomy with which these entities are governed and fulfil their mission.

In this sense, it is necessary to create the regulatory and institutional context so that the members of the governing and management body of the National School of Magistrates can act with independence, autonomy and freedom of judgement, within the framework of the Iey and the current Constitution, free from political pressures, This does not prevent the necessary coordination with the Judiciary and the Public Prosecutor's Office within the Inter-institutional Coordination Council referred to in Article 144 of the Constitution.

In view of the above, the proposed composition is made up of three high-level and institutionally representative members, two of them from the judiciary and one former director of the postgraduate law schools of the national universities with more than 50 years of seniority, elected by their current directors.

The participation of a representative of the postgraduate law schools of the private universities has been excluded, as their officials have no experience in the management of public resources in the field of higher education, and academic positions in private universities, although they have a halo of meritocracy, are positions of trust that respond to the interests of their promoters and owners, so that the will of these representatives would always be subordinated to the decision of their employers.

The idea that two of the three members of the Board of Trustees should come from the highest levels of the institutions of the Justice Administration System is justified by the fact that these are the recipients of the human resources to be trained at the school. Therefore, as these members are knowledgeable about the weaknesses and strengths of these institutions at the national level, as well as the professional profile required for the optimal fulfilment of the functions of the positions, we believe that they will lead the School in a collegial manner and in a way that will make it possible to achieve the proposed objective, especially if it is proposed that the position of Director should be a full- time position.

Now, the presence of a former director of postgraduate law schools at national universities with more than 50 years of experience will contribute his teaching and management expertise to the running of schools at this academic level, ensuring their strength and high professional standards.

We consider the term of five (5) years without the possibility of re-election to be reasonable, taking into account that every institution demands stability of its authorities in order to achieve its goals and objectives.

This composition and the general guidelines of the governing body of the school are the result of some lessons learned from its predecessor, the Academy of the Judiciary, which, despite the various efforts made for its successful management, continues to be afflicted by structural problems in its organisation that prevent the fulfilment of its objectives and constitutional mission.

**"Article 154.-** To be a member of the Board of Directors of the National School of the Judiciary, the following are required:
1. Be Peruvian by birth.
2. To be a practising citizen.
3. Be over 55 years of age.
4. Be a lawyer and have at least 25 years in the practice of the profession.
5. Hold a master's or doctorate degree.
6. The representative of the Judiciary and the Public Prosecutor's Office must have at least five years of experience as a Supreme Judge or Supreme Prosecutor.
7. For the former Director of the postgraduate law schools of the national universities with more than 50 years of seniority, to have been a university professor for at least 25 years and to have served as Director of a Postgraduate Law School for at least 5 years.
8. Have moral solvency, recognised professional, academic and democratic background.

9. Not have been convicted of a criminal offence or been dismissed or disqualified from public office.

The titular and substitute members of the Board of Directors shall hold office only until the end of the period for which they were elected...".

Basis of the proposal:

A specialised, high-level training centre such as the National School of the Judiciary must have a governing body made up of people with sufficient academic training, experience and knowledge of the organisation of the Justice Administration System and of each and every one of the institutions that make it up, and who else but the magistrates themselves who have gone through all the stages of their respective careers until reaching the highest appointment as the head of the Supreme Court or the National Public Prosecutor's Office.

We believe that combining the expertise of magistrates with experience in the organisation and management of higher education institutions will enable the creation of a training centre of the highest standard for future magistrates.

It is well known that theoretical knowledge, combined with practical experience, allows for a clear and objective vision of reality and, therefore, to face problems with solvency. Applying all the richness of this knowledge in the magistrates' study centre will not only lead to the development of a good study curriculum, but also to being demanding in the formation of the teaching staff and thus enriching the participants of these teachings, which will ultimately lead to raising the quality of judicial and prosecutorial work.

On the other hand, the minimum age of 55 years required for the exercise of the position is related to the requirement of maturity and experience to exercise such an important position, which is compatible with the personal conditions of the supreme magistrates, who are also required to have at least 5 years of experience as holders of the supreme magistracy, sufficient time to have known their institution at a national level and in a comprehensive manner.

| Actividad / PIA | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|---|---|---|---|
| ABOGADOS ASPIRANTES A JUECES Y FISCALES FORMADOS | 2,369,990 | 2,098,723 | 3,561,167 | 2,823,901 | 2,366,290 | 1,446,626 | 1,585,807 | 1,894,941 | 1,483,959 | 1,288,930 |
| JUECES Y FISCALES NOMBRADOS POR EL CONSEJO NACIONAL DE LA MAGISTRATURA ACREDITADOS PARA EL EJERCICIO DE SU FUNCION | 387,380 | 192,669 | 106,422 | 51,820 | 0 | * | * | * | * | * |

Fuente: Transparencia económica MEF - 8 de enero de 2024

* NO FIGURA LA ACTIVIDAD

The specification related to the degree of lawyer is necessary in order to avoid the confusion that occurred when electing the representatives of the universities for the former CNM, in which, due to the lack of this precision, health professionals (doctors, nurses), biologists and engineers not linked to the System of Administration of Justice were elected.

However, due to the nature and purpose of the entity, a degree alone is not sufficient, as the position requires experience in the exercise of the profession and in this case in teaching, which we believe should not be less than 25 years, complemented with a Master's degree and/or Doctorate in Law, considering that the training provided at the School of the Magistracy to aspiring judges or prosecutors should be of a high level and specialised.

The knowledge acquired through experience sharpens the perception of the weaknesses of the institutions and human resources, of the opportunities when they arise, of the pending needs to be satisfied, as well as the strengths that serve as support and the threats that may affect each of the institutions. Hence, it is proposed in this standard that the position of member of the Board of Trustees of the School be filled by professionals who meet the qualities and requirements specified in this standard.

**"Article 155.-** The members of the Board of Directors enjoy the same benefits, rights and prerogatives and are subject to the same obligations, prohibitions and incompatibilities as supreme judges. Their function is incompatible with any other public or private activity, except university teaching in another entity.
They may be removed from office for serious cause by the Congress of the Republic with the affirmative vote of two thirds of the legal number of its members".

Basis of the proposal:

In view of the high function performed by the Board of Directors of the National School of the Judiciary, in that it selects and appoints magistrates at all levels, this proposal equates them with senior State officials who enjoy the procedural prerogative of impeachment and impeachment for any crime they commit in the exercise of the function or for infringement of the Constitution, respectively,
This treatment is justified not only because the Board of Directors is composed of two supreme magistrates who enjoy these prerogatives, but also because of their high investiture and constitutional assignment of appointing supreme magistrates; a high responsibility that cannot be subject to complaints or accusations from any citizen and before indistinct fiscal bodies, as this could give rise to abuse, political revenge and anarchy.
To this extent, they should be incorporated into Article 99 of the Constitution, which should be amended to remove the reference to the JNJ.
On the other hand, since the members of the ENM's Board of Directors have the same obligations, prohibitions and incompatibilities as the supreme judges, it is necessary that, like all public officials, they are subject to functional control, and since there is no higher level body with such powers, it is up to the Congress of the Republic, in the absence of a higher level body with such attributions, It is up to the Congress of the Republic, in the exercise of its supervisory function, to investigate and sanction, if necessary, with REMOVAL from office when they incur in SERIOUS CAUSE, as stipulated in the current article 157º with respect to the JNJ whose functions are now being exercised by the E.N.M.

**“Article 156.-** Judges and prosecutors at all levels are subject to permanent evaluation of their functional performance by their own institutions and to disciplinary control by the National Authority for the Control of the Judiciary or the Public Prosecutor's Office, as appropriate. Their results are incorporated into the institutional and National School of the Judiciary merit table.
Judges and prosecutors are forbidden to participate in politics, to join trade unions and to go on strike.

Basis of the proposal:

**1. Regarding Performance Evaluation.**

The Constitutional Reform Law N° 30904, modifies numeral 2) of article 154 of the Political Constitution, to add to the Ratification, the "Partial Performance Evaluation" of judges and prosecutors of all levels, every three years and six months, which must be carried out by the JNJ together with the Academy of the Magistracy; functional competence which in turn is incorporated in article 2 literal c) of the Organic Law of the JNJ N.° 30916.

From the Explanatory Memorandum of the aforementioned reform law, there is no clear and precise basis to support the incorporation of this Partial Evaluation, nor what it consists of and what its scope and effects are, since this reform arises from the opinion given by Supreme Judge Jorge Luis Salas Arenas, then President of the Academy of the Magistracy (AMAG), in the debate generated regarding the Ratification and Disciplinary Control of judges and prosecutors at all levels, both in charge of the former CNM, now JNJ.

The aforementioned magistrate, when invited by the Congress' Constitution and Regulations Committee, pointed out that it was important "(...) to articulate the institution under his charge with the selection and appointment process, in order to guarantee a continuous training process with a view to achieving probity in the legal profession and with the appropriate skills for the proper administration of justice". Opinion that the Commission considered sufficient to incorporate the Partial Performance Evaluation as a measurement indicator to serve as input for the purposes of ratification by the JNJ.
This lack of precision about the content, scope, object and purpose of this indicator for measuring functional performance was not even satisfied in the Organic Law of the National Board of Justice, because although in its article 38 it states that; "The partial performance evaluation is a strategic process aimed at the objective knowledge of the achievements, contributions, competencies, potentialities, limitations and weaknesses of judges and prosecutors at all levels, with the purpose of carrying out the necessary actions to favour the personal and professional development of the evaluated official", the lower part of article 39 of the same Law states that: "The criteria, opportunity and scope of the partial performance evaluation are defined by the National Justice Board in coordination with the Academy of the Magistracy" (...)

With such provisions, its development and execution was left to the discretion of the JNJ, which resulted in it being given the same regulatory treatment as Ratification, as stated in Chapter VI of Resolution No. 260-2020-JNJ published on 20.12.2020, having become, as a result, an instrument of pressure, subjugation and demotivation of magistrates and a limitation of jurisdictional power.

It is clear that this reform was not duly studied or agreed upon, as it was not realised that it would affect the independence in the exercise of the jurisdictional function and of the Judicial Power, generating a legal antinomy within the constitutional text itself by opposing art. 154.2 with art. 139.2 of the constitution itself.

Unconstitutionality highlighted by Supreme Judge Cesar San Martin, when dealing with the partial performance evaluation, in his speech on the History of the Judiciary, stating in this regard: "If this governmental sphere is taken away from us, if the sphere of discipline and control of the judicial career is also alienated from us - that is where the winds of reform are blowing - if we continue on the path of limiting the judicial power in homage to a jurisdiction pretended to be fallaciously superior by an organ foreign to the organisation of the Judiciary itself, what will then be left of the organisation of the Judiciary?. I answer: It will be nothing but an archipelago of Courts and Chambers, a Power without Power, an unacceptable null and invisible power, which will not be able to assert, with its own powerful voice, the values of the judiciary and the needs of a justice system in need of holders who can fill it. 188 years of history cannot pass in vain[18].

In this sense, we can only say that this indicator for measuring functional performance has been distorted, not only because its implementation and execution has been entrusted to a body outside the Judiciary and the Public Ministry, such as the JNJ, but also because, as it is regulated, it does not fulfil its motivating and feedback purpose as it should, due to its essence and existence.
Therefore, we consider that, by proposing in the present project the elimination of Ratification as an infringement of functional independence among others, it is necessary for each institution to

[18] "San Martín Castro, César. "La Corte Suprema, Historias y Perspectivas". P. 13 para. 21

have internally an indicator for measuring the judicial and prosecutorial career respectively, which will serve as an input for drawing up its institutional merit table, which should be shared with the National School of Magistrates in order to be considered in the merit table that will finally determine promotions. This interoperability will, in turn, serve as a motivation for the development of the personal career of each judge or prosecutor.
In this sense, it is necessary to maintain the Performance Evaluation, but in a permanent manner from the beginning of the career. Its purpose is neither punitive nor persecutory, as it seeks to accompany magistrates in the improvement of their professional level through training and the reinforcement of their aptitudes, attitudes and identification with institutional values, so that they can reconcile their personal career objectives with the systems and objectives defined by the institutions.

This criterion coincides with what was conceived at the Ibero-American Summit of Supreme Presidents and Supreme Courts of Justice, held in Antigua in January 2002, with respect to this Evaluation Indicator, which also considers it as a system for improving judicial activity and supporting the work of the judge that contributes to strengthening the efficiency, effectiveness and quality of the Administration of Justice, adding that it should consist of comparing the judge's performance with a predefined standard with at least the following parameters:

1. It is not to be directed at the person of the judge, but at his or her professional performance.
2. It will have an objective and published framework of definition, known to all before the first evaluation.
3. It must be carried out professionally
4. The results must be reviewable by an authority other than the evaluating authority.
5. Performance appraisal is the system of measuring the judge's pattern of conduct, compared to a standard, from normal performance to excellence.
6. The results of the performance evaluation may be considered for the professional promotion of the judge and to promote incentive policies in the development of judicial activity, as positive consequences of the performance evaluation are the confirmation o f the judge's professional performance.

It is therefore an indicator of the administration of human resources related to the career which, from a qualitative point of view, measures the organisation's perception of the level of productivity of each judge with respect to all judges or prosecutors, as the case may be, as well as the perception of these in their grade and speciality; and from a quantitative point of view, it measures the individual productivity index, the average passing marks obtained in training courses, the history of performance evaluations, academic merits and feedback.

Feedback is considered necessary because, if the magistrate is systematically informed about the progress in the performance of his or her functions, he or she will tend to improve his or her work, as well as internalising his or her role within the organisation to which he or she belongs. This will undoubtedly contribute to improving the organisational climate, as it has other benefits for the institutions, such as talent retention.

The result of this evaluation will undoubtedly be an important input to determine the merit table that each institution, as well as the National School of the Judiciary, must finally draw up for promotion purposes. This will put an end to the subjectivity and distortion that has occurred in appointments and promotions due to the selection models implemented over the last fifty years.

**2. Regarding the elimination of Ratification**

Maintaining the Performance Evaluation of judges and prosecutors, but with the character of Permanent, brings as an unavoidable consequence the elimination of the RATIFICATION every seven years, currently established in numeral 2) of article 154º of the Constitution, even more so,

if this has been questioned since its inception for affecting the right to due motivation of the resolutions, to judicial independence, and to the stability and permanence in the service of judges and prosecutors guaranteed by the Political Charter in article 146º Inc. 3), and also because it was initially conceived, including by the Constitutional Court, in the sense that its application could lead to dismissal from office without any motivation, thus turning judicial and prosecutorial positions into positions of trust that could be reviewed and terminated every seven years in a discretionary manner by the National Council of the Judiciary, now the National Board of Justice.

This anomalous situation was fortunately reversed by the Constitutional Court itself, with the Binding Precedent in Case 3361-2004-PATTC, the Alvares Guillen case, in which, resorting to Overruling, it changed the previous criterion, establishing in ground 39 that from now on it will be taken into account that, as in any resolution: "motivation is essential in any ratification process for the effectiveness of ex post jurisdictional control and to convince the judge of the correctness and fairness of the CNM's decision regarding his rights as a citizen. Furthermore, a consistent resolution based on adequate reasoning finds its pedestal in its articulation with the criterion of reasonableness, in order to adequately regulate the margin of appreciation that the counsellor has to make a final decision, despite the sensibility and flexibility that has been imposed on him in the exercise of his functions."

The overcoming of the initial arbitrary interpretation, caused by the deficient wording of article 154 inc. 2) of the constitutional text, however, did not eliminate another of the problems that Ratification brought with it, that is, that of the affectation of the Independence of the jurisdictional function, which is still in force, Despite the fact that in the Constitutional Court's Ruling 3361-2004-PA/TC, it was stated that ratification seriously compromised jurisdictional independence in its external dimension if the CNM, in the ratification processes, acted without any mechanism to make its decisions reasonable, especially when these decisions referred to the removal of a magistrate from his or her post.

This is also true, of course, and with the same intensity, in the case of the members of the Public Prosecutor's Office, to whom article 158 of the Constitution also guarantees autonomy and independence.
It is enough to review the regulations governing the ratification procedure to see the degree of pressure exerted by the members of the now called JNJ on the magistrates through this and the other control, evaluation and supervision mechanisms that have been constitutionally entrusted to them, as they evaluate and qualify the contents of the judicial resolutions or prosecutorial opinions presented by those submitted for ratification, through anonymous third parties who may well be interested parties or their enemies, without the possibility of questionnaires due to the secrecy and obscurantism with which this phase of evaluation of the documentation collected is carried out, which also includes anonymous complaints from third parties, economic resources from spouses, grown-up children, parents and other relatives, as well as psychological examinations whose results are known a couple of days before the final interview.

