CORRUPTION IN ARGENTINA

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SUMMARY: I. *Brief Historical and Current Analysis*. II. *Corruption, Public Ethics, International Agreements and the Republican and Democratic System in the National Constitution*. III. *The Public Ethics Law, The Anti-Corruption OFFICE, and The Control Systems in the Federal Government, in The Provinces, in the Autonomous City of Buenos Aires and the Municipalities*. IV. *Conclusions and proposals to fight against corruption*.

I. BRIEF HISTORICAL[1] AND CURRENT ANALYSIS

Since colonial times there have been corrupt practices in our country. This mentions what is linked to the delivery of land, smuggling, and shipments made to Spain. In a list that is not exhaustive, we can remember the following events after the revolution of May 1810: Rivadavia's emphyteusis, which gave rise to large estates, and the ruinous loan from Baring Brothers, which began our external indebtedness, with bribes included. Then the Desert Campaign is mentioned, and the wasteful distribution of land is carried out. The Civic Union also denounced government corruption in times of the 1890 Revolution and, in particular, the fiery oratory of Leandro N. Alem.

Already in the 20th century, this was one of the reasons for the denomination of the Infamous Decade, after the 1930 coup d'état, due to the scandals produced by the purchase of the wills of politicians and councilors by foreign electricity companies for the extension of Italo concessions, To which the investigation promoted by Senator De la Torre on the links of a

[1] Here we follow what is exposed in our work *Fortalezas y debilidades constitucionales. Una lectura crítica en el Bicentenario*", Buenos Aires, Abeledo-Perrot, 2012.

Minister with the English meatpacking companies that evaded taxes and the scandal over the sale of Palomar land was added.

The maneuvers produced by external indebtedness during the last military process should be mentioned later. And, specially, what happened in the 90s, with the privatizations. This gave rise to sales of companies for less value, directed bidding, and presumably criminal links between officials and businessmen. Negotiations such as the sale of arms to Ecuador and Croatia are still being investigated, where even former President Menem was convicted.[2]

And the series of events with strong suspicions of corruption continued with the following Presidencies.[3] Natalio Botana argued about it:

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[2] Marcos Aguinis in his cited work *El atroz encanto de ser argentinos* makes a list of 20 reported cases of corruption that are still unpunished during said government (pp. 216 and 217). And then he expresses: "Faced with such a quagmire, can we continue to affirm that the causes of our deterioration are fundamentally economic?" (p. 218). In one of the few legal proceedings for illicit enrichment, María Julia Alsogaray, who held very high positions at that stage, was convicted.

[3] As indicated by this list, which is not exhaustive either: the buying of votes in the Senate of the Nation during the government of De la Rúa for the modification of labor legislation; the complaints made in relation to the corralito; and the very extensive list of events produced during the government of Néstor and Cristina Kirchner. In this sense, the following cases are mentioned: Skanska; that of the Minister of Economy Felisa Miceli; Antonini Wilson's $800,000 suitcase, presumably for the presidential campaign; the Jaime case; the complaints to Minister De Vido for public works; the purchases and sales of land belonging to the presidential couple in Calafate; the denunciations for the increase in the assets of the Kirchners; the investigations of the Swiss justice of Hugo Moyano; the cases of Lázaro Báez, Cristóbal López and Rudy Ulloa (closely linked to power and who in a few years became important businessmen, (*Cfr.* Agunis, Marcos, "Pobre Patria Mía", Buenos Aires, Sudamericana, 2009, p. 111); the sales of public companies to businessmen close to political power (such as Eduardo Eskinazi at YPF) and relations with state concessionaires that make up a capitalism of "friends" (such as Eduardo Eurnekian, Aldo Roggio and Electroingeniería, in addition to those mentioned above. We had to rule on the rescission of the contract between the National State and A airports Argentina 2000, for the concession of the Argentine airport system, considering the extraordinary degree of non-compliance of the concessionaire, due to the debt that existed in the payment of the fixed canon that reached 700 million dollars and the failure to carry out the public works committed to in the contract See our Legal Opinion within the framework of Commission 301/2001, appointed by President De la Rúa and published in the Rubinzal Culzoni Public Law Magazine, Buenos Aires, núm. 1, 2002). Drug and gambling businesses should also be included (see Agunis, Marco, "Pobre Patria Mía", *op. cit.*, pp. 115-121, with references to the game in the Autonomous City of Buenos Aires and in the province of the same name). In the Province of Córdoba, during the Government of José M. de la Sota, the game was given in concession to the Roggio Group, through the CET Company, for tourist places. In the Government of Schiaretti, the number of slot machines (slot machines) was

> In the Corruption Perception Index of 2010, prepared by Transparency International (a civil organization that demands strict compliance with the United Nations Convention against Corruption), Argentina is in a kind of suburb of the planet in this matter, below the top 100 countries out of a total of 178. On a scale that, from least to greatest corruption, goes from 10 to 0, Argentina marks 2.9 while Chile has 7.2; Uruguay, 6.9 and Costa Rica, 5.3. Brazil (3.7), Colombia, and Peru (both with 3.5) enjoy a better assessment than the one that Argentines give themselves. However, we still have a consolation prize since Nicaragua (2.5) and Venezuela (2.0) are worse off.[4]

We also highlighted another aspect that made the situation more serious, because, despite the sanction of a more than important legislation on the matter, it was not complied with, starting with the regulations of Art. 36 of the National Constitution, to which later I will refer. And he concluded that the problem of corruption had notably worsened in the Second Bicentennial.

And he added on that occasion: "The prevailing impunity produces devastating effects on the ethical and spiritual foundations of our democracy[5]

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increased by 2,100 by law of the legislature (see report by *La Voz del Interior* dated Sunday, March 6, 2011). Although the contract mentioned that the casinos would be installed in tourist areas, of the 19 existing rooms there are some in locations that are not, such as Río Cuarto, Villa María, Deán Funes, Laboulaye, General Roca, Cruz Alta, Corral de Bustos, San Francisco, and Morteros.. Of the game produced, the Municipalities that host the casinos receive only 3%, while 27% is for the Córdoba Lottery and the rest for the concessionaire. Given the seriousness of the gambling problem, the Municipality of Río Cuarto, by ordinance and exercising its police power, tried to reduce the operating hours of the casino, for which the CET company resorted to the Superior Court of Justice to prevent it. This Court upheld the claim, declaring the Ordinance unconstitutional, in clear disregard of the police power of local morality and health. And raised the extraordinary resources and of complaint, they were not attended by said Court and finally by the Supreme Court of Justice. The resolution was in 2017 in application of Art. 280, by majority, since Minister Horacio Rosatti voted in dissent. This precedent does not correspond to the municipal jurisprudence that has been consolidated in our Highest Court and that I have opportunely highlighted.

[4] Botana, Natalio, "Corrupciones del poder", *La Nación*, April 6 2011.

[5] On the mutual dependence between ethics and democracy, the renowned professor of Political Philosophy at Harvard University, Dennis F. Thompson, already quoted, maintains: "It is a more intimate relationship than what philosophers and political scientists generally suggest. Ethics and politics pose serious problems for each other, but they also exchange resources to solve them. Political ethics supports democratic politics and does so in a variety of ways. It provides criteria by which citizens can more accurately judge the acts of officials and attribute responsibilities to them. It points out what resources are needed to promote democratic accountability and helps to overcome principled objections to this. Democratic

and trust in institutions, as evidenced by the different surveys carried out.[6]

And here again, appears the undeniable responsibility of the political and administrative control bodies, and especially of the Judiciary, in the jurisdictions most linked to these events, that is, criminal, electoral, and tax.

That is why here I insist again that another of the cardinal principles of the republican system is affected: the independence of the Judiciary.

It is painful to verify that there is an unwritten law, which has very few exceptions: criminal investigations do not advance when it comes to officials who exercise power.

It is unfortunate to see how the Prosecutors do not promote criminal actions in crimes of public action when it comes to facts linked to powe. Or how they dispute over the competition between them —just like the judges—, to excuse themselves from intervening in those cases. Or how, on other occasions, both judges and prosecutors act with great diligence to dictate the dismissals that benefit the political power in power... In addition, the slowness of Justice is of such magnitude, that the Civil Association for Equality and Justice has estimated in 14 years the duration of the cases of corruption, for which it exempts from further comments.[7]

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politics in turn underpins democratic ethics. Many of the controversies in this area, even those concerning fundamental principles, must ultimately and at least partially be resolved through some kind of democratic process. And further on he adds: "...an adequate conception of democracy should include, as a necessary condition, the collective deliberation of controversies over fundamental values. It is essential then that the democratic process complies with certain ethical restrictions, such as the publicity requirement, which requires officials to act according to principles accepted by all citizens." Thompson, Denis, "La ética política y el ejercicio de los cargos públicos", Barcelona, Gedisa Editorial, 1999, pp. 13 y 14. The original title of the book is "Political ethics and public office", Massachusetts, Harvard University Press, 1987.

[6] See Hernández Antonio María, Zovatto Daniel and Mora y Araujo Manuel, "Encuesta de cultura constitucional. Argentina: una sociedad anómica", in *percepciones sobre el Congreso y sobre el Poder Judicial y el sistema judicial*, pp. 74-76 *et seq*. and Hernández Antonio María, Zovatto Daniel and Fidanda Eduardo, "Segunda Encuesta de Cultura Constitucional. Argentina: una sociedad anómica", Buenos Aires, Eudeba, 2016, Ch. II, "Percepciones sobre la democracia y las instituciones", pp. 42 *et seq*.

[7] Hernández, Antonio María, "Fortalezas y debilidades constitucionales…", *cit*., p. 155.

