
Relations between the Judiciary and the other two Powers of the State from the Ibero-American Perspective.

1. Introduction

Distinguished colleagues, ladies and gentlemen,
It is a great honor to address you today on a topic that lies at the heart of constitutional democracy: **Relations between the Judiciary and the other two Powers of the State from the Ibero-American Perspective.**

From Mexico to Argentina, from Spain to Portugal, the Ibero-American world shares a deep commitment to justice — but also faces recurring challenges in maintaining the delicate balance between independence and cooperation among the branches of government.

In this presentation, I would like to share with you **some reflections on the nature of these relations**, the **tensions and risks we observe in different Ibero-American countries**, and the **principles that must guide us** as judges and as defenders of the rule of law.

2. The Constitutional Framework

The Ibero-American constitutions are built upon the principle of **separation of powers**.

They proclaim that the Judiciary is an independent branch, whose mission is to guarantee the supremacy of the Constitution and to protect fundamental rights.

However, between the constitutional ideal and the institutional reality, there is often a wide gap.

Independence on paper does not always translate into independence in practice.

And it is precisely within this gap that the tension between the Judiciary and the other powers arises.

In theory, the three powers should act in harmony — each respecting the limits of the other, each exercising checks and balances.

In practice, however, **the Judiciary is frequently the weakest branch**, especially in contexts where democratic culture is fragile or where economic and political instability prevail.

3. The Latin American Reality

Let me begin with Latin America, where the Judiciary often faces **pressure from both the Executive and the Legislative branches**.

In several countries, judges have been publicly attacked by political authorities simply for applying the law.

Budgetary dependence on the Executive remains a chronic problem: many courts still depend on annual negotiations with the government to guarantee even basic operational resources.

In some cases, **political control over judicial appointments** or disciplinary procedures has become a subtle — yet effective — way to try to influence judicial decisions.

Allow me now to highlight **specific cases** that exemplify what we are discussing:

Peru

In Peru, the independence of the Judiciary and the Public Prosecutor's Office is under **serious strain** due to recent legislative and disciplinary initiatives.

A law approved by Congress in the end of 2024 modified the Judicial Career Law, the Prosecutorial Career Law, and the Criminal Code — even **criminalizing certain judicial and prosecutorial acts**, thereby exposing judges to political retaliation for their legitimate decisions.

Furthermore, as denounced by the **Ibero-American Group of the IA**, the **National Board of Justice**, entity that replaced the former **High Council of Justice in Peru**, has opened a disciplinary investigation against **Judge Oswaldo Ordóñez Alcántara**, who is President of the

First Constitutional Chamber of Lima and also President of the National Association of Judges of Peru.

The investigation was initiated following a complaint by a member of Parliament, because of statements Judge Ordoñez made before the Inter-American Court of Human Rights, where — acting in his institutional capacity as president of the association of judges — he highlighted that certain members of Congress were destabilizing the justice system. The IBA-UIM has firmly rejected this action, emphasizing that **freedom of expression and the right of association of judges** are essential guarantees of judicial independence. Disciplinary proceedings based on legitimate institutional expression represent a **form of intimidation** and an attempt to **silence judicial associations** that defend independence and the rule of law.

El Salvador

On **May 1 2021**, the new composition of the House of Representatives **summarily dismissed** the Justices of the Constitutional Chamber of the Supreme Court and the Attorney General — an act widely seen as **political retaliation** because the Supreme Court ruled against some president's executive orders issued during the pandemic.

Later, a reform of the Judicial Career Law allowed **mandatory retirement at 60 years of age** and **discretionary transfers** by the Supreme Court, affecting one-third of the judges.

These measures violate the Constitution and dismantle the separation of powers. It is known that the origin of this measure was exclusively to remove from the judicial career a judge who was responsible for judging a case involving people close to the government. That judge was 62 years old at the time.

As the UN High Commissioner Michelle Bachelet observed, such acts **erode democracy and the rule of law**.

Mexico

The constitutional reform of the Judiciary carried out in Mexico has replaced merit-based selection with **popular elections for judges and justices**, dissolved the Federal Judiciary Council, and terminated the

mandates of sitting judges.

This will allow for **a complete political replacement of the Judiciary**, ending judicial tenure and institutional autonomy.

Such a reform directly contradicts international standards and represents a profound step backward for judicial independence in the region. The President of Mexico proposed such a reform clearly because he didn't accept some rulings from the Supreme Court against his administration's actions.