Although the interview is carried out by the members of the board, its source of information, basis and support is the opinion of the third parties who intervened in the previous phase. This situation is aggravated by the fact that what these third parties report is assumed to be the sole truth, as there is no possibility of contradiction or opposition, as can be seen in the copy of the attached copy of the Regulations on the Comprehensive Procedure and Ratification of Judges, Judges of the Judiciary and the Public Prosecutor's Office, approved by Resolution of J.NJ No. 468-2021-JNJ, published on 18 December 2020.

In addition to this, the ratification has also been the subject of serious criticism, questioning and constitutional actions because an unratified person could not reapply for the position of judge or prosecutor, a fact that made this measure a sanction of greater severity than dismissal, having deserved two rulings by the Constitutional Court, including the one in the Jacobo Romero, STC No. 1333-2006 PATTC, which established as binding precedent that the integration of Article

154.2 with Article 2.2 of the Constitution does not allow NON-RATIFIED magistrates to be prevented from reapplying to the Judiciary or the Public Prosecutor's Office, since the fact of not having been ratified cannot be an impediment to re-entering the judicial career.

"5. Thus, this Court has held that it could be said that judicial non-ratification is an act with even more serious consequences than dismissal for disciplinary measures, since, unlike the latter, Article 154(2) of the Constitution literally states that "Those who have not been ratified may not re-enter the Judiciary or the Public Ministry", while those dismissed for disciplinary measures may re-enter. In this respect, the Constitution guarantees the right to equality and non-discrimination for any reason in Article 2.2, so that the discriminatory treatment given to those who were dismissed for disciplinary measures does not apply, at least in the application stage for re-entry into the judicial career.

6. Non-ratification does not imply a sanction, so the possibility of applying the prohibition of re-entry into the judicial career is incongruent with the very nature of the institution, since, as has been explained, this does not constitute a sanction, but, in any case, a power in the hands of the National Council of the Judiciary for the purpose of verifying, with justification, the performance of the magistrates - with regard to the exercise of the jurisdictional function entrusted to them for seven years.

7. This is the interpretation that should be given to that constitutional provision ("Those who have not been ratified may not re-enter the Judiciary or the Public Prosecutor's Office"), because, otherwise, one could fall into the absurdity that a decision that expresses the manifestation of a constitutional power of the National Council of the Judiciary, regarding the way in which the judicial function has been performed, nevertheless ends up constituting a sanction with even more aggravating effects than those that can be imposed by a disciplinary measure; thus producing unjustified unequal treatment. Therefore, without prejudice to exhorting the constitutional reform body to be the one that, in the exercise of its extraordinary tasks, better defines the contours of the institution, allowing the rights of non-ratified magistrates to be compatible with the functions that ratification fulfils, this Collegiate considers that such magistrates are not prevented from reapplying to the Judiciary or the Public Ministry".

In this sense, it is unnecessary, unproductive and unconstitutional to maintain ratification as a mechanism of control or re-evaluation of the functional performance of each magistrate every seven years, even more so, if it is being proposed that each institution should carry out the permanent control of performance and that the School of the Magistracy should be in charge of their education, training and improvement in close coordination with the managers of the Judiciary and the Public Prosecutor's Office in the same way, that is to say, permanently.

**3. On disciplinary control.**

Another of the aspects linked to stability and permanence in office is the observance of conduct and suitability for the function. This is a sine qua non requirement in order to remain in office.

It is essential, therefore, that the organs of administration of justice have people with ethical and academic capacities, expertise and, above all, moral suitability to resolve the cases submitted to them.

Currently, those in charge of functional control, i.e. to oversee and watch over the correct functional actions of all magistrates, both in the Judiciary and in the Public Prosecutor's Office are:
a) The NATIONAL CONTROL AUTHORITY of each of these entities, which enjoys functional, administrative and economic autonomy and,
b) The NATIONAL JUSTICE BOARD. An external body, fully autonomous, administratively and functionally.

### 3.1. On the National Control Authority.

On 8 May 2019, Laws 30943 and 30944 were published, respectively creating the NATIONAL CONTROL AUTHORITY for the Judicial Power and for the Public Prosecutor's Office, modifying the organic laws of both institutions in relation to the control system, which in the Judicial Power corresponded to the Office of Control of the Judiciary whose highest authority was a Supreme Judge and in the Public Prosecutor's Office to the Supreme Prosecutor's Office of Internal Control whose highest authority was a Supreme Prosecutor.

According to the new laws, the National Control Authority of both institutions has as its representative a CHIEF, who is the highest authority of the body and represents it and due to his rank of judge and supreme prosecutor respectively, enjoys the same incompatibilities, prohibitions, remuneration and benefits as judges and supreme prosecutors.

They are in charge of the functional control of the judges and prosecutors of all instances and of the judicial auxiliary staff of the Judicial Power and of the prosecutorial function of the Public Prosecutor's Office, depending on the institution to which they are attached, EXCEPT IN THE CASE OF THE SUPREME JUDGES AND PROSECUTORS, WHICH IS THE EXCLUSIVE COMPETENCE OF THE NATIONAL JUSTICE BOARD.

Functional control includes prevention, supervision, inspection, investigation, disciplinary prosecution and imposition of the sanctions provided for in Law 29277, Law of the Judicial Career and Law 30483 Law of the Prosecutorial Career, and, as the case may be, making recommendations for dismissal to the Executive Council of the Judiciary or the Board of Supreme Prosecutors. If these bodies accept the recommendation made, they must request the National Board of Justice to apply the disciplinary sanction to the magistrate under investigation. In this instance, after an administrative procedure, it is finally determined whether or not to impose the sanction of dismissal.

The disciplinary power of the National Board of Justice is therefore preserved, as it is an attribution that has been constitutionally assigned to it.

In accordance with the aforementioned norms, it can be said that the creation of the National Control Authority does not return the power to impose sanctions to the judiciary or the Public Prosecutor's Office in its entirety, as the most serious sanctions are the responsibility of an external body such as the JNJ. The only thing that changes is the functional, administrative and economic autonomy that has been given to this authority, which is intended to eliminate the questioning of peer-to-peer cover-up of the functional control carried out by the judges or prosecutors themselves.

In a process of so many trials without positive results, it cannot be denied that this is a step forward in terms of guaranteeing the effectiveness of disciplinary control without affecting the internal or external independence of judges and prosecutors and of the institutions themselves, since, due to its functional autonomy, it is a body which, being part of the organic structure of the institutions, does not answer to their administrative authorities, but is obliged to have the mystique of a judge or prosecutor and to participate in the institutional culture and values.

Moreover, being part of the judicial or prosecutorial organisation, he/she is close to the judicial or prosecutorial work, and therefore in a position to know and internalise its rules, principles and guarantees, as well as its problems and all its functioning, especially if he/she is also in charge of the functional control of the jurisdictional assistants or assistants of the prosecutorial function, as the case may be.

Consequently, it is expected to act with rectitude, serenity and weighting, with respect for functional independence, without interference and always subject to the Constitution and the laws, as the magistrates, like any other citizen, have the right to due process and other rights that the Constitution sets out in article 139, and for this reason, we consider it appropriate to maintain this model of control.

This option leads us to consider that, having proposed the replacement of the Council or Board model by the National School of the Judiciary, it is necessary to determine which entity should assume the function of functional control assigned to the JNJ, that is, the one related to the dismissal of judges and prosecutors of all instances and especially the functional control of supreme judges and prosecutors.

In this respect, it should be taken into account the nature of this function, which specifically and as a unique attribution, has been assigned to the NATIONAL CONTROL AUTHORITY and although this comes from a law, it is no less true that it is exclusive for judges and prosecutors, so that, due to its membership, functional competence and the principle of unity that sustains the Administration of Justice (art. 139 Inc. 1 of the Constitution), it becomes convenient and necessary to extend the powers and competences of this control body and its creation at the constitutional level with some modifications in terms of its organisational and functional structure.

In this sense, we agree with the 2019 reformers that functional control should correspond to the institutions themselves but entrusted to reinforced autonomous bodies with sufficient authority to exercise functional control over judges and supreme prosecutors.

The proposal is based on the trust that those who hold the highest functional position within the institutions should and do deserve, because, beyond the control function they perform, they also carry out management acts in their own offices, in which they administer an important human resource, their workload, the material needs that arise and which they must attend to with the budget assigned to them, therefore, who else but them, to exhibit and demand responsibility and suitability in the exercise of this function.

If this is so, it is up to the magistrates of the institution itself to strengthen the system to which they belong, to sanction misconduct and expel from its ranks anyone who violates such a high function, which ultimately affects social peace, legal security and the development of the country.

The mystique of a magistrate of supreme rank is not possessed by the members of civil society who are incorporated as officials in the external control bodies; their vision is of a different nature, so much so that they will find it difficult to understand when a conduct is or is not a misdemeanour and, if so, of what dimension it is, nor will they be able to design preventive policies to attack the causes that generate irregular behaviour, as they do not know the problems that affect these institutions and those who are part of them.

### 3.2. Control by the National Board of Justice

The experience of these years has taught us a clear lesson. No external entity will do justice to those charged with administering justice.

In recent times, it has been necessary for magistrates to go to the Constitutional Court for violation of due process, lack of motivation of decisions, right to defence, principle of proportionality and reasonableness[19] and the Inter-American Court, Nina v. Peru case, so that their rights are respected.

[19] "STC expediente N.° 2192-2004.

Indeed, among the different constitutional functions that our fundamental law grants to the CNM, there is the one referred to disciplinary control. Article 154 (3) of the Constitution gives it the power to apply sanctions of dismissal to Supreme Court justices and prosecutors and, at the request of the Supreme Court or the Board of Supreme Prosecutors, respectively, to all judges and prosecutors of all instances.

This power is complemented by other functions, such as the power to appoint and ratify, which it must exercise within the legal framework established by the Political Constitution, that is, within the limits imposed on the exercise of any function that affects the stability and permanence of judges in their respective positions, which become more intense when it comes to exercising disciplinary functions that can lead to the imposition of sanctions as serious as dismissal.

Even when the regulation of an external body harboured a hope for change, the CNM failed in its functional performance, not only because its decisions were questioned for being arbitrary, or for contravening norms of higher hierarchy,

The JNJ was also accused of not only transgressing fundamental rights, but also of disseminating audios and recordings through the media of its members linked to corruption networks; likewise, it was reported that many of its members and/or public servants were commercialising exams or altering the marks of curricular evaluations, among other things.

In this context, the JNJ arose, replacing the CNM, which from the beginning lacked legitimacy, due to the fact that some of the authorities who participated in the appointment of its members were questioned as they had proceedings pending review in that body (the case of the Prosecutor General), but they were not inhibited. This situation meant that the appointment of the new members of the board lost legitimacy from the outset.

On the other hand, Article 156(4) of the Constitution establishes that, in order to be a member of the JNJ, one must be a practising solicitor or solicitor in their capacity as a professor, which deliberately eliminated the possibility of both the Judiciary and the Public Prosecutor's Office having a representative on the JNJ who could contribute to the selection of human resources for their institutions.

These events took place in a political context of presidential elections, where it was within the competence of the junta to appoint and remove the head of the ONPE and the RENIEC, as indeed it did. Therefore, the exclusion of the members of the Judiciary and the Public Prosecutor's Office was carried out according to the political interests of the executive power of the time, which was the one that requested the removal of the members of the CNM to the Congress and the constitutional amendment, which gave rise to the new JNJ. The exclusion of the Judiciary and the Public Prosecutor's Office, carried out ex profeso by political decision, delegitimised its origin as it was contrary to the constitutional norm that guarantees the autonomy of the Judiciary and the Public Prosecutor's Office.

The constitutional reform, which replaced the CNM with the JNJ, only entailed a change in the name, without affecting its organisation and/or structure. The change did not solve the new disciplinary procedures in an efficient manner.

The NJC has not developed institutional policies that demonstrate to society its independence, autonomy and lack of subjugation to political power. On the contrary, it has shown complacency and permissibility in some cases, such as the case of the head of the ONPE who was in charge of the last elections, which has left a series of doubts about his performance due to complaints from the public about the adulteration of the minutes, falsification of signatures or impersonation of persons and others, however, the JNJ remained silent, even when it was within its competence to initiate an investigation and determine whether or not there was any fault by its head.

Furthermore, it has not demonstrated the ability to distinguish between what is and what is not a disciplinary offence or the seriousness of the behaviour, having sanctioned prosecutors and judges with dismissal for the sole reason of having met for lunch or dinner with colleagues and, in other cases, on the basis of unconfirmed press reports and through a procedure known as “immediate proceedings”, which violates all guarantees of due process. The most recent case is that of the Attorney General, Patricia Benavides, in which they have also intervened despite being prevented from doing so because they are subject to the grounds for disqualification provided for in paragraphs c) and g) of Article 14, punishable by dismissal in the following Article 15 of their Organic Law.

In the current context and in the face of a national reality that demands confronting organised crime, white collar crime, the seizure of national wealth and assets, and the subjugation and dispossession of the assets of vulnerable people, it is transcendental to carry out a comprehensive reform of the Justice Administration System, including the Control system.

This implies leaving aside the failed model of Councils that have only served to foster corruption and destabilise both the Judiciary and the Public Prosecutor's Office, especially the latter, and moving towards the model of a Specialised School for the training of judges and prosecutors, accompanied by a strengthened National Control Authority, which is part of the Institution in which they will exercise their function, but which enjoys functional, administrative and economic autonomy, whose maximum heads have sufficient powers to investigate judges and supreme prosecutors in the first instance, in order to ensure their full independence.

The recommendation of the CION has pointed out that each of the aspects to be assessed, in the case of magistrates, should be done with objective criteria, in accordance with the universal statute of the judge, noting that some selection and appointment procedures of justice operators are not aimed at ensuring that those with the best merits and professional capacities obtain the positions, and may be motivated by political issues, In pointing this out, he regrettably cites the case of Peru as an example of political manipulation, in relation to the appointment made by Congress in 2013, when it appointed six members of the TC, in a procedure in which the political parties nominated their candidates and voted en bloc without the possibility of analysing the merits of each of them or carrying out an individual evaluation, which led to a series of citizen protests in which some magistrates presented their letter of resignation.

The objective of banishing corruption is achieved through a closed system where the new school is in charge of training, providing institutional identification and acting ethically in the performance of its functions.

Comprehensive training which, together with the permanent evaluation of performance and functional control, will contribute to strengthening the new system, since the evaluation will allow updating to improve professional competence and identify weaknesses and correct them, and the second to carry out disciplinary control of possible faults committed by judges or prosecutors, during the development of the judicial or prosecutorial career.

Disciplinary proceedings should respect the guarantees of due process, and in particular the rights to a hearing, defence, adversarial proceedings, and the right to an effective remedy. The UN guidelines on the role of prosecutors, such as the Venice Commission, have foreseen that the disciplinary regimes of prosecutors should include guarantees such as the principle of legality, a prior hearing, and the review of the decision of the sanction; however, these guarantees are not being fulfilled because their dismissal decisions are not based on objective criteria, and the guarantee of the review of the process is not fulfilled either, because although it is true that it is foreseen in the

In the administrative procedure, the appeal for reconsideration, new evidence is required, and they are always denied due to formal aspects without affecting the merits of the case.

In the aforementioned questions, it is transcendental to point out that if we choose to make a radical change in the training of future magistrates in our country, strengthening them with principles and values that guarantee suitability in the exercise of their functions, we aspire to considerably reduce disciplinary offences, not only because they will have better training, but also because better mechanisms will be established for the training of future magistrates, but also because better control mechanisms will be established for the performance of their duties and their conduct in accordance with the code of ethics, which is nothing more than banishing corruption from the justice system, and justifies that disciplinary control is carried out by an internal body such as the National Control Authority.

**"Article 157.-** Disciplinary control of judges and supreme prosecutors is carried out by their respective institutions, with the guarantees of due legal process. It is in charge, in the first instance, of a tribunal composed of three members, two (2) judges or supreme prosecutors as appropriate, selected by lot from among their peers and the head of the National Control Authority of each institution who shall preside over it. The Plenary Chamber or the Board of Supreme Prosecutors shall act, respectively, in the last and final instance.

In the disciplinary proceedings provided for in the Law against judges and prosecutors at all levels, the sanctions of fines, suspension and dismissal may be imposed, respecting the principles of proportionality and the prohibition of arbitrariness.

Basis of the proposal:

The model of external disciplinary control through the CNM or the JNJ has failed, not only because the members of these institutions in most cases did not have experience in the administration of justice, but also because some of them were linked to acts of corruption, and in the case of the members of the JNJ, since they are made up of people with some professional training, most of them lack experience in the judiciary, making it difficult for them to know the desired professional profile for each position.

Furthermore, by granting them powers to evaluate the functional performance, ratify and sanction magistrates at all levels, they have become judges of judges without requiring them to have a higher level of training and knowledge than that required of a judge or supreme prosecutor, which has had negative consequences, as their actions have had an impact on the independence and impartiality of judges and prosecutors.