More recently, books and articles by investigative and opinion journalists such as Hugo Alconada Mon,[8] Daniel Santoro,[9] Luis Majul,[10] Carlos Pagni,[11] Joaquín Morales Solá,[12] Diego Cabot,[13] and Jorge Lanata,[14] that exposed the phenomenon of systematic and structural corruption that our country suffered, especially between 2003 and 2015. The judicial complaints made by some legislators, such as Elisa Carrió, Margarita Stolbizer, and Graciela Ocaña, among others, should also be highlighted. There were also books on the subject by Mariano Grondona[15] and by Héctor Mairal[16] and articles by Jorge Vanossi,[17] Alfonso Santiago[18] and Eduardo P. Jiménez.[19]

[8] With his books "El secreto de la valija: del caso Antonini Wilson a la petrodiplomacia de Hugo Chávez", Buenos Aires, Planeta, 2009; "Boudou Ciccone y la máquina de hacer billetes", Buenos Aires, Planeta, 2013; "La piñata: el ABC de la corrupción de la burguesía nacional kirchnerista y del "capitalismo de amigos", Buenos Aires, Planeta, 2015; and specially "La raíz de todos los males", Cómo el poder montó un sistema para la corrupción y la impunidad, Buenos Aires, Planeta, 2018. In this last work, the author analyzes corruption in different spheres, demonstrating its systematic nature and highlighting the existing impunity. In this sense, he recalls the phrase of businessman Alfredo Yabrán, in the 90s: "Power is impunity".

[9] With his books "La ruta del dinero K: La trama secreta de los escándalos de Lázaro Báez, Hotesur y otras causas que llevarán a rendir cuentas ante los Tribunales a Máximo y Cristina Kirchner", Buenos Aires, Ediciones B, 2014; "La ruta secreta de la efedrina", Buenos Aires, Ediciones B, 2017 and "El mecanismo: la corrupción kichnerista: contratos energéticos, delatores y Oderbrecht", Buenos Aires, Planeta, 2018.

[10] With his book "El Dueño: historia secreta de Néstor Kirchner, el hombre que maneja los negocios públicos y privados de la Argentina", Buenos Aires, Planeta, 2009.

[11] Through, especially, his opinion articles in La Nación and on his TV show "Odisea argentina" on LN+.

[12] Through, especially, his opinion articles in La Nación and on his TV show "Desde el llano" on TN.

[13] In his book "Hablen con Julio. Julio de Vido y las historias ocultas del poder kichnerista", co-authored with Francisco Olivera, Buenos Aires, Editorial Sudamericana, 2007 and in his opinion articles in La Nación. He was also the journalist who received the Notebooks in 2018 and who began the most important investigation into corruption in the country, which will be analyzed later.

[14] With his book "La década robada", Buenos Aires, Planeta, 2014, his opinión articles on Clarín and on his TV show "Periodismo para todos" and on Radio Mitre.

[15] Author of the book "La corrupción", Buenos Aires, Planeta, 1993.

[16] Author of the book "Las raíces legales de la corrupción", O de cómo el derecho público fomenta la corrupción en lugar de combatirla", Buenos Aires, BA Edit. Rap, 2007, with a foreword by Agustín Gordillo.

[17] Vanossi, Jorge, "La problemática constitucional de la corrupción", Boletín Informativo de la Asociación Argentina de Derecho Constitucional", August 1993.

[18] The article on "La cláusula ética del art. 36".

[19] Jiménez, Eduardo P., "Corrupción y ética pública (algunos apuntes institucionales)", El Derecho, July 21 1997 and "En defensa del orden constitucional y la vida democrática",

From all this, it can be affirmed that our country is painfully one of the cases described by the Group of Experts of the IDB that I mentioned before since the appropriation and capture of the State took place for its looting through a system of corruption that covered all spheres of public works, concessions, transportation, subsidies, and gambling. To which must be added corruption in the business, trade union,[20] political, judicial, and press sectors, in addition to that which occurs in the daily life of our society. On the other hand, when verifying that there is no rejection of corruption in vast sectors of the population, it can be considered that there is a "Corruption Culture" in the country.[21]

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on "A veinte años de la reforma constitucional de 1994" Alberto García Lema and Antonio María Hernández (coords.), in número especial de Jurisprudencia Argentina, Buenos Aires, August 20 2014, pp. 44 *et seq*.

[20] The corruption and eccentricity of some union leaders, turned into wealthy businessmen and who remain in their positions for decades, in what constitutes one of the most powerful corporations in the country, is particularly impressive. We cite as an example Raúl Álvarez, who for 19 years has been the General Secretary of FATAGA (Argentine Federation of Gaseous Water and Related Workers), a union that appears as one of the 3 owners of Friesian horses (those used by the Dutch Monarchy) in the country, in addition to 74 cars, some luxury, which can be seen in a field of 70 hectares. in General Rodríguez, Province of Buenos Aires (*Cfr*. Clarín, Política, electronic versión, Octuber 7 2018, that refers to the respective Jorge Lanata TV Program, "Periodismo para Todos"). Another well-known example is that of Marcelo Balcedo and his family, who for years managed the Union of Minority and Education Workers and Employees (SOEME), one of the Education Unions of the Province of Buenos Aires, and who owned the luxurious Mansion: "El Gran Chaparral", in Piriápolis, Uruguay, with high-end cars, in addition to the newspaper Hoy de La Plata, among other goods. Balcedo and his wife were arrested in the neighboring country, with international capture by order of Judge Ernesto Kreplak of La Plata, for tax crimes and money laundering, according to information from Infobae, dated January 4, 2018.

[21] Remember the well-known phrase of the union leader Luis Barrionuevo that: "We have to stop stealing for at least two years", pronounced in 1990 and reissued in 2012 when he said: "This government has to stop stealing for 30 seconds and we will get ahead" (*Clarín Política*, September 6, 2012). "From prison he is running to be Mayor of Pilar again", is the headline of *La Voz del Interior* on February 7, 2019, referring to Diego Bechis, who was removed from office and has been imprisoned for acts of corruption since 2018, but as there is no conviction yet, there would be no legal impediment to it… The news causes astonishment, but it is revealing of what we are exemplifying. And later, the Municipal Mayor of Pichanal, Julio Jalit, said before the Deliberative Council at the opening of the 2019 Sessions, that "you had to be smart even to steal and I consider myself an intelligent guy", to the applause of the attendees. He has been Mayor since 2003 and has had an enormous wealth growth, which includes dozens of fields with soybean production, despite the fact that he previously worked at a service station, according to Infobae, in the March 7, 2019 edition. On the other hand, this culture of corruption is closely linked to the lack of constitutional and legal culture that we suffer from, as we have analyzed in our work "Segunda Encuesta de

Regarding what happened in this matter, it should be noted that after the change of government-operated at the federal level in 2015, there was a more adequate functioning of the republican system, which implied greater independence of the Judiciary, a greater balance between the Powers Executive and Legislative, and the operation of the Anticorruption Office, in addition to the exercise of a concerted federalism. Likewise, more efficiency was noted on the part of the Council of the Judiciary and significantly, Laws of special importance in the fight against corruption were sanctioned, such as Access to public information No. 27,275 of 2016, of the repentant No. 27,304 of 2016, and Criminal Responsibility of Private Legal Entities No. 27, 401 of 2017.

In this political and institutional framework, the beginning of the most important judicial investigation in Argentine history on corruption took place, which was called the Notebooks of bribery or corruption K.

It all started when the journalist Diego Cabot of La Nación, on April 10, 2018, made a statement and complaint of more than 5 hours before the Federal Judge Claudio Bonadío and gave him a copy of the 8 Gloria Notebooks, written by the driver Óscar Rye on corruption. Centeno was the driver of Roberto Baratta, Secretary of Coordination and Management Control of the Ministry of Federal Planning and Public Works, in charge of Julio De Vido.

Cabot specified that he had received that copy on January 8, 201,8 and upon noticing its importance and after ordering and corroborating the data, he decided to make the judicial presentation, delaying the publication of the news until August 1, 2018, the date on which that Judge Bonadío ordered the first arrests for that cause.[22]

Cabot says that the Notebooks exhibited

> …the route of the bribes, which started from the instructions of Néstor Kirchner, continued with the millionaire tours of the slopes of Julio De Vido by the contracting companies of the State to collect bags full of millions of dollars. dirty dollars and ended up in the Quinta de Olivos, in the Chief of Staff or the apartment of the family of the former Presidents, in Juncal and Uruguay. The author's driver, a silent witness to what was happening in his Toyota Corolla in which he transported Roberto Baratta for at least ten years, took it upon himself, with the precision of a goldsmith, to take note of everything he

Cultura constitucional. Argentina: una sociedad anómica", Hernández, Zovatto and Fidanza Compilers, Buenos Aires, Eudeba, 2016.

[22] Cabot, Diego, "Los cuadernos de las coimas: la enigmática Caja que contenía una bitácora de la corrupción K", La Nación, August 1, 2018.

> could hear. He tried with each story to varnish his story with veracity, he did not let even a number that he saw pass by escape, he took the addresses, the names, the amount, and the physical characteristics of those who he did not know. And even the weight of bags and suitcases.[23]

Unlike what happened on previous occasions, the aforementioned Federal Judge Bonadío, together with Federal Prosecutors Carlos Stornelli and Carlos Rívolo, began an investigative task that has already been completed, and that has caused a before and after in the fight against corruption. Using the figure of the repentant especially,[24] evidence and testimonies were accumulated that corroborated what was stated in the Notebooks and the complaints made before, and that supported the indictment and preventive detention of high officials of the previous government and some of the most powerful businessmen in the country.

On September 17, 2018, Judge Bonadío resolved this by prosecuting 42 people, including former Presidents Kirchner and Fernández de Kirchnr, for leading an illicit association that received illegal funds between 2003 and 2015 and that included the former officials and businessmen. Among the prosecuted businessmen were Angelo Calcaterra, Carlos Wagner, Carlos Mundin, Luis Betnaza, Aldo Roggio, Gerardo Ferreyra, Néstor Otero, Enrique Pescarmona, Juan Carlos Lascurain, Hugo Dragonetti, Osvaldo Acosta, and Juan Chediack, among others.[25] Subsequently, the CEO of Techint, Paolo Rocca, who is the most powerful businessman in the country, was prosecuted.