Brazil

A new and deeply troubling situation has recently emerged in Brazil, involving external interference with the Judiciary that has no precedent in the country's democratic history.

Following the criminal case initiated by the Supreme Federal Court against a former Brazilian president accused of fomenting an attempted coup d'état, the current government of the United States adopted a series of economic and political measures clearly designed to exert pressure on Brazilian judges.

Among these measures were the imposition of extraordinarily high tariffs on Brazilian exports, the cancellation of visas of the Judge in charge of the case, of his family members, and of other Judges of the Court, as well as the application of the so-called Magnitsky Act against the Judge himself.

This episode represents an unprecedented attack on judicial independence in Brazil, with the peculiarity of not originating from internal political authorities, but rather from a foreign government seeking to shield an ally accused of undermining democracy. Such actions constitute a direct affront to the sovereignty of the Brazilian Judiciary and to the universal principle that justice must be administered free from political and international interference.

4. The Iberian Peninsula:

In **Spain** and **Portugal** — the situation may seem more stable, but it is not without challenges.

In Spain, discussions about the method of appointing members of the *Consejo General del Poder Judicial* have sparked deep political controversy. The perception that political parties influence judicial governance can erode public confidence, even if judges continue to act with independence and integrity.

Portugal, on the other hand, has maintained a relatively balanced model. The *Conselho Superior da Magistratura* safeguards independence, but the Judiciary still depends on the Executive for financial resources. This dependence, subtle yet significant, illustrates that **even consolidated democracies must remain vigilant**.

5. Shared Challenges Across the Region

When we look at the Ibero-American space as a whole, certain structural issues emerge as common denominators:

1. **Politicization of judicial appointments**, undermining meritocracy.
2. **Budgetary dependence**, which can limit institutional autonomy.
3. **Attempts to delegitimize the Judiciary** through media attacks or political rhetoric.
4. **Threats and violence** against judges, especially those handling corruption or organized-crime cases.
5. **Lack of public understanding** about what judicial independence truly means — too often confused with privilege, rather than recognized as a guarantee for citizens.

These problems show that the fight for independence is not only institutional; it is also cultural and pedagogical.

Across these countries, the same pattern emerges: **criminalization, political interference, and erosion of tenure.**

Judges are increasingly exposed to pressure and retaliation, and citizens consequently lose confidence in the impartiality of justice.

7. The Role of Judicial Associations and International Cooperation

In this context, **judicial associations** — national, regional, and international — have become indispensable actors.

The **Ibero-American Group of the International Association of Judges**, which I have the honor to serve, has consistently worked to:

- Promote the **Universal Charter of the Judge** and the **Ibero-American Statute of the Judge** as reference documents;
- Denounce attacks against judges and courts;
- Support the creation of solidarity funds to protect colleagues under threat;
- Foster dialogue and exchange of experiences among judicial associations throughout the region.

Through these initiatives, we reaffirm that **judicial independence is not a privilege of judges — it is a right of the people.**

Citizens can only trust justice when they know that judges decide according to law, not according to fear, ideology, or political convenience.

8. Towards a Balanced Relationship

The relationship between the Judiciary and the other branches must be **based on mutual respect.**

We do not seek confrontation, but neither do we accept subordination.

The Judiciary should cooperate with the Executive and the Legislative in advancing the rule of law, in improving access to justice, and in promoting the effectiveness of fundamental rights.

But cooperation cannot mean submission.

Judges must maintain their authority to review the constitutionality and legality of state actions — this is not an act of defiance; it is the very essence of democracy.

As Montesquieu wisely wrote, “*Power should check power, so that no one can abuse power.*”

That is the meaning of judicial review and the true balance of powers.

9. Conclusion

In conclusion, dear colleagues, the Ibero-American experience teaches us that **judicial independence is not a static condition**, but a continuous process of construction, defence, and renewal.

Every generation of judges must reaffirm this independence — not only through words, but through professional excellence, ethical conduct, and collective solidarity.

The relationship between the Judiciary and the other branches should not be one of rivalry, but of equilibrium.

The judge is not an adversary of government — the judge is its constitutional counterpart, the guardian of legality, and the protector of citizens’ rights.

May our work, our courage, and our unity within the Ibero-American family of judges continue to strengthen that balance — for the benefit of justice, democracy, and the rule of law.

Thank you very much.