In view of this, our proposal for disciplinary control seeks to guarantee precisely that autonomy and functional independence of judges and prosecutors and, it is true that internal disciplinary control is not exempt from questioning, as it is considered that peers protect each other, it has so far been the most effective, not only because judges are academically trained and therefore know their limits, but also because, in this case, the procedure is intended to be public, so that there is social control and, in the event of a cover-up or bias, the constitutional complaints provided for in Article 99 of the Political Constitution can be activated. The proposal for a new disciplinary control system is based on the principle of the independence of the judiciary, which is enshrined in Article 99 of the Constitution.

Furthermore, it is proposed that the National Control Authority, which acts in these cases in the first instance, should be made up of three members to guarantee transparency and impartiality in disciplinary proceedings brought against magistrates of the highest instance of the Judiciary and the Public Prosecutor's Office.

The legal basis for this proposal also lies in Article 11 of the "Universal Statute of the Judge", which stipulates that disciplinary measures can only be imposed by an independent body composed of a substantial number of judges, and Article 9 of the Charter of European Judges,

which provides that disciplinary measures against judges must be reserved to an internal body of the judiciary, which proceeds in accordance with established rules.

The proposal has also considered the observance of the due administrative process indicated by the Inter-American Court of Human Rights, which entails compliance with the principles and guarantees of due process, the right of defence, the right to appeal, publicity, being heard in a hearing, the motivation of its resolutions, and that the rules that provide for dismissal sanctions must contain a clearer typification, in order to respect the principles of legality and typicity. It is not possible to sanction with indeterminate or overly general or open rules, where the conduct does not contain the elements of the type of misconduct that justifies a serious sanction of dismissal.

The prohibitive rule describing the very serious misconduct must preexist the conduct of the defendant, sine crimen sine lege.

The assessment of the evidence must be based on objective criteria and not on subjective appraisals lacking supporting evidence.

The reform proposal considers in its second paragraph that the principle of proportionality and the prohibition of arbitrariness must be taken into account, which means that the imposition of a sanction entails the graduation of the fault, applying the principle of proportionality that must exist between the fault and the sanction, prohibiting any excess or overreaching.

Disciplinary authorities must be independent and impartial, free from any political interference, which is why it is reaffirmed that disciplinary control must be carried out by the magistrates, who are prohibited from participating in politics, in accordance with article 153 of the current Constitution.

Finally, the Political Constitution of Peru states that the Public Prosecutor's Office is an autonomous institution from every aspect, in the same way the Judicial Power is a power of the State, which according to Article 159 of the Constitution enjoys full autonomy, therefore, we consider that the power to carry out disciplinary control of judges and prosecutors are inherent attributions to the autonomy that each of these institutions has at a constitutional level, which must prevail in order to exercise an adequate disciplinary control.

**"Article 158.-** The Public Prosecutor's Office is autonomous. The Public Prosecutor presides over it. He/she is elected by the Board of Supreme Prosecutors. The office of Public Prosecutor lasts for three years, and can be extended, by re-election, for only two more years.

Members of the Public Prosecutor's Office have the same rights and prerogatives and are subject to the same obligations and prohibitions as members of the Judiciary in the respective category. They are affected by the same incompatibilities".

Basis of the proposal:

The amendment of article 158 is a consequence of the amendment proposed in the preceding article 156 and is intended to safeguard the coherence and unity that should exist in the entire body of norms of the Political Charter.

In effect, by establishing in the aforementioned provision the prohibition for judges and prosecutors to participate in politics, to join trade unions and to go on strike, it is necessary to expressly incorporate in this provision that these and the other prohibitions established for judges also apply to prosecutors.

**"Article 178.-** The National Jury of Elections is responsible for:

1. To oversee the legality of the exercise of suffrage and the conduct of electoral processes, referendums and other popular consultations, as well as the preparation of electoral rolls.
2. Maintaining and guarding the register of political organisations.
3. To ensure compliance with the rules on political organisations and other provisions relating to electoral matters.
4. To administer justice in electoral matters.
5. To proclaim the elected candidates; the result of the referendum or other types of popular consultation and to issue the corresponding credentials.
6. Appoint the Head of the National Office of Electoral Processes.
7. Appointing the Head of the National Registry of Identification and Civil Status.
8. Any others that the Iey indicates.

In electoral matters, the National Jury of Elections has the initiative in the formation of laws.

The National Jury of Elections presents the draft budget of the Electoral System to the Executive Branch, which includes separately the items proposed by each entity of the system. It supports it in that instance and before the Congress".

Basis of the proposal:

Article 177º of the Political Constitution establishes that the electoral system is made up of the National Jury of Elections; the National Office of Electoral Processes and the National Registry of Identification and Civil Status, who act with autonomy and maintain coordination relations among themselves according to their attributions. This regulatory text is food for thought insofar as the autonomies decreed are in contrast to the structure of a System, which as is well known, is characterised by an organisation with a functional hierarchy, in which, as Enrique Bernales Ballesteros[20] rightly says, "decisions are structured according to procedures that ensure the univocal nature of those decisions".

Notwithstanding this, having established in article 176 of the Constitution that "the purpose of all these bodies or bodies is to ensure that the voting reflects the authentic, free and spontaneous expression of the citizens and that the scrutiny is an accurate and timely reflection of the will of the voter expressed in the ballot box (...)", and then, in article 178 of the Constitution, when determining the competence of the National Jury of Elections, entrusting it with management, supervision and ultimate jurisdictional functions, it must be understood, as do the electoral laws.)", and then, in article 178, when determining the competence of the National Jury of Elections, entrusting it with management, supervision and jurisdictional functions in the last instance, it should be understood, as do the electoral laws, that although each body has been given autonomy and specialised functions have been assigned to each of them, they all function under the jurisdictional coverage, oversight and supervision of the Plenary of the National Jury of Elections.

In this sense, and given that it is the National Jury of Elections that has the legislative initiative in electoral matters, and that it is also responsible for presenting and supporting the Budget Project of the three entities before the Executive and the Congress of the Republic, it must be concluded that, despite the defective wording of the aforementioned article 177º, this is the body where the electoral decisions are finally made.

For this reason, and considering that the central proposal of the present constitutional reform replaces the model of the Council or Board with that of a National School of the Magistracy for

[20] BERNALES BALLESTEROS, Enrique: "La Constitución de 1993. Twenty years later". Sixth Ed. Year 2012.p.792

the selection, education, training and appointment of judges and prosecutors, it is necessary to modify articles 182 and 183 of the current Constitution, insofar as it entrusts the JNJ with the appointment and removal of the Head of the National Office of Electoral Processes and Head of the National Registry of Identification and Civil Status, to determine which body will be in charge of this competence.

The proposal considers that this competence should be assigned to the National Jury of Elections because the high functions entrusted to it - oversight, supervision and jurisdiction of last instance in electoral matters - make it the vertex of the so-called Electoral System.

The assignment of this competence also takes into account that it strengthens the Electoral System itself, not only in terms of its organisational structure, but also in the functional relationship of the National Jury of Elections with the RENIEC and the ONPE. Likewise, the specialisation in electoral matters of its members, as well as the knowledge of the competences of each of the bodies that make up the system, will strengthen the election process of the representatives of the latter.

**Article 182.-"** The head of the National Office of Electoral Processes is appointed for a renewable term of four years. He or she may be removed for serious misconduct by the Plenary Session of the National Elections Board with the vote of an absolute majority of its members. He or she is subject to the same incompatibilities as those applicable to the members of the Plenary Session of the National Elections Board.

It is responsible for organising all electoral, referendum and other popular consultation processes, including their budget, as well as the preparation and design of the ballot paper. It is also responsible for the delivery of the minutes and other material necessary for the counting of votes and the dissemination of the results. It provides permanent information on the count from the beginning of the vote count at the polling stations. Exercises the other functions assigned to it by the Law.

Basis for the proposal:

The proposed amendment is the consequence of the amendment made to Article 178 of the Constitution. Therefore, we reproduce the grounds on which the amendment of this constitutional provision is based.

**“Article 183.-**The head of the National Registry of Identification and Civil Status is appointed for a renewable period of four years. He may be removed for serious misconduct by the Plenary of the National Jury of Elections with the vote of the absolute majority of its members. He/she is subject to the same incompatibilities as the members of the Plenary of the National Jury of Elections.

The National Registry of Identification and Civil Status is in charge of registering births, marriages, divorces, deaths, and other acts that modify civil status. It issues the corresponding certificates. It prepares and keeps the electoral roll up to date. Provides the National Jury of Elections and the National Office of Electoral Processes with the necessary information for the fulfilment of their functions. Maintains the citizens' identification register and issues the documents accrediting their identity.

It exercises the other functions indicated in the Law.

Basis of the proposal:

In the same sense, as this reform is a consequence of the amendment made to article 178º of the Constitution, we reproduce the grounds that serve as the basis for the amendment of this constitutional provision.

**ADDITIONAL TRANSITIONAL PROVISIONS**

**FIRST -** The members of the first Board of Directors of the National School of the Judiciary are elected within 30 calendar days of the entry into force of its respective Organic Law.

**SECOND -** Once this constitutional reform has been enacted, the functions of the National Board of Justice and the Academy of Magistrates shall cease, and the Comptroller General of the Republic shall be responsible, during the interim period, for safeguarding the documentary and administrative archives of both institutions and supervising their transition to the National School of Magistrates, issuing the corresponding administrative provisions for this purpose. These complementary transitory provisions are intended to introduce a regulatory provision for the election of the members of the first Board of Directors of the National School of the Judiciary within a peremptory period of 30 calendar days, to be calculated as of the entry into force of its respective Organic Law, in order to avoid situations of legal uncertainty regarding the functioning of this new institution and its authorities.

On the other hand, some provisions are issued regarding the conclusion of the activities of the current National Board of Justice and the Academy of Magistrates with respect to administrative management, protection of property and assets, as well as the supervision of the transition to the National School of Magistrates, entrusting this task to the Office of the Comptroller General of the Republic. It is important to mention at this point that a similar role has already been played by this supreme control body in the deactivation of the defunct National Council of the Judiciary.

**SUPPLEMENTARY AND FINAL PROVISION**

ONE. CHANGE OF NAME OF THE NATIONAL BOARD OF JUSTICE TO THE NATIONAL SCHOOL OF THE MAGISTRACY.

In all constitutional provisions and in all corresponding legal provisions, the name of the National Board of Justice is changed to the National School of the Judiciary.

The purpose of this provision is to avoid the deactivation of some regulations that may mention the JNJ, when - if the present proposal is approved - the JNJ will be deactivated.

## VII. COMPARATIVE LEGISLATION

### 7.1 INITIAL CONSIDERATIONS

Referring to the systems of selection and training of judges, as well as to aspects related to promotion or career and disciplinary matters, is as extraordinarily important as it is complex.

The importance stems from multiple issues. On the one hand, with the breakdown of the subsumption principle, a rupture whereby contemporary judges have ceased to be mere enforcers of the law and have become guardians of the rule of law and human rights guarantees In Latin America, since the ruling 'Almonacid Arellano et al. v. Chile' (Judgment of 26 September 2006) of the Inter-American Court of Human Rights[21], they have become custodians of the control

[21] https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf
"The Court is aware that domestic judges and courts are subject to the rule of law and, therefore, are obliged to apply the provisions in force in the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State apparatus, are also subject to it, which obliges them to ensure that the

of conventionality. In the European Community, the human rights system structured on the basis of the Charter and the European Court of Human Rights generates similar responsibilities.

With such tasks, and of such institutional significance, the selection, promotion and disciplinary control of judges is of central importance for the modern state.

States must provide for the best mechanisms to select those who wish to join the judiciary, so that these mechanisms are relevant to recruit those who demonstrate the best competences for the exercise of the activity.

On the other hand, parallel to the growing importance of judicial work, there has also been an increase in criticism of the work of the judiciary. This is a constant throughout Latin America, motivated by various causes whose analysis is beyond the scope of this document. There have been calls for reform, questioning of the work of judges and prosecutors, and a host of other common situations that have even led to concern over difficult relations with the media.

Several judicial schools have incorporated the subject of communication in an attempt to improve the exposure of judicial acts. The Ibero-American Judicial Summit since 200a held workshops and later approved the Document of Good Practices in the field of communication[22] in an attempt to alleviate the problems.

This critical situation is not the exclusive preserve of Latin America. It is also present in Europe. As Edith VAN DEN BROECK, then President of the Belgian High Council of Justice, described in 2006 in a conference given at the Judicial School of Spain, the sad Dutroux case[23], plunged Belgium into a state of shock:

"The White March of 1996, which brought together more than 300,000 demonstrators in Brussels (including the parents of the girls disappeared and murdered by Dutroux), provoked "an unprecedented awareness on the part of the political powers" and "the general suspicion of the population hovering over the entire judicial and police system", establishing "the reign of "everything goes wrong".

VAN DEN BROECK continued, that society reproached that justice was politicised (appointments to the judiciary were essentially made within the framework of political influences), that it was not subject to any control, that it had not moved beyond the 19th century, whether in its language, its rites or even its procedure.

Because of this situation, all the democratic parties, both in the government majority and in the opposition, concluded a great agreement for a profound reform of the justice system, known as the Octopus agreements of 1997.

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effects of the provisions of the Convention are not diminished by the application of laws contrary to its object and purpose, and which lack legal effect from the outset. In other words, the judiciary must exercise a kind of "conventionality control" between the domestic legal norms that apply in specific cases and the American Convention on Human Rights. In this task, the Judiciary must take into account not only the treaty, but also the interpretation made of it by the Inter-American Court, the ultimate interpreter of the American Convention.

[22] Defined as basic rules and recommendations that establish the guidelines around which the relationship between the judiciary and the media in the framework of a democratic state governed by the rule of law should be based can be found at http:I/www.cumbrejudicial.org/productos-y-resultados/productos- axiologicos/item/35- buenas-practicas-en-materia-de-comunicacion

[23] https://es.wikipedia.org/wiki/Marc_Dutroux

Marc Dutroux is a Belgian serial killer, accused of being linked to a paedophile ring, convicted of having abducted, tortured and sexually abused six girls and teenagers between the ages of 8 and 19, four of whom were murdered between 1995 and 1996. His widely publicised trial was held in 2004. A series of flaws in the Dutroux investigation caused widespread discontent in society against the soft criminal justice system and the ensuing scandal led to a shake-up in the Belgian security services.

These agreements defined some main axes that were legislatively approved:

The creation of the Supreme Council of Justice, an independent constitutional body responsible for ensuring that appointments to the judiciary are objective, exercising external control over the functioning of the judicial apparatus and, finally, contributing to the proper functioning of the justice system.[24]

**In Argentina,** a field study carried out in 2005 by the Argentinean Federation of Bar Associations provided similar data on the negative public perception[25].

This study showed that more than half of the population did not believe in the justice system and:

- 9 out of 10 disagreed with the functioning of the judicial system;
- 4 out of 5 did not believe they had access to it and considered that it was not independent of political power;
- 85 % believed that the judicial system benefits those who have money, and when asked what is the worst thing about it, 55 of said that it is corruption;
- 86 of' did not believe that the majority of the population enjoys the benefits of the rule of law, and the same percentage considered that the judicial system should be reformed;

An interesting issue was the response to the question of whether the justice system was considered suitable for resolving the problem of insecurity. Sixty-five per cent of the public believed that it was not. When lawyers were asked, given that their position puts them in a better position to comment on the functioning of the system, the percentage of disbelief increased to 91.9 per cent.

If we review the situation in all the countries, we can gather a rosy picture of similar negativities and criticisms that make us think that, at the moment, Justice has never been as necessary as it is insufficient.

The complexity of the issue stems from the enormous heterogeneity of the different systems, which, although they can be grouped into different typologies that share basic aspects, each has a notable singularity and organisational complexity that gives them nuances and networks that are sometimes difficult to unravel.

Trends can be grouped together, but it should be borne in mind that the judiciary in the different countries is the result of the particular historical evolution and legal traditions of each country.

In this sense, it can be seen, for example, that in some systems, the constitutional provisions are detailed, but in others they only set out generalities that delegate the concrete application to legal regulation.

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[24] Other key points were: 2. The introduction of a temporary mandate for presidents of courts of justice and tribunals, as well as attorneys general and the King, who would no longer enjoy a lifetime appointment but would be appointed for a non-renewable term of seven years.
3. The verticalisation of the public prosecutor's office: public prosecutors who have followed a case at first instance will continue with that case on appeal
4. The creation of the College of Attorneys General, in order to ensure better harmonisation of the application of the anti-crime policy decided by the Minister of Justice
5. The creation of the Federal Public Prosecutor's Office with investigative and procedural missions in all matters relating to international crime.

[25] FACA, "Abogados. Percepción Pública y Justicia", Prólogo del Dr. Carlos ANDREUCCI Ed. Federación Argentina de Colegios de Abogados, Buenos Aires, 2005.