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[23] *Idem.*

[24] Among those who include businessmen such as Aldo Roggio, Angelo Calcaterra, Carlos Wagner, among others, in addition to those who were very close to former Presidents Kirchner, such as Ernesto Clarens, the financier, Víctor Manzanares, the personal accountant, and Carolina Pochetti, the woman of the former Private Secretary Daniel Muñoz, who owned apartments in Miami and New York for a value of 70 million dollars. These latest statements were producing new investigations, such as that of Clarens who presented a list of bribes in public works, for which Judge Bonadío began on February 20, 2019 to receive inquiries from 101 businessmen, including the corresponding to the most powerful economic groups in the country such as Eduardo Eurnekian, José Cartellone, Angelo Calcaterra, Aldo Roggio, Gerardo Ferreyra, Osvaldo Acosta, among others, as well as officials such as the former President, former Minister De Vido and their Secretaries José López and Roberto Baratta, to which are added the former Directors of the National Road Directorate. The modality of payment of bribes declared by the repentant Aldo Roggio, who identified 5 former officials and for an amount of 3 million dollars, is very illustrative. See the note by Carreras, Sergio, in *La Voz del Interior*, on Monday, September 17, 2018, entitled "Cuadernos: Aldo Roggio identificó a los cinco funcionarios que le pidieron fondos".

[25] See the copy of the resolution in the file "Fernández Cristina Elizabeth s. Asociación Ilícita", *Clarín*, September 17, 2018, electronic version.

The prosecutions were confirmed by Chamber I of the Federal Criminal Court of Appeals, made up of Judges Leopoldo Bruglia and Pablo Bertuzzi, on March 7, 2019, although the qualifications of several businessmen who had been identified as members of the illicit association, except in the case of Gerardo Ferreyra. This case continues and should be brought to trial in times to come, although it is not exempt from some maneuvers to stop it.[26]

Two Federal Judges from Comodoro Py have been implicated in this cause of the notebooks:[27] the already retired Norberto Oyarbide, since the Accountant Víctor Manzanares denounced that he manipulated an expert opinion to close the investigation for illicit enrichment against the Kirchner couple[28] and the current Luis Rodríguez, already that Carolina Pochetti, widow of the Kirchner's Private Secretary, Daniel Muñoz, denounced him for receiving a bribe of 10 million dollars, to benefit her husband who was dismissed for illicit enrichment.[29] This confirms what we have been maintaining about structural and systemic corruption, which shows the special responsibility of the Judiciary, for having enshrined impunity, which is even more serious than corruption.

On the other hand, it is very difficult to specify the amount of what was stolen from the Argentine State and people, but the magnitude of the loot-

[26] Federal Judge Alejo Ramos Padilla, from Dolores, prosecuted the Prosecutor Carlos Stornelli, the false lawyer Marcelo D Alessio and the journalist Daniel Santoro, accused of extorting the businessman Etchebest, so that he is not involved in the cause of the bribery notebooks. In turn, Prosecutor Stornelli denounced D'Alessio for fraud for asking for bribes in his name. *Cfr. Clarín*, February 13, 2019, p. 8. This case will be investigated by Federal Judge Casanello. Likewise, Stornelli recused Judge Ramos Padilla for partiality and has raised his incompetence to intervene in this case. For her part, Deputy Carrió has denounced a maneuver to try to get Prosecutor Stornelli out of the cause of the notebooks. *Cfr. Clarín*, February 9, 2019, p. 9. In relation to this, the Federal Prosecutor Federico Delgado publicly declared: "If the cause of the notebooks fails, the crisis of Justice will be terminal". *Cfr. La Nación*, March 7, 2019, electronic version. In a very important ruling at the end of 2020, Judges Jiménez and Tazza of the Federal Chamber of Mar del Plata, revoked the prosecutions against Prosecutor Stornelli and journalist Santoro, with severe criticism of the Judge of First Instance. In any case, the cause of the Notebooks and other causes of corruption are delayed, as I will explain later.

[27] Headquarters of the 12 Federal Courts of the Federal Capital, in the City of Buenos Aires, where the largest number of cases related to the corruption of the Federal Government are concentrated.

[28] For which reason, the Financial Information Unit (FIU) was already accepted as a plaintiff in the claim to reopen the case that investigated said illicit enrichment, for being a "cause judged irrational". *Cfr.* Clarín, February 13, 2019, p. 12.

[29] Reason for which Judge Rodríguez is being investigated by the Judicial Council, through its Accusation and Disciplinary Commission. *Cfr. ambito.com*, March 6, 2019, electronic version.

ing can be measured in some way, through the embargoes decreed by the Justice between 2017 and 2018 in only 10 cases of corruption of Kirchnerism, and amounting to the sum of 270,000,000,000 pesos, as reported by Laura Alonso, head of the Anti-Corruption Office.[30] Consequently, it is understood the urgent need to have the legal instruments and the corresponding judicial decisions, to recover as soon as possible those funds so required by the complex situation of our finances.[31]

In this regard, it is important to state that, despite the objections made against the legislation on the repentant, finally the Federal Chamber of Criminal Cassation upheld the constitutionality of this decisive means of evidence.[32]

The slowness of the Justice system in our country never ceases to amaze, since everything is delayed, not only the instruction but also the initiation and processing of the oral trials, so that later the same thing happens in the endless appeals process, until ending in the Supreme Court of Justice of the Nation.[33]

In 2019, some oral trials began to judge the highest officials of the Kirchner governments, including the former President, who has 12 prosecutions.[34] The first of the oral trials began on May 21 and corresponded to the direction of the public works, which would especially benefit Lázaro

[30] *Cfr. La Voz del Interior*, Córdoba, February 3, 2019, p. 15.

[31] In Congress, the sanction of a law of extinction of the domain has been delayed for several years, for which the Executive Power issued a Decree of Necessity and Urgency in this regard, No. 62 of January 21, 2019, which was rejected by the Bicameral Commission and that must be dealt with by each of the chambers.

[32] By Judgment of November 30, 2020. See Canela, Ini's note in La Nación, dated December 1, 2020 entitled "Cuadernos de las coimas: la Cámara de Casación Penal validó las declaraciones de los arrepentidos".

[33] Earlier I referred to the delay in corruption cases that last an average of 14 years and in which only 1% of those accused are convicted.

[34] On March 7, 2019, the Supreme Court of Justice of the Nation rejected a complaint appeal filed by the defense of the former President, finalizing its prosecution in the case related to the signing of the Memorandum with Iran, which is related to the investigation of the attacks on the Amia and the Embassy of Israel, still unpunished. The other causes with prosecution are those of Hotesur, Los Sauces, the cartelization of Public Works, the Corruption Notebooks, the Road Administration, irregularities due to subsidies for trains and subways, irregularities due to subsidies to the groups, that of road corridors, that of the use of official planes to send newspapers and other objects from Buenos Aires to Río Gallegos or El Calafate, that of the purchase of liquefied natural gas and that linked to the possession of a letter of San Martín to O'Higgins and background of President Yrigoyen (See "Cristina Kirchner ya suma 13 procesamientos y 7 prisiones preventivas", Infobae, Buenos Aires, June 6, 2019. Five of these cases are in the oral trial stage. She was dismissed from her prosecution No. 13, by Chamber 1 of the Federal Chamber of Criminal Cassation in the case of the

Báez, who in a few years would become an important businessman, even though he was a bank employee in Santa Cruz, linked to Nestor Kirchner.[35]

Amado Boudou, who was Vice President of the Nation, was sentenced for passive bribery and negotiations incompatible with the public function, for trying to irregularly stay with the Ciccone Calcogràfic Printing Press to obtain the printing of banknotes and official documents with the State. The sentence of the Federal Oral Court No. 4 was confirmed by the Federal Chamber of Criminal Cassation and was definitively final with the rejection of a complaint that it had filed with the Supreme Court of Justice of the Nation, dated December 2, 2020.

Other senior former officials were also convicted, such as former Minister Julio de Vido, for fraudulent administration to the detriment of the State, in the case called the Eleven Tragedy, for not having properly controlled the provision of the train service, in the 2012 accident in the said railway station, which caused 52 deaths. The sentence was issued by the Federal Oral Court No. 4 and confirmed by the Federal Chamber of Criminal Cassation, dated December 22, 2020.[36] Likewise, the former Secretaries of Transport Ricardo Jaime and Juan Pablo Schiavi, among others, were previously convicted of said railway tragedy, with a sentence of the Federal Oral Court No. 2 of 2015, confirmed by the Federal Chamber of Criminal Cassation, in 2018.[37]

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future dollar, with a ruling of April 13, 2021. See, "Casación dismissed Cristina Kirchner in the case for the future dollar", *La Nación*, Buenos Aires, April 13, 2021.

[35] Baéz received the concession of 52 works for a value of 46,000,000,000 pesos, during the years 2004 to 2015. The cause lasted years before reaching this instance. There was a first complaint by Elisa Carrió in 2008 and later by the National Road Directorate in 2016. In the last two years, the former President, De Vido and Báez delayed the case with 51 complaints filed with the Federal Chamber of Criminal Cassation. (*Clarín*, Buenos Aires, Tuesday, May 21, 2019, p. 5). On the other hand, the former President launched her candidacy for the Vice Presidency of the Republic, announcing Alberto Fernández as her running mate for the Presidency. It is a situation similar to the one that occurred in Brazil with the frustrated candidacy of Lula da Silva in 2018, due to the judicial conviction that she suffered for corruption. But there is a very significant difference, since the Brazilian Judiciary has stood out for its demonstrated independence and for the strict application of the law in very short periods of time. Here everything is unpredictable, and uncertainty characterizes our reality, beyond the well-known problems of low institutional quality and the culture of corruption.

[36] See "Tragedia de Once: confirmaron la condena a de Vido por cinco años y ocho meses de prisión", Buenos Aires, Infobae, December 22, 2020.

[37] "Tragedia de Once: Le otorgaron la libertad a Ricardo Jaime pero seguirá detenido", Buenos Aires, Infobae, September 26, 2020, where pretrial detention is refered as another cause of corruption.

José López, former Secretary of Public Works of the Nation, was convicted in 2016 of illicit enrichment in the so-called case of the bags since he was filmed at the time, he was taking them with almost 9 million dollars to a Convent. The sentence was issued by Federal Oral Court No. 1.[38]

In addition, Lázaro Báez together with his 4 children, the Accountant Pérez Gadin and the financiers Elaskar and Fariña were sentenced in the case known as the "K Money Route", by the Federal Oral Court No. 4 of the City of Buenos Aires, dated February 24, 2021, for money laundering of approximately 55 million dollars.[39]

And currently, the case for the public works in Santa Cruz, referred to above, continues, which is being judged by the Federal Oral Court No. 2, where Báez is charged along with Cristina Fernández de Kirchner, Julio de Vido, and José López, among others.[40]

Since the change of federal government in December 2019, extremely serious developments have been taking place in these judicial matters related to the investigation of corruption cases.[41] It is already clear that despite the pandemic that affects humanity and our country in particular, a substantial part of the official agenda was and is intended to prevent the

[38] See Salinas, Lucia, "Trial for corruption. José López was sentenced to six years in prison for the bags with money in the convent", Clarín, Buenos Aires, June 12, 2019. On April 13, 2021, López was released by a ruling of the Federal Oral Court No. 1, although he did not finish serving his sentence of more than 7 years and despite the fact that he is prosecuted in the case of the Bribery K Notebook. See the journalistic notes "Un ícono de la corrupción kirchnerista: José López queda en libertad bajo fianza", in Perfil, Buenos Aires, April 13, 2021 and Joaquín Morales Sola, "La Justicia no siempre es justa", *La Nación*, April 14, 2021. On the other hand, this is what has happened with almost all of the former officials convicted and prosecuted, it being evident that the judges and prosecutors have yielded to the pressure exerted. Keep in mind that the President of the Republic himself has advocated the innocence of the Vice President on several occasions, in violation of Art. 109, which states "In no case can the President of the Nation exercise judicial functions, claim knowledge of pending cases or restore the dead ones".

[39] This cause had originated with the television broadcast made by the journalist Jorge Lanata in April 2013 in his program Periodismo para todos, of the statements of Leonardo Fariña, with a hidden camera, where he explained the criminal actions of money laundering carried out by Báez.

[40] See "Tras la condena a Lázaro Báez por la "ruta del dinero K" hoy continúa el juicio en otra de las causas donde está acusado", Buenos Aires, Infobae, March 1, 2021".

[41] See note "Avanzada judicial: una por una, las acciones del kirchnerismo que impactaron en causas judiciales", *La Nación*, Buenos Aires, May 19, 2020, where it is indicated what has been done by the Anticorruption Office, the Human Rights Secretariat, the Treasury Attorney and the Judicial Council, among other actions.

advancement of the causes that especially affect the current Vice President of the Nation.[42]

In the Anticorruption Office, for example, it was decided to withdraw from the role of plaintiff in cases where the Kirchner family is accused,[43] in addition to other former officials.

Correlatively, the actions of the Judges who intervened in the cases of corruption began to be criticized and from the Council of the Judiciary, the representative of the Executive Power Ustarroz questioned the legality of the transfers of 3 of those Federal Criminal Chambers: Bertuzzi, Bruglia and Castelli. Given this, these Magistrates filed legal actions in defense of their stability, requesting that their positions be declared definitive.[44] Finally, the Supreme Court in the "Bertuzzi Pablo y Otro-Amparo" case,[45] in a divided and very extensive ruling, decided to keep them temporarily in their positions until new competitions were held and modified the jurisprudence that allowed these transfers, in a practice described as *contra legem* and

[42] See note by Cappiello, Hernán, "Corrupción K: Cristina Kirchner no mejoró su situación judicial tras un año en el poder, pero sus aliados sí", Buenos Aires, La Nación, November 15, 2020. There, a precise reference is made to each of the cases, which continue to be substantiated although with considerable delay, and on the other hand, the resolutions that benefited other high officials of his government are indicated. However, recently, the vice president has been dismissed in the future dollar case and has also ordered the return of the assets of Hotesur and Los Sauces and other assets of the succession of Nestor Kirchner (26 properties) to the Kirchner family, at the request of their lawyer Carlos Beraldi, despite the fact that these cases continue (See note by Salinas, Lucía, "TOF 5: La Justicia les devolvió a los Kirchner el manejo de sus empresas, hoteles y propiedades", *Clarín*, April 6, 2021).

[43] See notes by Winazki, Nicolás, "Corrupción K. La Oficina Anticorrupción dejó de ser querellante en dos causas emblemáticas de la familia Kirchner", *Clarín*, Buenos Aires, May 4, 2020, where criminal procedures *Hotesur* and *Los Sauces* are refered, of which Cristina Fernández de Kirchner and her children Máximo and Florencia are indicted; and by Paz Rodríguez, Niell, "Oficina Anticorrupción: cuáles son las 32 causas contra exfuncionarios en las que el gobierno dejará de ser querellante", *La Nación*, Buenos Aires, October 21, 2020, refered to former members of Menen, Kirchner and Fernández de Kirchner's administrations, as Boudou, De Vido, López, Jaime, Milani, Picolotti, Aníbal Fernández, among others, by serious cases of corruption, such as the "case of the notebooks", Oderbecht, the sale of YPF, Ciccone and illicit enrichment by Bodou, López and Milani, among others.

[44] An appeal was filed in the first instance by Bertuzzi and Bruglia and, given their rejection, they appealed for an extraordinary appeal per saltum before the Supreme Court of Justice. The Chamber members requested the declaration of unconstitutionality of Resolution 183 of the Council of the Judiciary, since at the time they had been appointed by the Council itself and based on Acordadas 4 and 7 of 2018 of the Supreme Court of Justice itself.

[45] Of September 29, 2020, with a majority vote of Ministers Lorenzetti, Maqueda and Rosatti plus the concurring vote of Highton de Nolasco and the dissent of Rosenkrantz.

through the declaration of unconstitutionality of Resolutions of the Council of the Judiciary. This ruling was criticized by some authors.[46]

For my part, I believe that some important criteria in this matter set by the Court for the future should be highlighted: l) the only way to appoint Magistrates is through the procedure of Arts. 99 inc. 4 and 114 of the National Constitution; 2) the designations thus made are definitive, while the transfers are always transitory; 3) practices contrary to the Constitution are invalid and contribute to the anomie referred to by Carlos Nino, as expressed in Considering 25 of the Majority Vote;[47] 4) respect for the precedents "Uriarte", "Rosza", "Rizzo" and "Aparicio" are insisted on and Resolution 183/2020 of the Judicial Council is declared unconstitutional, for not respecting Art. 99 inc. 4. Remember that in the first of these rulings, the Court declared the unconstitutionality of Law 27,145 on subrogation, since this practice was extremely serious for the federal judicial system of our country; and 5) Congress is requested to pass a new transfer law and greater speed to fill vacancies.[48]

[46] Daniel Sabsay argued that it was an irresponsible ruling by the majority, that it modified the previous jurisprudence of the Court, and that it did so retroactively, affecting constitutional principles on the stability and independence of the Judiciary. He agreed with Dr. Rosenkrantz's minority vote and added that legal certainty was unknown. That this practice of judicial transfers is more than 70 years old and that with this new precedent, more than 60 magistrates were now left in the same situation as the claimants (Radio Continental, November 4, 2020 and "Daniel Sabsay: el fallo de la Corte es una tragedia institucional para el país", Perfil, November 6, 2021). Alberto Garay expressed similar arguments in his note "The Court's ruling: an unnecessary and enormous damage to the judicial system", in Clarín, on November 5, 2020. For his part, Roberto Gargarella, in his article "A propósito del fallo de la Corte", in Clarín on November 12 of November 2020, pointed out that the criterion of Acordada 7/2018 was modified, where the Court had endorsed the transfer of the judges before a consultation by the Minister of Justice and that this sentence is explained by the urgencies of politics rather than by the demands of the Law and that there was a lack of dialogue and joint reflection on this constitutional issue.

[47] Since the ruling "Grau" of 1945 of the Supreme Court, reference is made to judicial transfers, that is, a practice of more than 75 years. During his Presidency, Fernández de Kirchner ordered 18 transfers and Macri did it 22 times.

[48] The Majority Vote indicated that the average duration of a new appointment with the participation of the Council of the Judiciary, the Executive Power and Congress is 3/2 years, although other examples of much slower pace can be mentioned. This caused the existence of a large number of vacancies and on many occasions, this was used to carry out transfers and designate substitutes, with which the independence of the Judiciary and its proper functioning were unquestionably affected. Consider that there are currently 291 vacancies out of 988 positions in the Federal Court. But, in addition, the 153 short lists raised by the Council of the Judiciary to the Executive Power have remained there, by decision of the new government elected in 2019.

Likewise, the Executive Power promoted a Judicial Reform by sending a draft Law for the modification of the Federal Criminal Justice, and on the other hand, created a Commission for the analysis of other aspects, which included the operation of the Council of the Magistracy, the Public Ministry and the Supreme Court of Justice of the Nation. This is the fourth judicial reform promoted during the governments of Menem, Kirchner, Fernández de Kirchner and now Alberto Fernández.[49]

The Federal Criminal Justice Reform Bill,[50] which has already been approved by the Senate since August 28, 2020, is now awaiting treatment by the Chamber of Deputies and consists of 3 Titles.

The first, aimed at the unification of the Federal Criminal Jurisdiction with the National Economic Criminal Jurisdiction of the City of Buenos Aires. This means that from the current 23 Courts (12 federal criminal courts and 11 national economic criminal courts) the number will increase to 46, with the denomination of Federal Criminal Courts. 4 National Economic Criminal Oral Courts are transformed into Federal Oral Criminal Courts, which are added to the 8 existing ones and 5 more Oral Courts are also created. Note then the enormous number of charges that are made for the City of Buenos Aires, a subject that I will deal with again later. Likewise, the National Chambers in Criminal and Correctional Matters and Economic Criminal Matters will be transformed into a new Federal Chamber of Appeals in Federal Criminal Matters. In addition, for substitutions in the new courts created, Article 16 provides that the National Criminal and Correctional Chamber, within 10 days after the Law is sanctioned, will submit

[49] The first reform was carried out in the Government of Menem and consisted of increasing the number of Ministers of the Supreme Court from five to nine and the number of Federal Judges in Federal Criminal Matters of the Federal Capital from 6 to 12, who are the ones who they have the largest number of cases on corruption and that they have their headquarters in the Comodoro Py building. The second reform was during the government of Néstor Kirchner, which reduced the number of members of the Judicial Council from 20 to 13, through Law 26,080 of 2006, whose unconstitutionality for not respecting the balance of Art. 114 of the Supreme Law, by promote the participation of the political sectors, as opposed to that of the lawyers and judges, was declared by a Federal Contentious-Administrative Chamber and for 5 years has been subject to a decision by the Supreme Court of Justice of the Nation for an extraordinary appeal.. In the government of Fernández de Kirchner several reform laws were sanctioned, under the objective called by the Government of democratizing justice. Perhaps the most significant of them, No. 26,855, which provided for modifications in the Judicial Council, was declared unconstitutional by the Supreme Court of Justice of the Nation in the "Rizzo" case, ruled in 2013. And now it is trying the fourth reform during the current Presidency of Alberto Fernández.