For example, the 1993 Constitution of Peru, in Article 150, states that the National Council of the Judiciary, now the National Board of Justice, is responsible for the selection and appointment of judges and prosecutors, and in turn specifies that (Article 151) the Academy of the Judiciary is responsible for the education and training of judges and prosecutors at all levels, for the purpose of their selection.

In general, such a specification is not included, and there are only references to selection through public competitions, such as in the Argentine Constitution (Art. 114), the Italian Constitution, which provides that magistrates shall be appointed through competitive examinations (Art. 106)[26], and, even more generically, only refer to the competent body for the appointment of judges, such as the Spanish Constitution, which mentions that the organic law of the Judiciary shall determine the constitution, functioning and government of the Courts and Tribunals, as well as the legal status of career Judges and Magistrates (Art. 122), the Constitution of Ireland, which confers such power on the President (Art. 35), or simply refer to the law, such as the Constitution of Portugal, which establishes that the appointment, assignment, transfer and promotion of judges of the judicial courts and the exercise of disciplinary action is the responsibility of the Superior Council of the Judiciary under the terms of the law (Art. 217), or the Constitution of Uruguay, which provides that the Supreme Court of Justice is responsible for appointing judges of all grades and denominations (Art. 239, para. 5).

The constitutional panorama, both in Latin America and Europe, is based on the separation of powers and the guarantee of independence of judges and magistrates, but, upon closer examination, a variety of organisational responses can be observed, including the aforementioned issues, and especially the extraordinarily complex procedures for the selection of judges.

The reality is extremely complex and associated with the evolution of each country's legal institutions and traditions, which is why, for the purposes of this paper, the essential categories will be grouped and examined, following some illustrative typologies.

It should be clarified that the first and most important complexity derives from the terminology used. In some countries, the terms "Judge" or "Magistrate" are used interchangeably for those who are in charge of the actual jurisdictional functions, regardless of rank. In others, a distinction is made according to hierarchy, with Judges being those of first instance, and Magistrates being the members of the appeal courts, as is the case in Spain, where the Organic Law of the Judiciary (art. 299) clearly distinguishes the categories of Supreme Court Magistrate, Magistrate and Judge.

Likewise, in some places the term "Magistrate" is used to include Prosecutors, while in others it is clearly differentiated. Likewise, some countries have a Public Defence Office (Costa Rica, Dominican Republic and Argentina), in some cases integrated within the Judiciary, and in others as an extra-power body with functional autonomy and financial autonomy (Argentina art. 120).

This in turn generates different selection and training systems: in some cases the Judiciary trains both Judges and Defenders (Dominican Republic), and in others, such as Argentina, Judges, Prosecutors and Defenders have three different legal systems for selection and training, with their own institutions. In others, such as Spain, there is no public defence and there is what is known as "Turno de oficio" provided by private lawyers[27].

[26] It also specifies that "The Organic Law on the Judiciary may admit the designation, even by election, of honorary magistrates for all the functions entrusted to individual judges. Full university professors in legal disciplines and lawyers who have been practising for fifteen years and are registered in the special registers corresponding to the higher jurisdictions may be called to the post of member of the Supreme Court on special merits, after designation by the High Council of the Judiciary".

[27] Service provided by a court-appointed solicitor or duty solicitor to a citizen financed by the State to citizens with the aim of satisfying their right to legal protection and to a trial with the

In turn, in some cases, such as Spain, the defence system targets those who lack resources; whereas in others, such as Argentina, it makes no distinction between those who have resources and those who do not, because in reality the objective of the system is not focused on the defence of the rights of individuals per se, but rather that such defence constitutes a means to "promote the administration of justice in defence of the legality of the general interests of society"[28]

Therefore, and for the purposes of this paper, we will conventionally use the term "Magistrates" interchangeably, to encompass both Judges and Prosecutors.

Finally, we note that, to add to the complexity, within the judiciary, the systems are not homogeneous either, as different procedures and requirements tend to be established according to the type of Magistrate.

## 7.2 TYPOLOGIES OF MODELS

### 7.2.1 Bureaucratic Selection

Bureaucratically inspired selection and career models are usually associated with the civil law of the civil law tradition of continental Europe and, by inheritance from Latin American countries. They emphasise both selection procedures through competitive examinations and examinations, and the professionalisation of the career.

They sharply separate both the profiles and the tasks of judges and lawyers, with careers that are not intertwined, which means that many judges have not worked as lawyers before becoming magistrates.

They generally emphasise career development based on merit-based promotions.

In the European model, young people who have just obtained a law degree (except in the French case, where no such specific degree is required), without any professional experience (i.e. without having practised law), are generally recruited by means of a competition or competitive examination, which is followed by a period of training through a School of the Magistracy (French, Portuguese or Spanish cases) combining theoretical teaching with on-the-job training (stage), or in some cases only through a traineeship in courts or tribunals (Italian case).

In general, with its variants, because in some cases a minimum age or seniority of registration as a lawyer is required, the model, as mentioned above, is applied in Latin America, and the cases of Chile, Uruguay and the Dominican Republic have been referred to.
In Europe, in addition to the cases of Spain and France, we can refer to Portugal, Belgium and Italy as exponents of the model.

In turn, the model establishes a closed promotion system in the form of a career path, with a few exceptions or "lateral entries".

**DOMINICAN REPUBLIC**

**Ley de Carrera judicial, No. 327-98**
Article 11 establishes that in order to enter the judicial career it is necessary, among other requirements, to take part in a competitive examination. Likewise, they must have passed the theoretical and practical training programmes offered by the National School of the Judiciary.

maximum guarantees of equality and independence.
[28] Although those who have resources must pay fees to the Public Defence which are destined to the Public Defence Budget and destined to training.

The exception is the fact of being a lawyer of recognised competence with more than ten years of professional practice. Or university professors of high academic qualification, authors of contributions to the legal bibliography and those who have served in the judiciary with efficiency and rectitude for more than five years, may enter the judicial career in the category determined by the Supreme Court of Justice.

Article 13 determines that in order to become a judge of First Instance or a judge of original jurisdiction of the Land Court, or a Judge of Instruction, it is required to have graduated from the National School of the Judiciary, in addition to the conditions required by the Constitution.

As stated above, the Regulations of the Scale of Judges set out the conditions for promotions for which seniority, ability, professional and personal merits are taken into consideration together.

And, as detailed above, each of these aspects is strictly regulated and scored for its application.

Even art. 29, for cases where there is equality in the ranking between two candidates for promotion, regulates the way of settling with the following rules:

a) The judge with the longest seniority in the judicial career shall have preference in the position.
b) In the event that they have the same seniority, the older of the two shall be taken into account, in accordance with the provisions of Article 18 of Law No. 327-98 on Judicial Careers.
c) In the event of having the same time and age, the judges shall be called to a competition to demonstrate who has the greatest expertise in the position to be filled, for which an evaluation jury shall be appointed, composed of two retired judges of the Supreme Court of Justice, duly selected by the Council of the Judiciary, and a member of the Council of the Judiciary, who shall preside over it.
d) In the case of the Courts with National Jurisdiction, the Speciality shall be given priority.

It is interesting to note that the Judicial Career Law recognises promotion as a Right:

**Article 43.-** The following are special rights of judges: 1) To be promoted by their merits, to other positions of higher level and remuneration, in accordance with the needs and possibilities of the Judiciary.

Regarding the evaluation of the performance of judges, the Law establishes specific criteria in the Supreme Court of Justice for those of the Courts of Appeal, and the High Courts for the other judges.

The evaluation is to be carried out annually (Art. 26). The criteria are particularly detailed:
1) The number of sentences pronounced and the number of incidents decided in the courts where he/she exercises his/her functions.
2) The number of sentences confirmed, revoked or annulled.
3) The number of hearings held by the court in each month of the year.
4) The number of orders issued and the disposition of administrative matters.
5) The length of time taken to pronounce judgments and to rule on motions brought before the court.
6) The hearing of referral cases and the settlement thereof.
7) The challenges made and accepted against the judge and the number of disqualifications.
8) The sanctions imposed on the judge.
9) The general movement of the court's work, represented by the number of cases initiated each month, the number of cases resolved and in a state of substantiation, the proceedings at a standstill and the cases, the number of sentences handed down.
10) Participation in seminars, national and international congresses.

11) Articles, books and monographs published on legal topics.
12) Academic teaching.

The disciplinary power resides i n the Supreme Court of Justice, the Courts of Appeal and the other courts (Art. 59).

The applicable sanctions may be:
1) oral reprimand;
2) a written reprimand;
3) Suspension without pay, for a period of up to thirty (30) days;
4) Dismissal.

The misconduct regime sets out the behaviour that can be observed in accordance with the possible sanction. Thus, it is detailed which ones correspond to or deserve each type of sanction, which makes it an extremely regulated regime.

Certain behaviours are specifically classified as misconduct, for example: Being manifestly discourteous to subordinates, superiors and members of the public seeking information (results in a verbal warning), Failing to attend work or being absent from work for one (1) day without justification (results in a written warning), Performing activities unrelated to official duties in the workplace (results in suspension for up to 30 days) or Failing to attend work for three (3) consecutive days without justification, thus incurring abandonment of post (results in dismissal).

But there are also open or diffuse types, in which cases the conduct is subject to the interpretation of the judge. Thus, the following are mentioned:

Any other minor acts or omissions, which, in the opinion of the sanctioning authority, are similar in nature to the previous ones and which do not carry a greater sanction (gives rise to an oral reprimand), Any other acts or omissions, classifiable as misdemeanours, which, in the opinion of the sanctioning authority, are similar to the previous ones and which do not carry a greater sanction (gives rise to a written reprimand). Any other acts or omissions which, in the opinion of the competent authority, are similar or equivalent to the other offences set out in this article and which do not carry a heavier penalty (results in suspension for up to 30 days), Carrying out activities incompatible with decency, social morality, the performance of the office and the respect and loyalty due to the administration of justice and the community (results in dismissal).

It is important to note that failure to satisfactorily meet the annual performance standards does not, in principle, lead to dismissal, since according to Art. 65(6) "Failure to give satisfactory annual performance evaluated as indicated in this Law", leads to a sanction of up to 30 days' suspension.

However, indirectly, this is possible because Art. 66 para. 12 provides for dismissal for "Repeated misconduct that has caused a suspension of up to thirty (30) days", from which it follows that failure to satisfactorily meet annual performance standards on two occasions may result in dismissal. It is not clear whether they must be consecutive or whether they can be alternated.

**PORTUGAL**

In the case of Portugal, the general rules are provided for in the Constitution. Art. 215 para. 1 establishes that the judges of the judicial courts form a single body and are governed by a single statute, delegating to the ley the determination of the requirements and rules for the selection of the judges of the judicial courts of first instance.

It also establishes the concept of a career, in the same article, by stating that "The selection of judges of the second instance courts shall be carried out on the basis of merit by means of a

curricular competition among the judges of first instance", without providing for lateral entry, from which a closed career path can be inferred.

Only in access to the Supreme Court of Justice is there provision for a "curricular competition open to judicial magistrates and the Public Prosecutor's Office and other jurists with merit, under the terms determined by the law".

The scheme of access to the judicial career revolves, broadly speaking, around the following elements in accordance with the Statute of Judicial Magistrates LAW No. 21/85 with the amendments introduced by Law 9/2011.

1) Firstly, there are a series of general requirements for access to the judicial career, such as being a Portuguese citizen or having a law degree. Specifically, it is required to "have successfully attended training courses and internships" (art. 40) at the Centre for Judicial Studies (art. 41), being appointed in the first appointment "according to the grade obtained in the training courses and internships" (art. 42).

2) Secondly, they must pass the competition for admission to the Centre for Judicial Studies, given that admission to the initial training of magistrates is by public examination (art. 6 of Law no. 2/2008 regulating the admission to the judiciary, the training of magistrates and the nature and structure of the Centre for Judicial Studies).

The competition consists of knowledge tests, assessment of the curriculum vitae and psychological examination.

The knowledge tests consist of written and oral tests.

The written test (art. 15) aims to assess, in particular, the quality of the information transmitted by the candidate, the ability to apply the Law to the case, the relevance of the content of the answers, the capacity for analysis and synthesis, the simplicity and clarity of the presentation and the command of the Portuguese language.

It comprises the completion of the following knowledge tests:

a) A test of resolution of cases of civil and commercial law and civil procedural law;
b) A test on the resolution of criminal law and criminal procedural law cases;
c) A test on the development of cultural, social or economic topics.

The oral phase (art. 19) aims to assess, in particular, the candidate's legal knowledge, critical, argumentative and expository skills, oral expression and Portuguese language skills.

The oral phase comprises the following knowledge tests:

a) A discussion of questions of constitutional law, law and organisation of the judicial European Union;
b) A discussion of civil law and civil procedural law and commercial law;
c) A discussion of criminal law and criminal procedural law;
d) A discussion of administrative law, economic law, family and children's law and labour law.

The assessment of the curriculum vitae has special characteristics, given that it comprises a specific test, in which the applicant must defend it (art. 20).

It consists of a public test provided by the candidate, with the aim of evaluating and classifying the consistency and relevance of his or her professional experience, in the forensic area or

related areas, for the exercise of the Judiciary, through the discussion of his or her curriculum vitae.

The curriculum assessment test includes:
a) A discussion of the candidate's curriculum vitae and professional experience;
b) A discussion on legal issues, based on the candidate's experience, which may take the form of a presentation and discussion of a case study.

The test lasts sixty minutes and may, exceptionally, be extended by a maximum of thirty minutes at the request of the candidate or by decision of the chairman of the jury.

In the curricular evaluation, the jury uses the following weighting criteria:
a) The set of factors related to the consistency and relevance of the candidate's professional experience is worth 60%;
b) The set of factors related to the design, structure and mathematical presentation of the curriculum and the quality of the candidate's intervention in the curriculum discussion is worth 20% ;
c) The set of factors related to the quality of the candidate's intervention in the discussion of law issues is worth 20%.

3) Thirdly, the successful candidates are elected to attend the immediate theoretical-practical course, in order of graduation, until the total number of vacancies in the competition is filled. They are granted the status of justice auditor, with the right to receive half of the remuneration of the initial salary of a Portuguese magistrate (art. 31 incs. 1 and 5).

4) Fourthly, they are admitted to the Centre for Judicial Studies. The theoretical- practical training course has as its fundamental objectives to provide judicial auditors with the development of qualities and the acquisition of technical skills for the exercise of the functions of a judge in the judicial courts and in the administrative and prosecutorial courts.

The initial training of judicial court magistrates comprises a theoretical-practical training course organised in two successive cycles and an entry stage. The 1st cycle begins on 15 September and ends on 15 July of the following year; the 2nd cycle begins on 1 September following the end of the 1st cycle and ends on 15 July of the following year.

5) Fifthly, at the end of the initial training period, the candidate chooses the magistracy in which he or she wishes to work in descending order (Art. 56);

6) Sixthly, he is appointed as a trainee judge, a period which will last for one year (art. 69), the objectives of which are:

a) The practical application and deepening of the knowledge acquired in the theoretical-practical training course;
b) The development of a sense of responsibility and the ability to consider decision- making and evaluate its practical consequences;
c) The refinement of the critical sense and the development of autonomy in the decision-making process;
d) The development of skills in the organisation and management of working methods, with emphasis on court, process, time and agenda management, as well as the discipline of procedural acts;
e) The development of a sense of responsibility in the terms required for the exercise of the functions of the respective magistracy;
f) The construction and affirmation of a responsible and personalised professional identity.

Therefore, the selective process of the Portuguese judge covers a period of thirty-two months, and even during the years of exercise as a career judge, he/she will have to follow the training programmes according to the plans drawn up in each case.

In their performance, judges are evaluated and classified, according to their merit, as Very Good, Good with distinction, Good, Sufficient and Mediocre (art. 33 Law 21/85).

The classification must take into account the way in which the judges of law perform their function, in terms of volume, difficulty and management of the service under their responsibility, the capacity to simplify procedural acts, working conditions, technical preparation, intellectual category, exercise of functions as a trainer of justice auditors, legal publications and suitability.

The evaluation has an impact on the stability of the magistrate, since a rating of Mediocre implies the suspension of the magistrate's functions and the opening of an investigation for inability to perform this function (art. 34).

The rating is carried out by an ordinary inspection, the first time after one year in the places of first access and then, as a general rule, every four years thereafter (art. 36).

In the appraisals, seniority in the service, the results of previous inspections, disciplinary files and any additional elements that appear in the respective individual file are taken into consideration (art. 37).

The judge has the right to be heard in the inspection report and may provide any elements he/she deems appropriate.

For promotions the career is closed since the filling of vacancies for judges of the higher courts is done by promotion, through a competition based on merit among judges of first instance (art. 46).

Only the competition for judges of the Superior Court of Justice incorporates, in addition to magistrates, jurists of merit (art. 50), of recognised merit and civic integrity, with at least twenty years of exclusive professional activity or successively in the university teaching career (art. 51).