[50] See the article by Oyhanarte, Marin, "Reforma de la justicia federal: un análisis crítico", La Ley Online, Buenos Aires, AR/DOC/2704/2020.

to the Judicial Council the list of applicants among the current National Judges. in Criminal and Correctional. And that the Council will make the appointments within 30 days, with a maximum term of 1 year for substitute judges.

However, this unification of different jurisdictions that includes some national ones, such as the economic criminal and others of the Second Title, provides for the transfer of national justice in criminal matters to the Autonomous City of Buenos Aires, or rather what remains after this transformation, which absorbs a very important part of that national justice.[51]

The Second Title orders the unification of the Federal Civil and Commercial Jurisdictions with the National Federal Administrative Litigation Jurisdiction, under the name of Federal Civil, Commercial and Administrative Jurisdiction, based in the City of Buenos Aires. Creates a Chamber in the jurisdiction and Courts of First Instance in Civil, Commercial, and Federal Administrative Litigation and Federal Tax Execution Courts. As previously anticipated, jurisdictions are unified, with a part corresponding to the National Justice and also, with very different competencies.

And the Third Title, strengthening federal justice in the interior, creates 73 new Federal Courts and 14 new Federal Courts of Appeal or Chambers that are added to the existing ones. All this implies the creation of 908 new positions, even though in the Project of the Executive Power it was 279.[52]

This project has received severe criticism: 1. Inopportuneness, lack of consensus, lack of studies, and enormous economic costs that the country cannot bear, as expressed by the senators of the opposition;[53] 2. It is a partial federal criminal reform, which multiplies the problems of Comodoro Py by creating so many new Courts in the City of Buenos Aires through the unification of jurisdictions;[54] 3. The inconvenience of unifying different jurisdic-

[51] For a long time, I have insisted on compliance with Art. 129 of the National Constitution and on the urgent need to transfer to the Autonomous City of Buenos Aires the so-called national justice, which never was and will never be federal, but which continued to oversee the Federal Government, due to the corporate pressure of the judges, who achieved the sanction of the unconstitutional regulatory law 24,588. See Hernández, Antonio María, "La Ciudad Autónoma de Buenos Aires y el fortalecimiento del federalismo argentino", Buenos Aires, Jusbaires, 2017.

[52] Según lo expusieron en el debate la Senadora Rodríguez Machado y el Senador Julio Cobos. See the article by Domínguez, Juan José, "Reforma Judicial: El Senado dio media sanción a una ley clave con mayoría del oficialismo", *La Voz del Interior*, Córdoba, August 28, 2020.

[53] *Idem.*

[54] According to the opinion of Prof. Alberto Binder, published in his article titled "La expansión de Comodoro Py", La Nación, August 10, 2020. He maintains that the serious struc-

tions such as federal and national and with different powers;[55] 4. Continue and deepen the serious problem caused by surrogacy[56] and 5. The creation of so many positions of Judges is surprising, when the new accusatory system is sanctioned, which requires a greater number of Prosecutors.[57]

On the other hand, the Executive Power of the Nation created a Commission called "Consultative Council for the strengthening of the Judicial Power and the Public Ministry", through Dec. 635/2020,[58] to study and propose reforms on various issues and was made up of 11 members.[59]

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tural problems of the federal justice system that have produced impunity have not changed, and points out in particular the seriousness of the intervention of the espionage services and the delay in the implementation of the accusatory system. For his thoughts on the reform we need, see his article "Cinco medidas para reformar la justicia federal", La Nación, February 4, 2020.

[55] See note 111, on the breach of Art. 129 of the National Constitution. That is why I maintain the unconstitutionality of the project that, instead of transferring the entire National Justice to the CABA, orders its unification and transformation into a federal one. On the other hand, this criterion has been assumed by the jurisprudence of the Supreme Court of Justice in the "Corrales" and "Nisman" precedents, on the differences between the federal and national jurisdictions and the need to transfer the latter to the CABA. And more recently in 2019, in "Gobierno de la Ciudad Autónoma de Buenos Aires c. Provincia de Córdoba" and "Bazán Fernando", where the original jurisdiction of the Court for the City, like the provinces, is admitted and competences are recognized to the Superior Court of the CABA in relation to national justice. For his part, Martin Oyhanarte had pointed out the same, since the criteria of the Supreme Court in Agreements 4 and 7 of 2018 were unknown, which required a specific designation for these jurisdictions due to their differences, in accordance with what is indicated by the National Constitution. (See his work cited in note 110). Likewise, it is what our Highest Court has ratified in the "Bertuzzi Pablo y otro-Amparo" judgment of 2020, previously mentioned.

[56] See the articles already cited by Alberto Binder and Martín Oyhanarte. And the rulings of the Supreme Court in "Uriarte", "Aparicio" and "Bertuzzi Pablo et al." On the other hand, Law 27,439 in its article 14 prohibits substitutions when it comes to Courts that are created, as in this case.

[57] This lack of criteria exhibited by the project already sanctioned by the Senate, corresponds to an aspect that should be highlighted and already mentioned: that of the budgetary situation of the Judicial Power. Indeed, during 2019 the infrastructure emergency was declared and in 2020 during the pandemic, the problems of lack of computer systems and connectivity became evident. That is why the magnitude of the criticism is understandable and also, that its treatment is paralyzed in the Chamber of Deputies, since the ruling party lacks the necessary majority of 129 Legislators. Hence, the next legislative election in 2021 is so decisive.

[58] B*oletín Oficial de la Nación*, Buenos Aires, July 30 2012, *https://www.boletinoficial.gob.ar/detalleAviso/primera/232757/20200730*.

[59] Drs. Beraldi, Arslanián, Gil Domínguez, Ferreyra, Palermo and Bacigalupo and Dras. Sbdar, Kogan, Herrera, Weinberg de Roca and Battaini. They were mostly members of the Judiciary, 2 Professors of Constitutional Law, Ferreyra and Gil Domínguez, and 2 Lawyers,

The lack of impartiality of the appointed Commission[60] and other aspects of this Judicial Reform has been criticized by Alberto Garay,[61] Roberto Gargarella,[62] and Daniel Sabsay.[63]

The Opinion produced[64] covered important issues such as the Supreme Court of Justice, the Public Ministry, the Judicial Council, Trial by jury, and the transfer of powers in non-criminal federal matters to the Autonomous City of Buenos Aires, in 4 Chapters, whose Further analysis exceeds the purpose of this article.

There were different opinions in the Opinion on the modifications to the Supreme Court of Justice. The sanction of a special Organic Law was proposed in this regard, in addition to the creation of an intermediate court

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Beraldi and Arslanián, with the particularity that they exercise criminal defense of those accused of corruption, and in particular the former, who It belongs to Fernandez de Kirchner.

[60] See the note titled "Criticas de abogados por la falta de pluralidad del consejo asesor que conformó Alberto Fernández para la reforma de la Corte Suprema", Infobae, Buenos Aires, July 28, 2020, where it is noted that the vast majority of the members they respond ideologically to the President and Vice President of the Nation.

[61] See his opinions in the article published in Clarín, Buenos Aires, dated August 3, 2020, entitled "La reforma judicial: el Gobierno, en el camino equivocado", with criticism of the opportunity, integration of the Commission or the creation of an intermediate court, in addition to referring to the language used by the President. On the contrary, he advocated a reform with the consensus of the different political and social sectors. And in the note "Alberto Garay, constitucionalista: "Es una insensatez una reforma judicial ahora", Infobae, Buenos Aires, August 4, 2020, where he reviewed the history of the Supreme Court and the attempts at political domination over the Judiciary. He also especially criticized the participation of criminal lawyers Carlos Beraldi and León Arslanián.

[62] Garzella, Roberto, "Razones para la reforma judicial", La Nación, Buenos Aires, August 5, where the author maintains that the reform is in the wrong direction, it is inopportune, it does not have democratic procedures, it indicates unattractive objectives and it does not face the most important problems, among other criticisms. He says that two of the tragedies of our Judiciary that are not addressed are inequality and the impossibility of access for the poorest and the service that has been rendered to the impunity of power. And he points out the need for a democratic dialogue in a reform that is carried out from the bottom up.

[63] Battaglino, Roberto, "La reforma judicial es un plan de impunidad", *La Voz del Interior*, Córdoba, of August 7, 2020, note by Roberto Battaglino, where he refers to a conference by Prof. Sabsay. In addition to the statement that gave the note its title, there were other criticisms such as the inopportuneness, the cost, the true objectives pursued, etc. And he also argued that the Supreme Court must rule on the case pending for 5 years on the unconstitutionality of Law 20,680 on the integration of the Judicial Council.

[64] See Dictamen del Consejo Consultivo para el fortalecimiento del Poder Judicial on the web site *argentina.gob.ar*. For a summary of the proposals made, see the note "El informe completo del Consejo Consultivo para la reforma de la Justicia Federal", *Palabras de derecho*, January 12, 2021, in *www.palabrasdelderecho.com.ar.*

for matters of arbitrariness, the setting of deadlines for sentences and public deliberations, the direct filing of extraordinary appeals, among other aspects. The counselor Ferreyra in his vote proposed the expansion to 9 of the number of ministers.[65]

The modification of the Law of the Public Ministry was proposed by ten of the members, to shorten its mandate to 5 years.[66] Regarding the reduction of the two-thirds majority to an absolute majority for his appointment, there was no consensus, since while six members supported it, another five were in favor of maintaining the current majority.[67] It was also proposed that the FIU (Financial Information Unit) not become part of the Public Ministry. Likewise, it was stated that the Anti-Corruption Office should not be transferred to the Public Ministry either and that it should continue depending on the Executive Power.

Concerning the Council of the Judiciary, it was stated that it must have 16 Members, at a rate of 4 per sector, -instead of the 13 that it currently has by Law 20,680,[68] so that the balance ordered by the Constitution for

[65] For an analysis of the constitutionality of the proposal to divide the Court into Chambers, see Manuel García Mansilla, Revista Jurídica Austral, No. 2, 2020. And in relation to the increase in the number of members of the Court, by the same author, the article "No", *La ley*, Supplement No. 7, November 2020.