The disciplinary regime has open types, as it states (art. 82) that disciplinary offences include "Acts, even if they are merely culpable, committed by the magistrate in violation of professional duties and acts or omissions in their public lives or which have repercussions incompatible with the dignity indispensable for the exercise of their functions".

However, the penalties include warning; Fine; Transfer; Suspension from office; Inactivity; Compulsory retirement; and dismissal.

As a particular atypical issue given that it is not usual in other regimes, the sanction of compulsory retirement implies the immediate disconnection from service and the loss of rights and benefits conferred by this Statute, without prejudice to the right to a pension established by the Law.

**BELGIUM**

The High Council of Justice organises examinations for access to the judiciary and proposes candidates for appointment (magistrates) by the King (the Minister of Justice). In addition, the Council draws up guidelines for the training of magistrates and judicial trainees.

The examinations must assess the maturity and competence necessary for the exercise of the office of magistrate. Not only intellectual abilities are assessed, but also other skills of the candidate, such as willingness to listen and accentuating resistance.

Examination syllabuses are reviewed each year and then approved by the Supreme Court. The Minister of Justice must ratify the examination syllabuses, after which they are published in the Belgian Official Gazette.

According to Edith VAN DEN BROECK, former President of the Belgian High Council of Justice, there are three ways to become a magistrate in Belgium:

1) The competitive examination for admission to the judicial traineeship, open to young lawyers:

The competition for admission to the judicial traineeship consists of a written and an oral part.
The written part consists of two tests:

The first test consists of writing the summary of a court decision, selecting the key words that characterise it and writing a commentary.

Candidates can choose between three subjects: civil law; criminal law, including criminal procedure; social law.

The second test, which is open only to candidates who obtain at least 60 % of the marks in the first written test, consists of a dissertation of no more than four pages on a topical social, economic, political or cultural subject related to law.

The oral part, which is open only to candidates who obtain at least 60 % of the marks in the second written test, consists of commenting on a case study. Candidates have a maximum of 60 minutes to prepare the proposed casus and may use their codes to do so.

Once again, candidates have a choice of three subjects.

Candidates who obtain at least 60% in the oral part are finally ranked.

On the basis of this ranking, the candidates are then called to start the traineeship.

2) The professional aptitude test, open to experienced jurists: it offers direct access to the magistracy.
The tests are similar to those in the competition for admission to the judicial traineeship, except for the first written test, which consists of drafting a correct judgment, both in form and in substance, on a case, the elements of which are provided in the form of a complete dossier. The three subjects to choose from are the same as those of the competition for the judicial traineeship.
The certificate of professional aptitude for the exercise of judicial functions is awarded to candidates who obtain at least 60'/o in the oral part. The certificate of aptitude is valid for 7 years from the date of the examination papers, so that successful candidates are not obliged to apply immediately for a post in the judiciary and can wait until the time is right to apply.

3) The oral evaluation examination, which is open to lawyers with more than 20 years' professional experience.

It consists of an interview with three hearing panels set up within the Council's Appointment and Designation Committee.

Each listening group is in charge of evaluating a specific area:
a) one group is in charge of assessing the candidate's motivations and perception of his/her professional career,
b) another group is in charge of assessing the candidate's legal knowledge;

c) the third group is responsible for assessing the candidate's aptitude for the role of judge (communication, quality of expression, decisiveness, collegiality, self- control, adaptability, open-mindedness and commitment).

In the legal knowledge interview, the candidate can choose between three subjects: civil law; criminal law, including criminal procedure; social law.

During these interviews, the candidate does not have any notes. However, he or she may rely on his or her codes. The Commission on Appointment and Designation deliberates on the basis of the reports of the three hearing panels and the opinion of the representative of the bar.

Candidates who pass the oral evaluation examination by a three-quarters majority of the votes cast by the Commission on Appointment and Designation are awarded the certificate of evaluation for the exercise of a judicial office.

It is important to clarify that those who have passed the examination and, if necessary, have completed the judicial clerkship, do not automatically become judges, as there must be a vacancy[29] in the post. But the procedure is not so simple.

1) The vacancy is published in the Belgian official gazette and the candidate has one month to apply by registered mail to the Minister of Justice;

2) The Ministry of Justice requests a written report on each candidate from persons and bodies in his or her working environment and in the place where the vacancy is located (this can be a boss if he or she works in the judiciary or a representative of the local bar association if he or she works as a lawyer).

3) The complete appointment files are then forwarded to the High Council of Justice, where they are forwarded to the French-speaking Appointments and Designations Commission (it should be noted that, due to the particularities of the country, there is a French-speaking and a Dutch-speaking Commission), or to the Dutch-speaking Commission, or to both together when the vacancy requires knowledge of French and Dutch).

"The Commission compares the backgrounds of the candidates on the basis of their merits and competencies and then conducts a comparative analysis of their qualifications.

4) The Commission compares the candidates' backgrounds on the basis of their merits and competencies and then holds an oral hearing with the selected candidate.

5) The Commission approves a candidate by a two-thirds majority of the members. However, the Commission may declare the post vacant if it does not accept any candidate, in which case the post becomes vacant again.

6) Finally, it is the King's responsibility (with the intervention of the Minister of Justice) to formally appoint the person presented. However, he may reject the appointment upon justification.

7) If rejected, the complete dossier is sent back to the Commission, which has two possibilities: either to present the same candidate again, or to present a new candidate. Again, the King may accept or not (with justification). In the latter case, the appointment procedure restarts from the beginning.

[29] See the Belgian Council website https://hrj be/nl/loopbaan-magistratuur/examens.

It is not possible to speak of a closed career, because as we have seen, experienced lawyers can apply directly and obtain the certificate that entitles them for seven years to apply for a vacancy.

For the higher instances, the procedure is essentially identical to the procedure for the initial appointment of judges. A comparison, which is intended to be objective, must be made between candidates, the Commission selecting them by a two-thirds majority, before the Head of State, who can only, as in the previous case, renounce the appointment by stating explicitly his or her reasons.

First instance magistrates can apply but cannot come from the bodies in which the vacancy is located (with the exception of the Court of Cassation). A management plan is required to be attached to the candidature, describing the objectives that have been set for the duration of the mandate.

Each judicial year, the King determines, by a decree issued by the Council of Ministers, the number of vacancies for judicial traineeships in the French and Dutch-speaking linguistic functions. On the basis of the respective ranking of the candidates after the competition, the Minister of Justice appoints the required number of applicants and designates the judicial district to which they will be assigned.

The legal traineeships for young lawyers are divided into short and long traineeships.

Short traineeships last 18 months and only give access to the prosecutor's career. Long internships last 3 years and give access to the judicial and prosecutorial career.

Before the end of the eleventh month of the traineeship, the trainee must inform his/her mentor whether he/she has chosen to do the short or the long traineeship.
"The training courses consist of a theoretical training, namely a set of
theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, a set of theoretical training courses, and a set of theoretical training courses.

The internship consists of a theoretical training, namely a set of courses prepared by the High Council of Justice and implemented by the Ministry of Justice, and a practical training which takes place in several phases: internships in the Public Prosecutor's Office, in a penitentiary centre, a police service, or others. In both the long and short training courses, the last part takes place in a public prosecutor's office or in a court.

During the short or long traineeship, the trainee is mentored and assessed by one or two mentors.

The Minister of Justice may terminate the traineeship of a trainee prematurely for professional ineptitude or serious reasons.

If at the end of the 36th or 18th month, as the case may be, the appointment cannot take place due to a lack of places, the Minister of Justice may extend the duration of the traineeship at the court or public prosecutor's office for one or two periods of six months. During these periods, the trainee may deputise.

**SPAIN**

In the case of Spain, as we have seen above, access is through competitive examinations.

It should be clarified that, although applicants for judges and prosecutors are jointly recruited, they then attend different schools.
The Selection Committee of the General Council of the Judiciary proposes the syllabus, the content of the exercises and the complementary rules that are to govern the competitive examination for access to the Judicial and Prosecutorial Careers, submitting them to the approval of the Ministry of Justice and the Plenary of the General Council of the Judiciary (art. 305).

Once they have passed the competitive examination, the candidates enter the Judicial School, which is configured as a centre for the selection and training of judges and magistrates and its purpose is to provide comprehensive, specialised and high quality preparation for members of the Judicial Career, as well as for those aspiring to join it (art. 307).

The selection course comprises a multidisciplinary theoretical training programme, a period of supervised traineeships in different courts of all jurisdictional orders and a period in which trainee judges will carry out substitution and reinforcement functions.

The theoretical training phase is multidisciplinary, although legislation requires specific training on the principle of non-discrimination and equality between men and women, special legislation to combat violence against women in all its forms, and in-depth study of national and international legislation on the rights of children and adolescents, with particular emphasis on the rights of children and adolescents.

Once the theoretical phase of multidisciplinary training has been completed, the practical training period will begin. In the first phase, the trainee judges, who will be called assistant judges, will assist and collaborate with their titular judges.

After passing this phase of supervised practice, there will be a compulsory period in which the trainee judges will carry out substitution and reinforcement work.

In this last phase, they will exercise jurisdiction to the same extent as the incumbent judges and a report will be drawn up on their dedication and performance in the performance of their duties, for evaluation by the Judicial School.

The duration of the theoretical training course may not be less than nine months, the supervised practical training will have a minimum duration of four months; the same minimum duration for the substitution or support functions, usually totalling eighteen months of training.
Those who pass the theoretical and practical course are appointed judges in the order of the proposal made by the Judicial School.

The judicial career consists of three categories:
— Magistrate of the Supreme Court.
— Magistrate.
— Judge.

For promotions, the career is partially closed, given that for every four vacancies that occur in the Magistrate category, two will give rise to the promotion of the Judges who occupy the first place in the hierarchy within this category, one vacancy will be filled, among judges, by means of selective tests in the civil and criminal jurisdictional orders, and of specialisation in the contentious-administrative and social jurisdictions, and in commercial matters and violence against women, and one vacancy shall be filled by competition among jurists of recognised competence and with more than ten years of professional practice who have passed the compulsory training course at the Judicial School (Art. 311).

This means that 75% of the promotion vacancies are filled by career judges.

It is also important to clarify that for the purposes of the career ladder and for promotion and professional advancement, the fulfilment of the objectives of the Specialised Plan for Continuing Training of each judge and magistrate will be evaluated by the General Council of the Judiciary, and for the purposes of promotion and professional advancement (art. 433 bis).
This continuous training is also carried out at the Judicial School.

The selection tests for promotion from the rank of judge to that of magistrate in the civil and criminal courts are designed to assess the degree of ability and legal training of the candidates, as well as their knowledge of the various branches of law. They may consist of the completion of studies, the passing of courses, the drafting of opinions or resolutions and their defence before the Court, the presentation of topics and replies to the observations made by the Court or other similar exercises (art. 312), and proof of having participated in continuous training activities with a gender perspective.
It is interesting to note that the judges included in the list of graduates of the Judicial School are appointed directly by the General Council of the Judiciary. On the other hand, Magistrates (second instance) and Presidents are appointed by the King at the proposal of the Council.

Judges and Magistrates are subject to disciplinary responsibility (art. 414).

Misconduct committed by judges and magistrates in the exercise of their office may be very serious, serious or minor (art. 416).

The classification of misconduct is not open-ended, but rather a regulation of conduct (arts. 417, 418 and 419). Examples of very serious misconduct can be given as examples:
a) Affiliation to political parties or trade unions, or the holding of jobs or positions in their service;
b) Interference, by means of orders or pressure of any kind, in the exercise of the judicial power of another judge or magistrate;
c) Inattention or unjustified and repeated delay in the initiation, processing or resolution of proceedings and cases or in the exercise of any of the judicial powers;
d) Abandonment of service or unjustified and continuous absence, for seven calendar days or more, from the seat of the judicial body to which the judge or magistrate is assigned, among others.

The following are considered serious misconduct, among others:

a) Lack of respect for superiors in the hierarchical order, in their presence, in writing that is addressed to them or with publicity;
b) The use in judicial decisions of unnecessary or inappropriate expressions, extravagant or manifestly offensive or disrespectful from the point of view of legal reasoning;
c) Abandonment of service or unjustified and continuous absence for more than three calendar days and less than seven days from the seat of the judicial body to which the judge or magistrate is assigned;
d) Unjustified and repeated non-compliance with the public hearing schedule and unjustified non-attendance at the procedural acts with a public hearing that have been scheduled.

These are, among others, considered minor offences:

a) The unjustified or unmotivated failure to comply with the legally established deadlines for issuing a decision in any kind of matter before the judge or magistrate;
b) Unjustified and continuous absence for more than one calendar day and less than four days from the seat of the judicial body to which the judge or magistrate is assigned;
c) Failure to comply with requests made by the General Council of the Judiciary, the President of the Supreme Court, the National High Court and the High Courts of Justice or Chambers of Government in the exercise of their legitimate powers.

The sanctions that can be applied (art. 420) introduce the particularity of being able to be pecuniary.
They are:
a) Warning;
b) A fine of up to 6,000 euros;
c) Forced transfer to a court or tribunal at least 100 kilometres away from the one where he/she was stationed;
d) Suspension for up to three years;
e) Dismissal.
The Law clarifies graduations for sanctions: Minor offences may only be sanctioned with a warning or a fine of up to 500 euros or both; serious offences with a fine of 501 to 6,000 euros, and very serious offences with suspension, forced transfer or dismissal.

**FRANCE**

As mentioned above, those selected in accordance with Art. 17 of Decree No. 72-355 of 4 May 1972 (by competitive examination) are assigned to the National School of the Judiciary for a period of thirty-one months (Art. 40). The same article (40) stipulates that the period of study is reduced by at least half under the conditions set out in the rules of procedure, if, as a Doctor of Law, at least three years of professional practice as an assistant lawyer can be justified. The system of education and the evaluation conditions for each of the categories shall be determined by the rules of procedure.
Decree No. 72-355 of 4 May 1972, as amended, concerning the National School for the Judiciary, regulates the possibility of access to two competitions (art. 17). The first competition is open to candidates aged 31 at the latest on 1 January of the year of the competition (art. 21). In order to sit the first competition, candidates may be admitted to a preparatory class, the aim of which is to allow a diversification of access to the judiciary, taking into account in particular the geographical origin and resources of the candidates or their families.

The second competition is open to candidates who meet the conditions set out in the Decree and who are forty years of age or younger on 1 January of the year of the competition.

In this second case, before sitting the second competition, candidates who meet the required conditions may be admitted to a preparatory course organised in accordance with the conditions set out in Articles 23 to 31.

Judicial auditors, recruited after having passed the competitive examination, are assigned to the national school for the judiciary. The duration of their training is thirty- one months (art. 40). This implies a sort of provisional entry into the judiciary: they receive a remuneration from the State, equivalent to 80% of the salary of an entry-level judge; and they undertake, in exchange for the training offered by the ENM, to serve the State for a period of time and to maintain professional secrecy (art. 20 of the Organic Law on the status of the judiciary).

The period of schooling of other auditors recruited as doctors of law may be reduced by at least half, on proof of at least three years of professional practice as an assistant lawyer.

The educational system, as well as the evaluation conditions for each of the two categories of court auditors mentioned in the first and third paragraphs, shall be determined by the internal rules of procedure.

"The general training phase is divided into three periods.

Firstly, there is a preliminary three-month internship in a public company or a public administration, the purpose of which is clearly to bring the student into contact with the world outside the judiciary.

Secondly, there is a period of residence at the ENM headquarters, where courses are taken on subjects that are not included as such in the competition programme (forensic medicine, economics, European integration, etc.). Teaching at the ENM is carried out both by full-time internal lecturers and by external lecturers called in on an ad hoc basis. The former are magistrates who, for a certain period of time, leave their judicial or prosecutorial duties to take up this post; the latter come from a variety of backgrounds (university lecturers, senior civil servants, liberal professionals, etc.).

Thirdly, there is a placement in a judicial seat for fourteen months. This is the real traineeship, in which the trainees are supervised by local magistrates who collaborate with the ENM as directors of the traineeships. They are required to send the ENM reports on the performance of the supervised trainees. During this period, the trainees exercise the functions of magistrates, actually carrying out the corresponding proceedings. It is an internship, to use the military metaphor, "under real fire". The only limitation is that they cannot sign alone, but need the support of a magistrate. In addition, always during this period, the students have to make short stays in institutions related to the administration of justice (prisons, police stations, lawyers' offices, etc.)".

At the end of the general training phase, students must pass a final exam, consisting of: writing a civil judgment for six hours, making a criminal argument as a prosecutor for twenty minutes, and holding a conversation with the examining committee for fifteen minutes.

"The purpose of this exam is not to select the candidates - which was already done in the competition - but to verify their actual aptitude to exercise the functions of a magistrate. At this point, students may be definitively suspended or, if necessary, invited to repeat the general training phase. This examination also gives rise to the ranking order, on the basis of which they then choose their assignment.

Once the students have been placed in the career ladder and their assignments have been chosen, the specialised training phase begins. This phase takes place at the first assignment of the new magistrate (civil court judge, public prosecutor, examining magistrate, etc.). This is, strictly speaking, a new supervised internship. Once these have been completed, the final appointment as a magistrate is made.[30]

Independently of the initial training, it is mandatory for each judge to take at least five days of training each year (art. 50) as continuing education. Likewise, any magistrate appointed to functions he or she has never exercised must also undergo, within two months of his or her installation, the corresponding training to assume his or her functions.
In the same vein, Article 14 of the Organic Law on the status of the judiciary (Ordinance n° 58-1270) states that "Judges are subject to the obligation of continuous training. Continuing education is organised by the National School for Magistrates under the conditions set by decree of the Conseil d'Etat".

"Continuing training takes various forms: "sessions", in which a monographic subject is dealt with over five days under the guidance of a specialist; "days" and "meetings", in which a topical subject is dealt with over two or three days, sometimes in the presence of professionals from outside the judiciary; "colloquiums", aimed at analysing and providing a two-day presentation of justice-related problems; "workshops", in which small groups reflect on a subject over six days spread

[30] 'Diez-Picazo Giménez, Luis María, 'El sistema francés de acceso a la judicatura: selección y formación inicial', 'El sistema francés de acceso a la judicatura: selección y formación inicial'. Paper for the Manuales de Formación Continuada, 13/2001 of the Consejo General del Poder Judicial de España. "

over the course of the year. In addition, continuing education also includes the possibility of placements in institutions outside the administration of justice (constitutional bodies, European institutions, etc.). The subjects covered by continuing training include, in addition to legal subjects, other subjects of interest for the exercise of the duties of a magistrate, such as info/zoology, economics, psychology, etc."[31].

The judiciary, in accordance with the Organic Law on the status of the judiciary (Ordinance n° 58-1270) includes:

1st The magistrates of the seat and indictment of the Court of Cassation, the courts of appeal and the courts of first instance as well as the magistrates of the central administration of the Ministry of Justice;
2° The magistrates of the Public Prosecutor's Office attached respectively to the first president and the prosecutor general of a court of appeal and with the capacity to exercise the functions of the grade to which they belong in the court of appeal to which they belong.
3° The auditors of justice.

The French magistracy is a hierarchical body comprising two grades (art. 2). Access from the second to the first grade is subject to registration on a scale (tableau d'avancement).

Judges are irremovable from the seat where they work. Consequently, a judge cannot be reassigned without his or her consent (art. 4) and can only be removed from his or her post following disciplinary proceedings or retirement due to incapacity.

"As far as the promotion of judges is concerned, every two years their activity is evaluated by the president of their respective court. On the other hand, they and the judges of the Court of Cassation are not evaluated. This evaluation can be appealed by the judge himself or herself to the Council of State. Within the hierarchical body of the French judiciary, access from the second to the third grade, after at least seven years of seniority in the judiciary, is subject to registration on a scale (tableau d'avancement) by an independent committee (commission d'avancement) "[32].

This assessment is preceded by an interview with the head of the court where the magistrate is appointed or seconded or with the head of the service in which he or she exercises his or her functions. For local judges, it is preceded by an interview with the magistrate at the seat of the district court responsible for the administration of the service of the district court in whose jurisdiction the local court is located. The assessment is fully communicated to the magistrate concerned (Art. 12).

The judge may contest the assessment of his or her professional activity. Once the judge's observations and those of the authority that carried out the assessment have been collected, the promotion committee issues a reasoned opinion, which is placed in the file of the judge concerned (art. 12).

Pursuant to Article 34, "A commission is established to draw up and decide on the promotion table and the lists of suitable candidates. This commission is common to the magistrates of the court and the prosecutor's office".

The promotion table (which is updated annually), is communicated to each of the formations of the Superior Council of the Judiciary before being signed by the President of the Republic.

[31] Diez-Picazo Giménez, Luis María, ob. cit.
[32] González Vega, Ignacio U., "La carrera judicial en Francia", https://studylib.es/doc/5064765/la-carrera- judicial-en-france.

The promotion committee may ask the authority responsible for assessing the professional activity of the judge applying for inclusion on one of the aptitude lists or the promotion table for details of the contents of his or her file. These details and the observations of the judge concerned are contained in his or her file. The commission may also send the authorities responsible for assessing the professional activity of judges any observations it deems useful on the content of the files examined.

The promotion commission includes (art. 35), in addition to the dean of the presidents of the chambers of the Court of Cassation, president, and the senior most senior advocate general of the Court of Cassation, vice-president:

1° The lnspector General of Judicial Services or, failing that, the Deputy Inspector General and the Director in charge of Judicial Services or, failing that, his representative of at least equal rank to the Deputy Director and with the capacity of a magistrate;
2° two non-hierarchical judges of the Court of Cassation, one from the seat and one from the prosecution, elected by all the non-hierarchical judges belonging to the Court of Cassation;
3° two first presidents and two prosecutors general of the court of appeal, elected respectively by all the first presidents and all the prosecutors general of the court of appeal;
4° Ten judges of the courts and tribunals, seven of the first degree and three of the second degree, elected by the college of magistrates under the conditions provided for in Chapter I bis.

The promotion committee draws up an activity report which is made public each year.
The magistrate's file shall contain all documents relating to his or her administrative situation, recorded, numbered and classified without interruption. No mention may be made of his or her political, trade union, religious or philosophical opinions or activities, nor of elements strictly related to his or her private life (art. 12-2).

The disciplinary evaluation is broad and does not contain precision, with no details of possible misconduct, but rather an evaluation of what may be called "good conduct". Art. 6 establishes that every judge, upon appointment to his or her first office, and before taking up his or her duties, shall take an oath to "perform my duties well and faithfully, to keep the secrecy of deliberations religiously and to behave in all things as a worthy and loyal judge", which can be considered a comprehensive duty. In turn, Art. 43 states that any breach by a magistrate of the duties of his or her office, honour, courtesy or dignity constitutes a disciplinary offence (Art. 43).

One of the breaches of the duties of his State is the serious and deliberate violation by a magistrate of a procedural rule that constitutes an essential guarantee of the rights of the parties, established by a court judgement that has become final.

The fault of a member of the public prosecutor's office or a judge is assessed within the framework of the central administration of the Ministry of Justice, taking into account the obligations arising from his or her hierarchical subordination.

The disciplinary sanctions applicable to magistrates are (art. 45):

1. A warning with a note in the file;
2. Automatic transfer;
3. Removal from certain duties;
3. bis. Prohibition from being appointed or designated to the duties of sole judge for a maximum period of five years;
4. Demotion;
4. bis Temporary exclusion from duties for a maximum period of one year, with
total or partial deprivation of salary;40 bis Temporary exclusion from duties for a maximum period of one year, with total or partial deprivation of salary;
5. Degradation;

6. Automatic retirement or admission to cease duties when the magistrate is not entitled to a retirement pension;
7. Revocation of magistrate status.
The disciplinary council of the magistrates is composed in accordance (art. 49) with the provisions of article 65 of the Constitution. In this regard, it is foreseen that the magistrates' chamber of the High Council of the Judiciary shall rule as the disciplinary council of the magistrates under the chairmanship of the first president of the Court of Cassation, and the prosecutors' chamber of the High Council of the Judiciary shall give its opinion on disciplinary sanctions concerning prosecutors, under the chairmanship of the General Prosecutor of the Court of Cassation.
The hearing of the disciplinary board is public (art. 57). However, if the protection of public order or privacy so requires, or if there are special circumstances that may prejudice the interests of justice, the public may be barred from the courtroom for all or part of the hearing.

The decision, which must be reasoned, is taken publicly.

In France, the issue of responsibility "has been a major point of friction between the executive, legislative and judicial branches. In 2005, several court rulings granting parole to certain convicts, followed by dramatic cases of recidivism, sparked public debate about the responsibility of judges for the consequences of their rulings. Nicolas Sarkozy, then Minister of the Interior, declared that it would be necessary for 'judges to pay for it'. A year later, there was another debate on the conduct of juvenile judges in Bobigny. The Prefect of the Paris suburbs drafted a report on crime in his department, in which he criticized the work of juvenile judges[33].

### 7.2.2 THE PROFESSIONAL SELECTION OR ANGLO-SAXON MODEL

In the Anglo-Saxon model of professional selection, the relationship between the profession of lawyer and judge is not so distant and specific weight is given to prior professional practice as a lawyer.

In order to complement the report, it is appropriate to make some mention of a system which, although it has not influenced our legal heritage (the American system is far from the British one, for example), is interesting for its contrast.[34]

The British judicial system is traditionally framed within what is known as the professional model of the judiciary as opposed to the bureaucratic model. The substantive difference is that there are no training institutions as a means of admission, and judges are recruited from among lawyers with professional experience and recognised prestige.

Appointment as a judge comes from the recognition of a career in the field of law and it is not conceivable that, as in the case of Spain, an applicant would sit the competitive examinations after graduating from university and enter the judiciary before the age of thirty.

"There are two types of practitioners in the British judicial system that resemble what we know as lawyers, namely solicitors (about 90,000) and barristers (about 9,000), with very different functions, especially in relation to legal proceedings before higher or appellate courts (which are in practice monopolised by the barristers). The latter are members of certain associations of lawyers (the Inss of court) and are gradually acquiring functions of greater professional responsibility for the defence of certain cases. It must be assumed that a large proportion of the judges in the Bar, especially those who occupy positions in the higher courts, come from the

[33] "González Vega, Ignacio U., ob. cit.
[34] *We draw here on the paper presented to the Spanish General Council of the Judiciary by Jiménez Asensio, Rafael, "A modo de conclusiones: un panorama de los sistemas de acceso a la judicatura en Europa", and the author's conversations with Cheryl Thomas, a specialist in the appointment and training of judges in England, and with judges from that country during his visits to the Argentine Judicial School.

barristers; in other words, they are recruited from among those lawyers who are recognised in the professional sphere, since access to the judiciary during the final phase of the professional career is considered to be a destination endowed with undoubted prestige.[35]

In addition to professional judges, there are justices of the peace (honorary judges), who are lay judges, and who cover a good part of the judicial demands both civil and criminal of minor matters.[36]

There are also part-time judges, who can carry out other activities including law, which is very peculiar.

In order to become a judge, it is common to have been a part-time judge before. In addition to practising or teaching law, the Iey has recognised that activities such as acting as an arbitrator or mediator, advising on law or drafting legal documents are also methods by which an applicant can gain experience in law.[37]

The selection processes are not related to the formalities of bureaucratic systems, being rather discretionary based on the assessment of the candidate's background and interviews with the candidate.

The appointment of judges, with some exceptions (in the cases of the High Courts), is the responsibility of the Lord Chancellor or, where appropriate, of the Queen on his or her nomination, and although vacancies are generally advertised, the proceedings are kept confidential. The Lord Chancellor is an eminently political post.[38]

Part-time judges are appointed by the Lord Chancellor, and are required to have seven years' experience and to be between 35 and 60 years of age. General knowledge and experience of civil litigation in the High Court and County Courts is particularly desirable. The appointments are of a temporary nature. Another category of temporary judge is that of "Acting stipendiary magistrates", who are recruited from among practising lawyers aged between 38 and 55, and sit in the metropolitan courts and as provincial stipendiary magistrates.

Municipal or local magistrates are appointed by the Queen on the nomination of the Lord Chancellor. They are required to have ten years' experience.

Among the permanent or professional judges there are various grades according to the hierarchy of the bodies in the British judicial system.

Some are appointed by the Queen on the proposal of the Prime Minister. They are appointed from among highly experienced magistrates. Ten years' experience before the High Court or being a judge of the High Court is required for appointment as an appellate magistrate. And for the appointment of judges of the High Court, ten years of experience before the High Court or having been a District Judge as a judge of the High Court is also required.

Some are appointed by the Queen on the recommendation of the Prime Minister. They are appointed from among highly experienced magistrates. To be appointed an Appeal Court Judge, ten years' experience in the High Court or as a judge of that Court is required. And for the

[35] Jiménez Asensio, Rafael, ob. cit.
[36] In Argentina they existed until 1978, when they became Justices of the Peace.
[37] https://cielawtutor.com/english-legal-system/unit-3-legal-personneI/the-judiciary/
[38] The Lord Chancellor, formally the Lord High Chancellor of Great Britain, is the highest ranking of the great officers of state in the United Kingdom, nominally above the prime minister. He is appointed by the sovereign on the advice of the prime minister. He had direct judicial functions until 2005 when he was reformed and retained, in relation to justice, only administrative functions.

appointment of judges to that court, ten years' experience in the High Court or 28 for at least two years. When the appointment is not made from among judges of the district courts, lawyers with more than twenty years of professional practice are usually chosen.[39]

To attain the position of "Circuit Judges", ten years of experience before the Courts or, where applicable, having served as a part-time judge is required. They must also be over 45 and under 60 years of age. They are selected by a Commission composed of three members (a Circuit Judge, a lay person and a member of the Lord Chancellor's staff). They are interviewed, their merits are assessed and the opinion of the bar is sought.

District Judges are, in practice, between forty and sixty years of age. As in the previous case, an annual call for applications is made, interviews are conducted before a three-member Commission, and the evaluation criteria are the same as those outlined above.[40]

This model of access to the judiciary is substantially different from the bureaucratic model. The professional and age requirements, the merit assessment procedures, as well as the involvement of numerous actors in the selection process (Lord Chancellor's office, lawyers' institutions, lay citizens), characterise a different system.

The final selection is made by the executive, and the system has been criticised. Sir Leonard Peach produced a report in 1399 entitled "The Independent Scrutiny of the Processes of Appointment of Judges and Queen's Counsel in England and Wales" and in the report, recommended the appointment of a Commissioner for Judicial Affairs. Then in 2005 some of the Lord Chancellor's functions in this regard were reformulated.[41]

"It was felt that the appointment process was open to criticism that a member of the government should not be solely responsible for appointing judges. It was also felt that judges were appointed in the image of existing judges and not solely by means of a broadly selected pool of eligible candidates. [42]

The Law Society[43] recommended the creation of an independent Judicial Appointments Commission with open and transparent selection procedures. A Judicial Appointments Commission has been established with advisory powers to tighten up appointments. The Judicial Appointments Commission selects candidates for judicial appointments in England and Wales, and for some courts with powers throughout the UK.

"The Commission recommends candidates to the Lord Chancellor, who has a very limited veto power. The Commission also has a specific legal duty to "encourage diversity in the range of persons available for selection for appointment". In this way, it seeks to widen the pool of candidates who are then appointed on merit."[44]

In the Commission's own words:
"It is our legal duty to select people on the basis of their merits, who are of good character. We believe that the judiciary should reflect the society it serves and we aim to attract diverse applicants from a wide field. We work closely with a variety of organisations to promote vacancies for all those who are eligible."[45]

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[39] Jiménez Asensio, Rafael, ob. cit.
[40] Jiménez Asensio, Rafael, ob. cit.
[41] https://cielawtutor.com/english-legal-system/unit-3-legal-personnel/the-judiciary/
[42]https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/judaccind/jud-appts/
[43] Professional association representing and governing solicitors in the jurisdiction of England and Wales
[44] https://~judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-accind/jud-appts/
[45] Commission page https://judicialappointments.gov.uk/

Another issue noted is the minority presence of women in the judiciary.

### 7.3 THE QUESTION OF RATIFICATION IN COMPARATIVE PERSPECTIVE

One issue that cuts across all careers, regardless of the selection process, is that of ratification.

Popular election can be said to entail, at the end of the term of office, a revalidation, retention of functions or implicit ratification, given that the judge submits to the will of the people.

Although in the sense of traditional careers, we can say that ratification refers specifically to the situation of judges who, after a certain period of time, must be ratified not by the will of the people, but by an established procedure and placed in the hands of some authority.
In this regard, it should be noted that ratification as such exists exceptionally.

Outside the system in force in Peru, it is only known in the Organic Law of the Judiciary of Mexico City (published in Volume I, Number 314 of the Official Gazette of Mexico City, 2018), in Article 11 which states that:

"Magistrates shall serve for six years in office and may be ratified, after public evaluation under the terms provided for in the Constitution and this Law."

Apart from this case, only Article 252 of the Constitution of Paraguay can be mentioned, which in relation to the irremovability of magistrates, states that:

"Magistrates are irremovable ... during the term for which they were appointed", but "They are appointed for periods of five years from the date of their appointment".

It is said here that the mandate is for a term, but it cannot properly be called a ratification, given that the judges must present themselves for a new competition as if they had entered initially.

The Constitution then goes on to state, in a complementary manner, that:

"Judges who have been confirmed for two terms following their election acquire irremovability in office up to the age limit established for members of the Supreme Court of Justice".