[66] The remaining member, Andrés Gil Domínguez, maintained that his mandate should last until he turns 75, in accordance with the guarantees of independence provided by Article 120 of the National Constitution.

[67] There is a Project of the Executive Power to modify the Law of the Public Prosecutor's Office, already approved by the Senate, which reduces the majority of two-thirds of Senators to an absolute majority, for the appointment of the Attorney General, in addition to a reduction of his mandate. In addition, the Government is pressuring the current interim Attorney Eduardo Casal to leave his post. The project is now under consideration by the Chamber of Deputies. Severe criticism exists against said project, since it does not respect the independence and autonomy of said institution, in accordance with the provisions of Article 120 of the National Constitution. Nine civil society organizations: the Bar Association of the City of Buenos Aires, FORES, Cadal, Será Justicia, Republican Professors, Jubi Judges, Usina de Justicia, Legislative Directory and Foense Accountants created an NGO called Network of Entities for Independent Justice in Argentina (REJIA) and signed the declaration "Without independent prosecutors there is no Justice", where the Chamber of Deputies is asked to reject the project under consideration. (See note "Rechazan la reforma la ley del Ministerio Público Fiscal- Crearon una red de ONG para defender la independencia de Jueces y Fiscales", *Clarín*, Buenos Aires, April 16, 2021).

[68] The Federal Chamber of Appeals in Federal Administrative Law declared the unconstitutionality of said Law for 5 years, so the issue is now under consideration by the Supreme Court of Justice. For its part, the National Academy of Law and Social Sciences of Córdoba also upheld its unconstitutionality, for not respecting the balance between the sectors provided for in Article 114, according to the opinion approved on March 14, 2006.

its integration is respected. The exclusive dedication of the Members was proposed, for which the Legislators should designate representatives. The constitutional competence of the Council in the financial administration of the Judiciary was reaffirmed. Concerning the Judicial School, there was a proposal for regular refresher exams for Judges.

Regarding the implementation of the trial by jury in a majority way, it was recommended for the federal order, with an integration of 12 members. There were different criteria for trial by jury in criminal matters.

And regarding the transfer of non-federal criminal matters to the CABA, the sanction of law was proposed that establishes a term of 3 years to complete the process, which must include the pertinent resources and the implementation of the accusatory system.

A well-founded Report of the Independent Consultative Council[69] convened by FORES (Forum for Studies on the Administration of Justice), published in December 2020[70] has also been known. And more recently, a critical study was carried out at the Faculty of Law of the UBA.[71]

On the other hand, the implementation that is being carried out of the Code of Criminal Procedures of the Nation must be observed very carefully, which began with its application in the Provinces of Salta and Jujuy and that must later continue in other provinces, due to the change towards the crimi-

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See Hernández, María Antonio, "A veinticinco años de la reforma constitucional de 1994", Córdoba, National University of Córdoba, 2019, p. 86.

[69] Composed of Drs. Caminos, Cayuso, Chayer, Del Carril, Garay, García Mansilla, Munilla Lacasa, Ostropolsky, Palacio de Caeiro and Sacristán.

[70] See the web site, *https://foresjusticia.org/2021/01/29/informe-final-del-consejo-consultivo-independiente.*

[71] At the "Ambrosio L. Gioja" Research Institute, with the coordination of Prof. Roberto Gargarella and Marcelo Alegre, with severe criticism of the creation of that Intermediate Court, among other aspects. See "Reforma judicial: un estudio de la UBA critica las conclusiones del Consejo Asesor", note by Cappiello, Hernán, La Nación, April 14, 2021. Personally, I consider a serious judicial reform very necessary, and in all orders, not only federal but also provincial and CABA. It is that problems as serious as the politicization of justice and judicialization of politics, inequality in access to justice and in its operation, lack of independence and social trust, among others, are observed. The reform should tend to ensure the independence of the judiciary, change the procedural codes, educate and train judges, facilitate access to justice, make justice more technical, etc..., with the consensus of the political forces in Congress and after a wide debate with the participation of the interested sectors. See the data referring to the Judiciary in the work "Segunda Encuesta de Cultura Constitucional. Argentina una sociedad anómica", Antonio María Hernández, Daniel Zovatto and Eduardo Fidanza (comps.), Buenos Aires, Eudeba, 2016, *op. cit.*, on Ch. 2 "Percepciones sobre la democracia y las instituciones" de Daniel Zovatto and Ch. 3 "Percepciones sobre la Constitución, las leyes y algunas cuestiones federales" by Antonio María Hernández, pp. 29 *et seq.*; pp. 63 *et seq.*, respectively.

nal system. accusatory. It is that the Commission for Monitoring the Implementation of the Code, managed by the ruling party and beyond its powers that correspond to Congress, has ordered that other articles of the new Code be put into effect, among which 375 stands out. This rule serves to lengthen criminal proceedings even more, since only the one that finally has the intervention of the Supreme Court of Justice itself can be considered a final sentence, for the execution of the sentence. This goes beyond the provisions of Article 8 of the American Convention on Human Rights, which requires double compliance in this matter and will serve to enshrine impunity.[72]

To this must be added the verbal violence deployed by the highest government officials against various judges and journalists who acted in cases of corruption. The President of the Republic himself, in his message to Congress on March 1, 2021, expressed that "The Judiciary is in crisis, it seems to live on the margins of the republican system". And he argued that Congress must control said Power in addition to announcing the sending of a project to create a court an intermediate court on arbitrariness issues, which affects the Supreme Court of Justice itself.[73]

For his part, the new Minister of Justice, Martín Soria, in his first public statement, maintained that he had come to put an end to lawfare, that some judges had crossed the line, that the Supreme Court was complacent, and that the vice president was innocent and that she wanted Justice itself to release her from guilt and charge.[74]

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[72] See the article by Vega, Juan Carlos, entitled "La falsa tesis de la tercera instancia judicial", *Clarín*, Buenos Aires, 26-2-2021. The author, who chaired the Criminal Legislation Commission of the Chamber of Deputies of the Nation, maintains that with this modification the processes will last 20 years, and impunity will be consolidated, especially for crimes of corruption and power, not for those of the poverty. He affirms that the need for a third judicial instance is false and that it is absurd to try to base it on the principle of innocence and human rights. He invokes that with this lengthening of the process, which prevents the application of penalties, the Arts are unknown. 25 of the American Convention, which establishes the rights of victims to have the guilty punished and to recover what was stolen, and 24, on the principle of equality, since only the causes of political, economic, and political power reach the Supreme Court. union, not those of poverty. And he recalls Resolution 1/18 of the Inter-American Commission on Human Rights in Bogotá, stating that corruption is one of the biggest human rights violations in the continent, and that the weakness of the Judiciary is the cause of impunity. He reiterates that Art. 8 inc. 2 (h) of the Convention only requires a second instance, not a third, and that is what follows from the "Valle Ambrosio" ruling of the Inter-American Court of Human Rights, dated 7-20-20, where the National State was condemned and to the Province of Córdoba for that reason.

[73] See "Alberto Fernández volvió a criticar a la Justicia y anunció la creación de un tribunal para limitar el poder de la Corte Suprema", *Infobae*, Buenos Aires, March 16, 2021.

[74] See "Martín Soria: "La Vicepresidenta quiere que la misma Justicia la libere de culpa y cargo", *Infobae*, Buenos Aires, March 16, 2021.

Likewise, Eugenio Raúl Zaffaroni[75] has upheld the concept of lawfare[76] and has proposed the issuance of a pardon by the Executive Power or an amnesty law by Congress to end these causes of corruption.

This notorious and continuous advance on the independence of the Judiciary[77] aimed at preventing the progress of corruption cases has also been accompanied by a sustained attack on investigative journalists, who played a decisive role in such an important matter.

In this sense, it is surprising that, even though our country we have the highest level of constitutional protection of freedom of expression, deepened with the incorporation in Article 43 of the secrecy of journalis-

[75] That he was a Minister of the Supreme Court of Justice of the Nation and that he is currently a Judge of the Inter-American Court of Human Rights. He recently co-authored with Cristina Caamaño and Valeria Vegh Weis the book "Bienvenidos al Lawfare", edited by Capital Intelectual.

[76] The English language term is a contraction between Law and Warfare and means judicial war, used to attack certain political sectors through legal and media actions. In our region, supporters of Lula, Correa and Fernández de Kirchner invoke this concept, criticizing the corruption processes that involved them, while others deny its existence. See the opinions in this regard of Roberto Gargarella, who maintains that "The story of lawfare comes to hide the fact, in our case, that Kichnerism has been, as Macrism later was, protagonists of pressure on justice. And that, furthermore, much of what is at stake are real acts of corruption, which have always occurred in the region". Schvartzman, Américo, "La liberación de Lula evidencia que el lawfare es una tontería", *Lavanguardia*, March 12, 2021. And he adds: "This is not an international conspiracy of justice, media and politics against popular governments, but what there is is a Justice that, in a context of concentrated political power, tends to work with the power of the day", pointing out as examples the cases of Argentina, Chile, Peru, Colombia, Ecuador, Nicaragua, Bolivia or Venezuela. Piscetta, Juan, "No hay lawfare, sino una burda y patética historia de dominio de poder sobre la justiciar", Infobae, Buenos Aires, January 17, 2021. Roberto Saba in his note "La paradoja del lawfare", *Clarín*, Buenos Aires, February 21, 2021, affirms that "if we question the impartiality of the entire Judicial Power, what do we have left?". And he proposes as a solution to that paradox that you have to trust the judicial processes, and not necessarily the judges. And that "the center of the debate on how to improve our justice must go through the way in which we improve those processes, otherwise, constitutional democracy will be caught in the crossfire of mutual accusations of lawfare". And then he maintains: "If law is power, then there is no law. Just power. Constitutional or liberal democracy is at the antipodes of this thought. This is built on the opposite idea that the deliberative process in Parliament and the judicial process before the courts are the appropriate mechanisms to make the best possible decisions".