When speaking of "confirmation", it seems to refer to a ratification, but in practice, when their mandate ends, the magistrates must present themselves again in a competition, so that, in essence, we cannot speak of ratification, in the sense of the original institute.

Even nowadays, in such competitions, a new evaluation of content must be presented according to their jurisdiction.

In addition to its exceptionality, it should be borne in mind that, in the case of Paraguay, in the experience of several training workshops for trainers that I have conducted at the Judicial School, the situation of term appointments has emerged as a disruptive element in the normal performance of the judiciary. It is common to hear judges complain about the situation of instability and defencelessness in which they find themselves in the period close to the end of their term, and how this affects their judicial independence.

In these workshops, when analysing the main competences to be trained in aspiring magistrates, the psychological competences to maintain equilibrium in such a situation came up, among others, which compromises the possibilities of an independent and balanced justice system. The ratification of magistrates does not seem to be an advisable institution.

## VIII. COMPARATIVE TABLE BETWEEN THE CURRENT CONSTITUTION AND T H E REFORM PROPOSAL

| CONSTITUTION OF 1993 | REFORM PROPOSAL |
|---|---|
| **Resolutions** that cannot **be reviewed** by **the Judiciary** Article 142.- Resolutions of the National Jury of Elections in electoral matters and those of the National Council of the Judiciary in matters of evaluation and ratification of judges are not subject to judicial review. | *Article 142.-* ***The*** **decisions of the** *National Jury* **of Judges in electoral matters are** *not* **subject** *to* ***judicial*** **review.** |
| Requirements to be a Supreme Court Judge<br>**Supreme Court**<br>**Article 147.-** To be a Supreme Court Justice, the following are required. | **Article *147.- To* be a *Magistrate* of *the Supreme Court, the following are required***<br>**Supreme Court *requires:***<br>***1. To be* Peruvian by birth;**<br>*2. To be a* practising *citizen*; |


| CONSTITUTION OF 1993 | REFORM PROPOSAL |
|---|---|
| **Resolutions** that cannot **be reviewed** by **the Judiciary** Article 142.- Resolutions of the National Jury of Elections in electoral matters and those of the National Council of the Judiciary in matters of evaluation and ratification of judges are not subject to judicial review. | *Article 142.-* ***The*** **decisions of the** *National Jury* **of Judges in electoral matters are** *not* **subject** *to* ***judicial*** **review.** |
| Requirements to be a Supreme Court Judge<br>**Supreme Court**<br>**Article 147.-** To be a Supreme Court Justice, the following are required. | **Article *147.- To* be a *Magistrate* of *the Supreme Court, the following are required***<br>**Supreme Court *requires:***<br>***1. To be* Peruvian by birth;**<br>*2. To be a* practising *citizen*; |

| **CONSTITUTION OF 1993** | PROPOSAL FOR REFORM |
|---|---|
| 1. To be Peruvian by birth;<br>2. Be an active citizen;<br>3. Be over forty-five years of age;<br>4. Have been a Superior Court magistrate or Superior Prosecutor for ten years, or have been a lawyer or university professor in legal matters for fifteen years. | *3. Be* over fifty years of age and under the age of oe<br>*75 years of age* óe eóaó;<br>4. Have *been a judge of the* Stzperior or Fisca/ Soperfor ocial Court for ten *years.* |
| CHAPTER IX<br>OF THE COUNCIL NATIONAL OF THE JUDICIARY<br>"National Board of Justice" (LAW No. 30904)<br>National Council of the Judiciary<br>Article 150.- The National Council of the Judiciary is responsible for the selection and appointment of judges and prosecutors, except when they are elected by popular vote.<br>The National Council of the Judiciary is independent and is governed by its Organic Law. | CHAPTER IX<br>The National School of the Judiciary<br><br>Article 150.- The National School of the Judiciary is the higher centre of high specialisation and academic research that is responsible for the selection and training of aspiring judges or prosecutors and their **appointment;** training for promotion purposes and their updating and improvement; as well as issuing the title that accredits them as judges or prosecutors at their corresponding grade and its cancellation in the cases provided for by the Law.<br><br>It is also responsible for selecting and appointing the heads of the National Authority for the Control of the Judiciary and the Public Prosecutor's Office after a public competition and a period of specialisation and induction.<br><br>The School is autonomous and is governed by its Organic Law. |
| Judicial Academy<br>Article 151.- The Judicial Academy, which is part of the Judiciary, is responsible for the education and training of judges and prosecutors at all levels, for the purposes of their selection.<br><br>Passing the special studies required by the Academy shall be a prerequisite for promotion. | Article 151.- The selection process for entry to the National School of the Judiciary is carried out by means of a public competitive examination and merit-based selection process.<br><br>Training for entry to the career is of the highest level, multidisciplinary and full-time for a period of two years followed by the provisional and supervised exercise of the post for a period of six months. It provides excellence, solidity and a high degree of jurisdictional and prosecutorial specialisation for both entry and promotion in the career. Training, updating and further training is continuous. |

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|---|---|
| | The judicial career begins at the rank of Justice of the Peace and the prosecutorial career begins at the rank of Deputy Provincial Prosecutor. |
| Justices of the Peace and Judges of First Instance<br>Article 152.- Justices of the Peace are elected by popular vote.<br>This election, their requirements, jurisdictional performance, training and term of office shall be regulated by law.<br>The ley may establish the election of judges of first instance and determine the relevant mechanisms. | Promotion is based on the principles of merit, objectivity and transparency, as well as suitability and specialisation.<br><br>Judges and prosecutors have the right to participate in promotion processes organised by the School. For their selection and appointment, they must first pass the corresponding special studies. For this purpose, the academic merit list, the results of the performance evaluation, the reports of the National Authority for Disciplinary Control and others as indicated by the ley shall be taken into account. |
| Prohibition on Judges and Prosecutors<br>Judges and prosecutors are prohibited from participating in politics, from joining trade unions and from going on strike. | Article 153.- The governing body of the National School of the Judiciary is the Board of Directors, which is made up of:<br>1. A permanent Supreme Judge, active or retired, elected by the Plenary Chamber of the Supreme Court of Justice.<br>2. A Supreme Prosecutor, active or retired, elected by the Board of Supreme Prosecutors.<br>3. A former Director of the Postgraduate Law Schools of the National Universities with more than 50 years of seniority, elected by their Directors in exercise.<br><br>The members of the Board of Trustees are elected for 5 years, are not eligible for re-election and hold office on a full-time basis. Alternate members are elected at the same time.<br><br>The Board of Directors elects its executive president for a period of two (02) years, extendable for one (01) additional year, who is the head and executive director of the School. |
| Powers of the National Board of Justice Article 154.- The functions of the National Board of Justice are as follows<br>1. To appoint, following a public competition on merit and merit, the following | Article 154.- To be a member of the Board of Directors of the National School of the Judiciary it is necessary to:<br>1. To be Peruvian by birth. |

| CONSTITUTION OF 1993 | REFORM PROPOSAL |
|---|---|
| personal evaluation, judges and prosecutors at all levels. Such appointments require a public and reasoned vote of two thirds of the legal number of its members.<br>2. Ratify, with a public and reasoned vote, judges and prosecutors at all levels every seven years; and execute jointly with the Academy of the Magistracy the partial performance evaluation of judges and prosecutors at all levels every three years and six months. Those not ratified or dismissed cannot re-enter the judiciary or the Public Prosecutor's Office.<br>3. Apply the sanction of dismissal to Supreme Court judges and supreme prosecutors; and, ex officio or at the request of the Supreme Court or the Board of Supreme Prosecutors, respectively, to judges and prosecutors of all instances. In the case of supreme judges and supreme prosecutors, a reprimand or suspension of up to one hundred and twenty (120) calendar days is also possible, applying criteria of reasonableness and proportionality. The final resolution must be reasoned and with prior hearing of the interested party. It cannot be challenged.<br>4. Register, keep custody of, update and publish the Register of Disciplinary Sanctions of Judges and Prosecutors.<br>5. To issue judges and prosecutors with the official title accrediting them.<br>6. Submit an annual report to the Plenary of Congress. | 2. Be a practising citizen.<br>3. Be over 55 years of age.<br>4. Be a lawyer and have at least 25 years in the practice of law.<br>5. Hold a master's or doctorate degree.<br>6. The representative of the Judiciary and the Public Prosecutor's Office must have at least five years of experience as a Supreme Judge or Supreme Prosecutor.<br>7. For the former Director of the postgraduate law schools of the national universities with more than 50 years of seniority, to have exercised university teaching for at least 25 years and to have served as Director of a Postgraduate Law School for at least 5 years.<br>8. Have moral solvency, recognised professional, academic and democratic background.<br>9. Not have been convicted of a criminal offence or been dismissed or disqualified from public office.<br><br>The titular and substitute members of the Board of Directors hold office only until the end of the period for which they were **elected.** |
| Members of the National Justice Board Article 155.- The National Justice Board shall be composed of seven members selected by means of public competition of merit, for a period of five years. It is forbidden the re-election of the members by competition is prohibited. The substitutes are called in strict order of merit obtained in the competition.<br>The public merit-based competition is in charge of a Special Commission, made up of:<br>1) The Ombudsman, who chairs it;<br>2) The President of the Judiciary;<br>3) The Public Prosecutor of the Nation;<br>4) The President of the Constitutional Court;<br>5) The Comptroller General of the Republic;<br>6) A Rector elected by ballot by the Rectors. | The members of the Board of Trustees shall enjoy the same benefits, rights and prerogatives and shall be subject to the same obligations, prohibitions and incompatibilities as the supreme judges. Their function is incompatible with any other public or private activity, except university teaching in another entity.<br><br>They may be removed from office for serious cause by the Congress of the Republic with the assent of two thirds of the legal number of its members. |

| | CONSTITUCIÓN DE 1993 | | PROPOSAL DE REFORM |
|---|---|---|---|
| | of licensed public universities with more than fifty years of seniority; and,<br>7) A rector elected in a vote by the rectors of the licensed private universities with more than fifty years of seniority.<br>The Special Commission must be installed, at the call of the Ombudsman, six months before the expiry of the term of office of the members of the National Board of Justice and ceases with the swearing in of the elected members.<br>The selection of members is carried out through a procedure in accordance with ley, for which the Special Commission is supported by a Specialised Technical Secretariat. The procedure provides guarantees of probity, impartiality, publicity and transparency. | | |
| | Requirements to be a member of the National Justice Board<br>Article 156.- To be a member of the National Board of Justice, the following are required:<br>1. To be Peruvian by birth.<br>2. Be a citizen in office.<br>3. Be over forty-five (45) years of age and under seventy-five (75) years of age.<br>4. Be a lawyer:<br>a. With professional experience of not less than twenty-five (25) years; or,<br>b. Have held a university professorship for no less than twenty-five (25) years; or,<br>c. Have worked as a legal researcher for at least fifteen (15) years.<br>5. Not have been convicted of an intentional crime.<br>6. To have a recognised professional career and moral solvency and suitability.<br>Members of the National Judicial Board enjoy the same benefits and rights and are subject to the same obligations and incompatibilities as supreme judges. Their function must not incur a conflict of interest and is incompatible with any other public or private activity outside working hours. With the exception of university teaching. | | Article 156.- Judges and prosecutors at all levels are subject to permanent evaluation of their functional performance by their own institutions and to disciplinary control by the National Authority for the Control of the Judiciary or the **Public Prosecutor's Office**, as appropriate. Their results are incorporated in the institutional and National School of the Judiciary merit table.<br>Judges and prosecutors are forbidden to participate in politics, to join trade unions and to go on strike. |
| | Removal of members of the National Council of the Judiciary<br>Members of the National Council of the Judiciary may be removed for serious cause by a resolution of Congress adopted with the assent of two-thirds of the legal number of members. | | Article 157.- Disciplinary control of judges and supreme prosecutors shall be carried out by their respective institutions, with the guarantees of due legal process. In the first instance, it is the responsibility of a tribunal made up of three members, two (2) judges or supreme prosecutors, as appropriate, selected by a two-thirds majority vote. |

| CONSTITUTION OF 1993 | REFORM PROPOSAL |
| --- | --- |
| | by lot among their peers and the head of the National Control Authority of each **institution who will preside over it.** The Plenary Chamber or the Board of Supreme Prosecutors shall act, respectively, in the last and final instance.<br><br>In the disciplinary proceedings provided for in the Law against judges and prosecutors at all levels, the sanctions of fines, suspension and dismissal may be imposed, respecting the principles of proportionality and the prohibition of arbitrariness. |
| CHAPTER X<br>THE PUBLIC PROSECUTOR'S OFFICE<br>Public Prosecutor's Office<br>Article 158. - The Public Prosecutor's Office is autonomous. The Public Prosecutor presides over it. He/she is elected by the Board of Supreme Public Prosecutors. The office of Public Prosecutor lasts for three years, and can be extended, by re-election, for only two more years. Members of the Public Prosecutor's Office have the same rights and prerogatives and are subject to the same obligations as members of the Judiciary in the respective category. They are affected by the same incompatibilities. Their appointment is subject to the same requirements and procedures as those of the members of the Judiciary in their respective category. | Article 158.- The Public Prosecutor's Office is autonomous. The Public Prosecutor presides over it. He/she is elected by the Board of Supreme Public Prosecutors. The office of Public Prosecutor lasts for three years, and may be extended, by re-election, for a further two years only.<br><br>Members of the Public Prosecutor's Office have the same rights and prerogatives and are subject to the same obligations and prohibitions as members of the Judiciary in the respective category. They are subject to the same incompatibilities. |
| Powers of the National Jury of Elections Article 178:<br>1. To oversee the legality of the exercise of suffrage and the conduct of elections, referendums and other popular consultations, as well as the preparation of electoral registers.<br>2. Maintaining and guarding the register of political organisations.<br>3. To ensure compliance with the rules on political organisations and other provisions relating to electoral matters.<br>4. To administer justice in electoral matters.<br>5. To proclaim the elected candidates; the results of referendums or other types of popular consultation and to issue the corresponding credentials.<br>6. Any others that the law indicates. | Article 178.- It is the responsibility of the National Jury of Elections:<br><br>1. To oversee the legality of the exercise of suffrage and the conduct of elections, referendums and other popular consultations, as well as the preparation of electoral registers.<br>2. Maintaining and guarding the register of political organisations.<br>3. To ensure compliance with the rules on political organisations and other provisions relating to electoral matters.<br>4. To administer justice in electoral matters.<br>5. To proclaim the elected candidates; the results of referendum or other types of popular consultation and to issue the corresponding credentials. |

| CONSTITUCIÓN DE 1993 | PROPUESTA DE REFORMA |
|---|---|
| In electoral matters, the National Jury of Elections has initiative in the formation of laws.<br>It submits to the executive branch the draft budget of the electoral system, which includes separately the items proposed by each entity of the system. It supports it in that instance and before Congress. | 6. Appoint the Head **of the National Office of Electoral Processes.**<br>Electoral Processes.<br>7. Appointing the Head of the National Registry of<br>**Identification** and Civil Status.<br>8. Any others that the ley indicates.<br><br>In electoral matters, the National Jury of Elections has the initiative in the formation of laws.<br>The National Jury of Elections presents the draft budget of the Electoral System to the Executive Branch, which includes separately the items proposed by each entity of the system. It supports it in that instance and before the Congress. |
| National Office of Electoral Processes Article 182.-<br>The Head of the National Office of Electoral Processes shall be appointed by the National Council of the Judiciary for a renewable period of four years.<br>for a renewable period of four years.<br>He/she may be removed by the Council itself for serious misconduct. He/she is subject to the same incompatibilities foreseen for members of the Plenary of the National Jury of Elections.<br><br>It is responsible for organising all electoral, referendum and other popular consultation processes, including their budget, as well as the preparation and design of the ballot paper. It is also responsible for the delivery of the minutes and other material necessary for the vote count and the dissemination of the results. It provides permanent information on the count from the beginning of the vote count at the polling stations. He/she performs the other functions assigned to him/her by the Law. | The head of the National Electoral Processes Office is appointed for a renewable period of four years. He may be removed for serious misconduct by the Plenary of the **National Jury of Elections with the vote of the** absolute majority of its members. He/she is subject to the same incompatibilities as the members of the Plenary of the National Jury of Elections.<br><br>It is responsible for organising all electoral, referendum and other popular consultation processes, including their budget, as well as the preparation and design of the ballot paper. It is also responsible for the delivery of the minutes and other material necessary for the counting of votes and the dissemination of the results. It provides permanent information on the count from the beginning of the vote count at the polling stations. Exercises the other functions assigned to it by law. |
| National Registry **of Identification and Civil** Status<br><br>The Head of the National Registry of Identification and Civil Status is appointed by the National Council of the Judiciary for a renewable period of four years. He may be removed by the said Council for serious misconduct. He/she is subject to the same incompatibilities as the members of the Plenary of the National Jury of Elections.<br><br>The National Registry of Identification and Civil Status is responsible for the registration of births, marriages, divorces, deaths, and deaths of children. | The head of the National Registry of Identification and Civil Status is appointed for a renewable period of four years. He may be **removed for serious misconduct by the Plenary of the National Jury of Elections with the vote of the** absolute majority of its members. He/she is subject to the same incompatibilities as the members of the Plenary of the National Jury of Elections.<br><br>The National Registry of Identification and Civil Status is in charge of the registration of births, marriages, divorces, deaths, and other acts that modify the |

COMPLEMENTARY TRANSITORY PROVISIONS

FIRST: The members of the first Board of Directors of the National Judicial Academy are elected within 30 calendar days of the entry into force of its respective Organic Law.

SECOND.- Once this constitutional reform has been enacted, the functions of the National Board of Justice and the Academy of the Judiciary shall end, and the Office of the Comptroller General of the Republic shall be responsible, during the interregnum, for safeguarding the documentary and administrative heritage of both institutions and supervising their transition to the National School of the Judiciary, issuing the corresponding administrative provisions for this purpose.

SUPPLEMENTARY AND FINAL PROVISION.

CHANGE OF NAME OF THE NATIONAL BOARD OF JUSTICE TO THE NATIONAL SCHOOL OF THE MAGISTRATURE. NATIONAL SCHOOL OF THE MAGISTRACY.

The name of the National Board of Justice is amended in all constitutional provisions and in all corresponding legal provisions to the name of the National School of the Judiciary.

## IX. COST-BENEFIT ANALYSIS REFORM PROPOSAL

civil status. It issues the corresponding certificates. Prepares and keeps the electoral roll up to date. Provides the National Jury of Elections and the National Office of Electoral Processes with the necessary information for the fulfilment of their functions. Maintains the citizens' identification register and issues the documents that accredit their identity.
It performs the other tasks specified in the Law. COMPLEMENTARY TRANSITORY PROVISIONS

**FIRST.-** The members of the first Board of Directors of the National Judicial Academy are elected within 30 calendar days of the entry into force of its respective Organic Law.

**SECOND.-** Once this constitutional reform has been enacted, the functions of the National Board of Justice and the Academy of the Judiciary shall end, and the Office of the Comptroller General of the Republic shall be responsible, during the interregnum, for safeguarding the documentary and administrative heritage of both institutions and supervising their transition to the National School of the Judiciary, issuing the corresponding administrative provisions for this purpose.

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### 9.1 ANALYSIS OF BENEFITS

One of the great desires of the Peruvian nation is to live in a just society, with values, in which rights and freedoms are respected and recognised. Where education is possible for all, as well as opportunities to develop and grow. All Peruvians demand order, security and compliance with the law, as this is the only way to make peaceful coexistence possible.

These desires, however, are difficult and almost impossible to achieve because society itself has been relativising values, mutual respect has been lost, rights are for the strongest and the institutions called upon to guarantee and enforce them are run by people who are not suitable, due to their professional incapacity, their lack of identification with the function they perform, their lack of values or simply because they do not know their role in society and the State. They have forgotten that they are civil servants or public servants and that they are therefore at the service of the community and not of their personal or group interests.

We ask ourselves how or why we have reached this situation. The answer can lead us in different directions, all of them valid, but the most transcendent and the one that should prompt reflection is the one that leads us to justice.

If there are professionally and morally solvent judges, the law will cease to be a lyricism and there will be no conflict, no matter how great, that remains unresolved in a timely manner. Where there are honest judges, justice will be fleshed out and individuals, families and social groups will be dealt with in accordance with the law.

Of course, in order to make this ideal a reality, the Executive must understand that the number of judges and prosecutors must be in direct proportion to the judicial incidence or recurrence and the human capacity to attend to this demand for service and, together with this, design and establish an adequate system or model for the selection of human resources to occupy such high positions, which, due to the complexity of the activities and human relations, demand high qualifications and a great deal of ethical and moral solvency.

There will be no just society if there are no just judges. There will be no social order without professionally competent and impartial prosecutors and judges. There will be no functional independence if the operators of justice are subjected to the evaluation, ratification and assessment of the performance of their function by third parties who have not been selected with the due rigour that the position demands, and who may well become involved in judicial problems as has happened in recent times, contaminating the image of the magistrates and the institutions and, basically, calling into question their independence and impartiality.

The development of this project has demonstrated the serious problems in the administration of justice, due to various factors, including the politicisation of justice, or the judicialisation of politics, the evident professional incompetence of many judges and prosecutors, and the accusations of acts of corruption by users of the justice service; a serious situation that stems from having chosen the wrong way of selecting magistrates, for economic reasons.

In recent years, the model of Councils or Boards has been chosen because it is more economical for the State, without realising that the cost has been much higher. We find ourselves in a time of serious crisis in the Public Prosecutor's Office, the Judiciary and the National Justice Board itself, due to the politicisation of justice, the demonstrated professional incapacity of many judges and prosecutors and of the members of the selection body itself.

Given the length of time this problem has been going on, we could well say that this is one of the causes of the social insecurity and lack of legal certainty that has had a serious impact on the country's economy.

Hence the urgent need to reform the model for the selection of judges and prosecutors, adopting the model of the School of Magistrates, so longed for and longed for many decades. Any cost is

too little for the benefits that can be obtained with highly trained, professionally and morally suitable magistrates.

Citizen security, legal certainty and social peace will be the benefits that will be obtained and with it, the economic development of the country, as there will be more opportunities for entrepreneurs, foreign investment will be attracted, there will be more tourism, and the necessary schools will be built, among other things.

It is not for nothing that the literature linking the performance of the judicial system to the performance of the economy is extensive. In summary, an efficient judicial system brings about the following benefits, among others:

- An increase in foreign direct investment inflows.[46]
- A decrease in the cost of financing and an extension of the term of loans.[47]
- An increase in the size of enterprises.[48]
- An increase in entrepreneurship and innovation.[49]
- Increased economic growth.[50]

Certainly, the benefits of an efficient and independent judicial system are transversal to the whole of society and are not limited to the economic sphere. In this regard, it is possible to find various rankings or indices that attempt to measure and compare the quality of the judicial system between countries.

We can cite the World Bank's "Doing Business 2020" publication, which ranks Peru 76th out of 190 countries. However, when the capacity of the judicial system to enforce contracts is evaluated, Peru is ranked 83rd. It should be added that Peru is ranked 11th out of 32 Latin American and Caribbean countries considered in the study.[51]

On the other hand, we can find the "Global Competitiveness Report" of 2019, carried out by the World Economic Forum. In this publication, it ranks 65th out of 141 countries. However, when the First Pillar (Institutions) is taken into account, our country ranks 94th and, when Judicial Independence is evaluated, the ranking worsens even more: 122[52]
The "Rule of Law Index 2019" of the World Justice Project (WJP) ranks Peru 70th out of 126 countries in terms of the Rule of Law[53]. In regional terms, Peru ranks 18th out of 29 countries. It is worth mentioning that, in terms of civil justice, Peru is ranked 89th and, in terms of criminal justice, 105[54]

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[46] Benassy-Quere Agnes, Maylis Coupet and Thierry Mayer, 2007, "Institutional Determinants of Foreign Direct Investment," The World Economy, Vol. 30, Issue 5, pp. 764-782.
[47] Bae Kee-Hong, and Vidhan K. Goyal, 2009, "Creditor rights, enforcement, and bank loans," Journal of Finance, Vol. 64 (2), pp. 823-60; y, Luc Laeven and Giovanni Majnoni, 2005, "Does judicial efficiency lower the cost of credit?" Journal of Banking & Finance, Vol. 29 (July), pp. 1791-1812.
[48] Giacomelli Silvia and Carlo Menon, 2012, "Firm size and judicial efficiency in Italy: evidence from the neighbour's tribunal," SERC Discussion Paper 108.
[49] Berkowitz Daniel, Johannes Moenius, and Katharina Pistor, 2006, "Trade, Law and Product Complexity," Review of Economics and Statistics, Vol. 88 (2), pp. 363-373.
[50] Feld, Lars P., and Stefan Voigt. 2004. "Making Judges Independent—Some Proposals Regarding the Judiciary." Working Paper 1260. Munich: CESifo (April). Islam, Roumeen. 2003. "Institutional Reform and the Judiciary: Which Way Forward." Policy Research Working Paper 3134. Washington: World Bank (September).
[51] https://espanol.doingbusiness.org/en/reports/global-reports/doing-business-2020.
[52] https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.
[53] https://worldjusticeproject.org/sites/default/files/documents/GROLI-Spanish-v2_0.pdf
[54] In Civil Justice, the following aspects are evaluated: access to justice, absence of discrimination, absence of corruption, absence of undue government influence, absence of undue delay, effective implementation and accessibility, fairness and effectiveness of alternative dispute resolution mechanisms. In Criminal Justice, the following factors are taken into consideration: effectiveness of the criminal investigation system, timeliness and efficiency of the justice delivery system, effectiveness of the prison system, fairness of the criminal justice system, absence of corruption, absence of undue government influence, and due process and respect for the rights of the accused.

We can also cite the "Global Trustworthiness Index 2021" by IPSOS[55], a study involving 28 developed and emerging countries. This publication indicates that, in Peru, out of 18 activities evaluated, the function of judge is the second worst positioned, with a distrust of citizens equivalent to 58%, being only surpassed by 62% of government ministers.

Additionally, we can cite the "Index of Accessibility to Judicial Information and the Internet 2019" (IAcc), carried out by the Justice Studies Center of the Americas (JSCA) through the collection of accessibility data from 34 member countries of the Organisation of American States (OAS)[56] . Peru ranks 13th out of 34 countries in this index.

Finally, a last example of the importance of institutions, in general, and the judicial system, in particular, is represented by the World Happiness Report 2021, which, among other factors for the construction of the ranking of countries, takes into account "Trust in Institutions", which includes trust in the national government, trust in the judicial system and courts, honesty in elections, trust in the local police force and perceived corruption in business"[57]

In conclusion, it can be noted that the international literature highlights the importance of institutionality and the judicial system. Likewise, the literature reviewed shows Peru's poor position in these aspects, which is why a Bill that seeks to reform the regime of selection and appointment of judges and prosecutors, as well as training, promotions and disciplinary control, will be of unquestionable importance and will bring transcendent economic and extra- economic benefits to our society.

## 9.2 COST ANALYSIS

No one can ignore the fact that the basis and support of a country's social peace lies in the effective and efficient functioning of the justice service. This function is theoretically entrusted to the best legal professionals in the national forum, however, the data and technical reports and reality itself show the opposite, as it can be seen that those who have been occupying these positions do not necessarily have the desired professional level.
The efforts that have been made at different times to overcome these dysfunctional aspects did not achieve their purpose, due to the fact that the selection and appointment of magistrates were not adequate or did not demand greater expenses from the State, without taking into account the high cost that this meant from a social, economic and political point of view for the country.

In fact, it was not possible to recruit the best professionals, nor to raise their level of training and technical knowledge, nor to strengthen ethical and moral values, so much so that questions about the poor quality of work and corruption have always been present and would have their origin in the way of selection and appointment, which is aggravated nowadays by the deficient university training, a situation that makes it necessary to reinforce the professional competences of those who aspire to be magistrates, as well as their attitudes, aptitudes and skills.

The only way to achieve this objective would be through a Specialised School for the training of magistrates, as has been recommended for more than thirty years and with greater emphasis in recent times, as specified in the background of this project.

The failure to implement this model of selection, training and appointment of magistrates has meant a high cost with a serious impact on all aspects of national life, because where justice does not work, there is no order, peace, security or individual and national development.

[55] https://www.ipsos.com/sitesldefaulIt/fileslct/news/documents/2021-10/Global-trustworthiness-index- 2021.pdf.
[56] https://biblioteca.cejamericas.org/bitstream/handle/2015/5633/IACC_FINAL_agosto2019.pdf?sequence=1&isAllowed=y
[57] https://happiness-report.s3amazonaws.com/2021/VVHR+21.pdf

In this sense, our proposal for the creation of the National School of the Magistracy, and the development of a judicial and prosecutorial career, aims to solve this problem, without demanding a greater expense to the State than those currently budgeted for the Academy of the Magistracy and the National Board of Justice, considering, that
"Year of the Bicentenary of the consolidation of our Independence and the commemoration of the heroic battles of Junín and Ayacucho".

In the School, both public institutions will be merging, a budget that in the last seven years, together, has amounted to an average of sixty million (60"000,000.00), as can be seen in the following table:

AMAG AND JNJ/CNM PIM FOR THE PERIOD 2018-2024

**PIM DE LA AMAG Y LA JNJ/CNM PARA EL PERIODO 2018-2024**

| Entidad | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|---|
| AMAG | 20,518,326 | 19,109,822 | 18,699,677 | 15,322,783 | 16,508,485 | 14,053,474 | 13,563,263 |
| CNM/JNJ | 39,920,288 | 31,812,884 | 31,812,884 | 48,142,816 | 41,849,457 | 42,259,949 | 47,026,900 |
| TOTAL | 60,438,614 | 50,922,706 | 50,512,561 | 63,465,599 | 58,357,942 | 56,313,423 | 60,590,163 |

Fuente: Transparencia económica MEF - 8 de enero de 2024

The assets owned by each of the aforementioned institutions, i.e. real estate and movable property, including the logistical and technological infrastructure they possess, together with their experience in educational management in the field of justice and their human resources, will also be transferred to the new institution, and therefore there will be no labour or social consequences for their current employees.

Therefore, we can affirm that the National School of the Magistracy will be implemented without requiring additional resources from the public treasury, using the budgets of the AMAG and the JNJ (which for the year 2021 totalled S/. 63'465,389) and the assets of both institutions.

All these resources will be sufficient to start the implementation of the School, which in the future may require more or less resources depending on the pressure of the justice system in terms of the need to train new contingents of judges and prosecutors and the annual renewal rates of judges and prosecutors.

In conclusion, the benefits provided by the creation of the National School for the Judiciary will be quantitatively and qualitatively much greater than the economic costs it could demand.

## X. EFFECTS OF THE ENTRY INTO FORCE OF THE REGULATION ON NATIONAL LEGISLATION

This legislative initiative proposes to amend Articles 142, 144, 147, 150, 151, 152, 153, 154, 155, 156, 157, 158, 178, 182 and 183 of the Political Constitution of Peru in order to create the National School of the Magistracy (ENM), replacing the Academy of the Magistracy and the National Board of Justice, and to constitute itself as an autonomous constitutional body and as the only means and form of access to the judicial and prosecutorial career, being a higher centre of high specialisation and academic research that is responsible for the selection and training of aspiring judges or prosecutors and for their appointment; training for promotion purposes and their updating and improvement; as well as issuing the title that accredits them as judges or prosecutors in their corresponding grade and its cancellation in the cases foreseen by the Law.

"Alto del Bicentenario de la consolidación de nuestra Independencia y de la conmemoración de las heroicas batallas de Junín y Ayacucho" (High of the Bicentenary of the consolidation of our Independence and the commemoration of the heroic battles of Junín and Ayacucho).

The aim is to improve the professional competence, as well as the attitudes and aptitudes of the magistrates to guarantee an independent, reliable, accessible and efficient administration of justice, and with this, the respect of the rights of the people and the effectiveness of its purpose, which is social peace in justice.

This bill also creates the Inter-institutional Coordination Council of the Justice Administration System, which will be chaired by the President of the Judiciary and will also include the Public Prosecutor, the President of the Board of Directors of the National School of the Judiciary, the heads of the National Authority for the Control of the Judiciary and the Public Prosecutor's Office, the Minister of the Interior, the Minister of Justice and Human Rights, and the Minister of Justice and Human Rights, and the Minister of Justice and Human Rights, among others, the Minister of Justice and Human Rights and the Minister of Economy and Finance, with the aim that the institutions that make up this System function administratively in a coordinated and articulated manner, with concerted public policies in everything that is common to them, respecting their own autonomy and functional independence, and elevates the National Authority for the Control of the Judiciary and the Public Prosecutor's Office to constitutional level.

## XI. LINK WITH THE NATIONAL AGREEMENT

The proposed constitutional reform is linked to the State Policies established in the National Agreement N° 24, 26 and 28, referring to the Affirmation of an Efficient and Transparent State; the Promotion of Ethics and Transparency and the Eradication of Corruption, in all its forms; and, the Full Enforcement of the Constitution and Human Rights and Access to Justice and Judicial Independence, since it is aimed at establishing a new National School of the Judiciary, which replaces the currently existing Academy of the Judiciary and National Board of Justice, granting it constitutional autonomy so that it can exercise its leadership as the official academic body of the Peruvian judiciary, responsible for selecting, educating, training, updating and perfecting judges and prosecutors, granting them the corresponding degrees.

The aim of this change is to ensure that justice is truly effective, that it benefits citizens, that it guarantees legal security, public peace and the defence of the rights of all people and, consequently, that it facilitates the growth and development of the country.