[77] See the article by Morales Solá, Joaquín, "A una Comisión le falta sólo la guillotina", *La Nación*, April 25, 2021, where it refers to an opinion of the Bicameral Commission of intelligence services, which also proposes the formation of another commission to investigate judges and prosecutors during the previous Macri government.

tic sources of information,[78] in addition to the international law of human rights, the criminalization of such activity is still insisted upon.[79]

For these reasons, the recent report No. 45 on Human Rights in the world of the United States Department of State points out concerning the period 2019-2020 that: "Weak institutions[80] and a judicial system that is often ineffective and politicized undermined systematic attempts to curb corruption. Executive, legislative, and judicial officials engaged in corrupt practices with impunity". He cites the cases of corruption against Fernández de Kirchner in the case of the Notebooks and against Macri. And that there is a "lack of effective implementation of the law", in addition to mentioning the murders committed by the security forces in several provinces.[81]

I end this point by emphasizing the notable importance of the continuity of these processes against corruption, which should mean a change in the decadent reality of the country in this matter, characterized by impunity. But the fight against corruption requires the investigation of other aspects of the structural corruption that we have suffered, such as, for example, concessions for public works, public services, and gambling, which has proliferated in the country and it reaches the Federal Government, that

[78] In my capacity as Vice President of the Drafting Commission I was the author of said incorporation in the National Constituent Convention of 1994. See Hernández, Antonio María, "A 25 años de la reforma constitucional de 1994", Córdoba, Printing of the National University of Córdoba, 2019, pp. 137 et seq.

[79] In the *Amicus Curiae* that I presented before the Federal Chamber of Mar del Plata in favor of the journalist Daniel Santoro, due to his indictment by Judge Ramos Padilla, I pointed out the different criminal cases that other distinguished colleagues had previously supported - authors of books and articles against the corruption - and how the jurisprudence, especially of First Instance Judges and some Chambers, did not respect the guarantee of secrecy of sources. Said Chamber, in a very important ruling that refers to the Amicus Curiae, with the vote of Judges Eduardo Pablo Jiménez and Alejandro Tazza, established an adequate jurisprudential criterion in this regard, with a precise constitutional reading of the new guarantee. See the note by García Mansilla, Manuel, "El caso Santoro: un hito en defensa de la libertad de prensa", *Clarín*, Buenos Aires, December 22, 2020. Unfortunately, unaware of this, Federal Judge Luis Rodríguez has just prosecuted the aforementioned journalist again, which has already provoked the reaction of the respective institutions, such as ADEPA, FOPEA and the National Academy of Journalism. See note "Procesaron al periodista Daniel Santoro en una causa por supuesto intento de extorsión", *La Nación*, April 19, 2021.

[80] Regarding the weakness of the institutions in the region, see "La ley y la trampa en América Latina", Siglo XXI, 2020, by María Victoria Murillo, Stephen Levitsky and Daniel Brinks; also see Guillermo O´Donnell that in his renowned work on delegative democracies he mentioned that legislative and executive bodies were like paper tigers.

[81] See notes "Estados Unidos considera que Argentina tiene un sistema judicial ineficaz y politizado", Perfil, Buenos Aires, March 31, 2021 and "Estados Unidos volvió a advertir sobre la impunidad en Argentina", *La Nación*, March 31, 2021.

of CABA and that of the provinces. In addition, no progress has yet been made against corruption in the Provincial or Municipal Governments, in many of which the same companies now investigated in the cause of the notebooks acted and act.[82]

II. Corruption, Public Ethics, International Agreements and the Republican and Democratic System in the National Constitution

I believe that the National Constitution has established with unchanging clarity the bases and guidelines for the fight against corruption, in various norms, principles, and republican and democratic values, to which I refer below.

Article 36, incorporated in the great constitutional reform of 1994, on the defense of constitutional order and democracy, in its second part, says:

> ...Likewise, whoever incurs in a serious intentional crime against the State that entails enrichment, will also attempt against the democratic system, being disqualified for the time that the laws determine to occupy public positions or jobs. Congress will sanction a law on public ethics for the exercise of the function.

Although I cannot dwell on the exhaustive interpretation of the aforementioned article, I want to recall some concepts that I pronounced in this regard in the Plenary of the Constituent Convention, in my capacity as Vice President of the Drafting Commission:

> ...Allow me to say what is the nature of this norm that we are going to incorporate into the National Constitution. We believe that we are facing constitutional criminal law. Already the Constitution of the Nation in articles 15, 22, 29, and 103 specifically introduces crimes of a constitutional nature. Here

[82] The acts of corruption produced in the pandemic should also be investigated. It has been pointed out that almost 90% of the contracts have been direct and, in some cases, it has been observed that the prices of the purchases vary enormously, such as, for example, those of an equipped ambulance that was paid 4.3 million pesos by the Provinces of Córdoba, Catamarca and Entre Ríos and 13.6 million by the Province of Buenos Aires. See the following article by Vega, Juan Carlos, "El argentino y la corrupción, síndrome de Estocolmo", *La Voz del Interior*, Córdoba, April 28, 2021, and "La corrupción en los tiempos del COVID-19", *Clarín*, July 16, 2020. Likewise, Joaquín Morales Solá has proposed the creation of an investigative commission in relation to the problem of vaccination, due to the lack of transparency in the negotiations for vaccines with the companies AstraZeneca and Pfizer. Morales Solá, Joaquín, "La Argentina pudo estar ya inmunizada"; *La Nación*, April 28, 2021).

> we do the same and refer to a protected legal asset that appears very clearly: the constitutional order. We define in the norm the incriminated behavior and the protected legal interest; we make a reference and the drafting and application of other penalties in this regard are also referred to the National Congress. It is the same constitutional technique used in the other cases.

And after indicating the dissuasive meaning of the norm and the importance of recognizing resistance to oppression as an enumerated right, as well as the reference to public ethics as a presupposition of democracy, I said about the constitutional order:

> ...for us the constitutional order is the Nation itself. This was the clear definition of one of the great men of the nationality, Juan María Gutiérrez, when he said that the Constitution was the Argentine Nation made law. From the initial moments of nationality in that formidable debate on May 22 in the Cabildo Abierto of Buenos Aires, the ideas of freedom, equality, the Republic, and federalism were integrated into the depths of Argentine nationality. Many years of fratricidal struggles and many constitutional attempts were necessary after the project of our first constitutionalist who was the eminent Mariano Moreno until we, in 1853, and later in 1860, closed that exercise of original constituent power that began precisely in that distant 22 of May.
>
> ...Consequently, it is appropriate to say that the idea of constitutional order and the defense of democracy, which is an essential value of our Constitution, unquestionably mean the defense of the best ideas that the Argentine nationality has had, painstakingly elaborated over the years. throughout our painful history. Declarations are solemn statements made in the Constitution about man, society, and the State. In this sense, this standard is also a declaration in the highest degree; it is based on the painful history we live in and on the deep conviction we have about the effectiveness of democracy for the time to come. It broadly expresses the consensus of this great Constituent Convention, and we consider it highly valuable that it be incorporated into the constitutional text.[83]

Consequently, there is no doubt that, since the Federal Supreme Law in this Article 36, corruption has been prescribed as a constitutional criminal offense and that, in addition, with all success, it has been characterized as an attack on democracy and the constitutional order.

But I must add another norm linked to this transcendent question: that of the inc. 22 of Art. 75, which recognized constitutional status for certain

[83] *Cfr*. "Reforma constitucional de 1994. Labor del Convencional Constituyente Antonio María Hernández", Buenos Aires, Press of the Congress of the Nation, 1995, pp. 57-59.

International Human Rights Treaties and supra-legal status for the rest of said Instruments. And this is closely linked to this fight, since international collaboration is essential, as we have observed. In this sense, the Conventions against Corruption were approved, both the regional one of the Organization of American States and the world one of the United Nations. The first was adopted by the Assembly of the Organization of American States in Caracas in 1996 and approved by Congress Law No. 24,759 of our country, sanctioned on December 4, 1996. For its part, the United Nations Convention against Corruption was adopted by the General Assembly in New York in 2003 and approved by Law No. 26,097, sanctioned by Congress on May 10, 2006. Likewise, the "Convention of the United Nations Organization against organized transnational crime", of the year 2000 was approved by our Law of Congress No. 25,632 of the year 2002 and the "Convention to combat bribery of foreign public servants in international commercial transactions of the OECD" of the year 1997, was approved by Law of the Congress No. 25,319 of 2000.

Consequently, due to the prevailing reality of the corruption that I analyze, it is verified that full compliance with both the Constitution and the International Conventions that I mention could not be achieved.

On the other hand, it should also be included among the regulations, principles, and constitutional values of the fight against corruption, which corresponds to the establishment of a republican and federal system of government and State. Indeed, I have already referred to the importance of controls, which are essential to prevent corruption and the concentration of power in one or a few hands.[84] I believe that the political-philosophical essence of our Constitution is republican and federal democracy, which is observed throughout the text and in articles of great importance such as 1, 5, 14, 15, 16, 29, 75 inc. 24, 121, and 123, which I cannot dwell on now, for reasons of extension of this work.

It must be remembered that the republic is based on a series of principles, elements, and values: the sovereignty of the people; the division, balance, and control of powers; freedom and equality; the responsibility of public officials; the publicity of the acts of government and the limited duration of the mandates that make alternation possible. Likewise, this system

[84] Remember the well-known phrases of Madison "the concentration of all power in one hand is the true definition of tyranny". *Cfr.* Hernández Antonio, María, "Estudios de federalismo comparado: Argentina, Estados Unidos y México", Buenos Aires, Rubinzal Culzoni Editores, 2018, Ch. II and by Lord Acton that "absolute power corrupts absolutely". On the other hand, there is a correlation between the republic and the federation in their great objectives of limiting power and ensuring the rights of citizens.

must be based on "political virtue", which in Montesquieu's opinion means love for the country, love for the Republic, compliance with the laws, the principles and values of the Constitution, democracy, and equality, and austerity of customs.[85]

The analysis that I have carried out on corruption confirms the inadequate functioning of our democratic, republican, and federal system and the breach of its norms, values, and principles.

III. The Public Ethics Law, The Anti-Corruption Office, and The Control Systems in the Federal Government, in The Provinces, in the Autonomous City of Buenos Aires and the Municipalities

The Public Ethics Law No. 25,188 of 1999, in compliance with Art. 36 of the Supreme Law, regulated the duties and guidelines of ethical behavior (Chapter II), the system of sworn declarations (Chapter III), the background (Chapter IV), incompatibilities and conflicts of interest (Chapter V), the system of gifts to public officials (Chapter VI), created a National Public Ethics Commission (Chapter VIII) and reformed several articles of the Penal Code (Chapter IX).[86]

However, it was later modified in 2013 by Law No. 26,857, to establish less severity in its provisions on sworn statements and to eliminate the operation of the National Commission of Public Ethics.

The Anti-Corruption Office, depending on the Ministry of Justice and Human Rights, was created by Law of Ministries, for the fulfillment of the functions that corresponded to the National Prosecutor for Administrative Investigations, according to arts. 26, 45, and 50 of Law 24,946, Organic of the Public Ministry of 1998. The Regulation of the Office was carried out by Decree 102/99 in the Presidency of De la Rúa, where in addition to the aforementioned powers of that Prosecutor's Office, those corresponding to the Inter-American Convention against Corruption. It should be noted that the substitution of the National Prosecutor for Administrative Investigations by the Anticorruption Office meant a serious institutional change

[85] See Montesquieu, Charles Louis de Seconday, "Del espíritu de las leyes", Mexico, Porrúa, 1977, pp. 15-26, where the author bases the political virtue that distinguishes the democratic republic. There he argued that when virtue ceases, ambition and greed enter hearts and the Republic is corrupted.

[86] For an analysis of this Law, see the article by Alfonso Santiago cited above "La cláusula sobre ética pública del art. 36".

since the status that the Organic Law of the Public Ministry assigned to the National Prosecutor cannot be compared, as part of the Ministry that acted in the sphere of the Attorney General, with the guarantees corresponding to a Magistrate (Arts. 43 and 44), with the position of the head of the Office, which depends on the Ministry of Justice and who is appointed and removed by the President. In 2015, Law No. 27,148 modified the previous Organic Law of the Public Prosecutor's Office and concerning this, in Article 22 of Specialized Attorney General's Offices, it established in Subsection 1 that of Administrative Investigations.

It is verified once again that there was non-compliance with the legislation, both in public ethics, —which was also modified around the sworn declarations of assets and for the elimination of the National Political Ethics Commission— and in that of the Public Ministry, in concerning National Prosecutor's Office for Administrative Investigations, which ceased to function. In other words, another recurrent expression of the anomie that characterizes us and that exhibited the lack of political will to combat corruption.

On March 5, 2019, the Executive Power of the Nation sent to Congress a Draft Law for the integral modification of the Public Ethics Law, which proposed important modifications that had been claimed in this matter. It is proposed to expand the number of people who must present sworn declarations, including union leaders, social workers, and political parties, in addition to the presentation of a single electronic form for all the powers of the State, which with annual control allows detecting unjustified growth of wealth and conflicts of interest, given that the Anti-Corruption Office controls only the Executive Power. Conflicts of interest are fully regulated, including the powers of the State, beyond the Executive Branch, per the regulations of the International Conventions against corruption. Prohibitions are established for the appointment of relatives up to the 2nd degree in the different powers of the State, including the Legislative, the Judicial, and the Public Ministry. A public register of gifts and trips paid for by third parties is prescribed. A Federal Council for Public Ethics and Transparency is created, with representatives from all the provinces, which must be convened every six months to consider the degree of progress in public ethics, transparency, and access to information in each of the jurisdictions. It is ordered that all the powers of the State must create autarchic organisms as enforcement authorities of this Law. Official advertising is limited and the personal promotion of public officials is prohibited. This project was coordinated by the Anticorruption Office, with the participation of public and private entities and the advice of the World Bank and the OECD. I consider

it of special importance that Congress deal with this important initiative as soon as possible.

Likewise, two international instruments of special significance govern our country: the Inter-American Convention against Corruption and the United Nations Convention against Corruption, to which we referred earlier and which have a constitutional hierarchy superior to the laws. Needless to say, the deficiencies that I have been pointing out have been observed in its fulfillment.

As for the current Criminal Code, it presents different penal figures linked to corruption, and although its reform is necessary, it did not have its adequate application, due to the actions of the Judicial Power, which made impunity possible, as we have seen.[87] A Preliminary Draft of a new Criminal Code was considered by the Executive Power of the Nation, which introduced modifications and new tools against corruption and which was presented as a bill in the Senate of the Nation.[88]

Likewise, I recall what was previously stated about the different laws approved in recent years on access to public information, on repentant persons, and the criminal liability of private legal entities. In other words, we have more than enough legislation to confront this true cancer of our political regime, which is corruption, and yet no appreciable results have been achieved so far in this fight.[89]

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[87] We already mentioned that the average duration of corruption cases is 14 years. This problem of the slow pace of Justice cannot be ignored, which imposes the need for profound changes in substantive and procedural legislation, in addition to another operation of the *Council of the Magistracy, with greater controls over Judges and the Public Ministry. On the o*ther hand, it is necessary to modify the jurisprudence that, beyond the double conformity of the Pact of San José of Costa Rica, allows endless appeals that often end up in the Supreme Court, and without effective fulfillment of sentences, with the argument that There are firm convictions. That is why it is very difficult for there to be prisoners for corruption processes, while the prisons are populated by those who do not have enough resources. Hence, there is a wide perception of the inequality of the law in the country, in addition to the lack of confidence in the Judiciary. See Hernández, Zovatto and Fidanza (comps.), "Segunda Encuesta de Cultura Constitucional. Argentina: una sociedad anómica", *op. cit.*

[88] The Commission was appointed by the Executive Power of the Nation and was chaired by the Judge of the National Chamber of Criminal Cassation Dr. Mariano Borinsky, who presented the Preliminary Draft in 2018. In it, the anticipated confiscation of assets and the increase in penalties in the figures of illicit enrichment, bribery and transnational bribery were proposed, in addition to their mandatory compliance. An aggravating circumstance was proposed in the crime of money laundering when public officials are involved, in addition to expanding the criminal liability of legal entities. *Cfr.* Cappiello, Hernán, *La Nación*, March 9, 2019.

[89] Very few have been convicted throughout our history for corruption. Currently, former Vice President Amado Boudou has been added to that list, for the Ciccone cause, and

On the other hand, in the constitutional reform of 1994, the institutional controls typical of the republican system were accentuated.

Indeed, on the one hand, greater powers were granted to Congress, which is the most important constitutional body and the one whose function is both to legislate and to politically control the other Powers. In effect, the attenuation of our strong presidentialism was designed with the figure of the Chief of the Cabinet of Ministers, who must appear alternately once a month before the Chambers of Congress, to render reports, according to the provisions of Article 101. This, which is very important for control, was also accompanied by the possibility for Congress to challenge him for a motion of censure and even to remove him from office, by the provision of the rule.[90]

Likewise, and with a close functional relationship with Congress, constitutional status was granted to two very important control institutions: the General Audit Office of the Nation and the Ombudsman. The first, prescribed in Art. 85, which states:

> ...He will be in charge of the control of legality, management and audit of all the activity of the centralized and decentralized public administration, whatever its organizational modality and the other functions that the law grants. It will necessarily intervene in the process of approval or rejection of the collection and investment accounts of public funds.

And the Ombudsman, who by Art. 86 has as its mission: "…the defense and protection of human rights and other rights, guarantees and interests protected in this Constitution and the laws, in the face of facts, acts or omissions of the Administration; and the control of the exercise of pub-

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the former Minister of Federal Planning, Julio De Vido, together with his secretaries Ricardo Jaime and Juan Pablo Schiavi, for the Once railway tragedy that occurred in 2012, which caused 52 deaths. Likewise, Lázaro Baéz and his relatives were convicted of money laundering, as we have seen before. But it should be noted that there have never been so many detainees, investigated and prosecuted as in the current case of the Notebooks, which, with its culmination through convictions, can mean a notable advance in the fight against corruption and impunity.

[90] However, the objectives set by the Constituent Assembly were not achieved, since the institution has not served to mitigate the hyper-presidentialism that we have suffered. In addition to this, it has been surprising to observe that for long periods the Chief of the Cabinet of Ministers did not appear before each of the Chambers for his reports nor before the Permanent Bicameral Commission after the dictation of Decrees of Necessity and Urgency. For example, the current Chief of Staff has only attended the Chamber of Deputies once and the Senate once, despite the fact that he has been in office since December 2019. See Hernández, Antonio María, "A veinticinco años de la Reforma Constitucional de 1994…", *cit.*

lic administrative functions". As I have pointed out before,[91] the objectives pursued by the reform were partially fulfilled, concerning the strengthening of Congress, and as for the new control bodies, only the Audit Office has been able to adequately fulfill its functions, even though its regulatory law to the respective constitutional article; while, in the case of the Ombudsman's Office, it has been 12 years without a new head being appointed.[92]

Likewise, another of the objectives of the Reform was to ensure the independence of the Judiciary, through the incorporation of two institutions: the Council of the Judiciary, the Trial Jury, and the Public Ministry, in Arts. 114, 115, and 120, respectively. Also, here a partial fulfillment of what was designed was achieved, considering what is exposed in this article, not being able to dwell on this issue, for reasons of extension of this contribution.[93]

I also conclude this point by insisting that the weak constitutional and legal culture has prevented the full validity of republican principles and controls, which has facilitated corruption.[94]

Concerning the regulations of the Provinces, the Autonomous City of Buenos Aires, and the Municipalities, on public ethics, anti-corruption offices or prosecutors and control systems, I express that this corresponds to our federal form of government and State, characterized by the coexistence of various state and governmental orders, with respective competences in this regard. Having made this clarification, on the one hand, I reiterate the need for progress in the fight against corruption in all spheres of our Federation, and on the other hand, I excuse myself from developing this regulation, because it exceeds the scope of this study.

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[91] See Hernández, Antonio María, "A veinte años de la reforma constitucional de 1994", in the Número Especial de Jurisprudencia Argentina, "A veinte años de la reforma constitucional de 1994", Alberto García Lema and Antonio María Hernández, (coords.), Buenos Aires, Abeledo-Perrot, August 20th of 2014, pp. 29-36 and "A veinticinco años de la Reforma Constitucional de 1994…", *cit.*

[92] Since Eduardo Mondino resigned from the position in 2009.

[93] In addition to what has been said about the judicial reform that is currently being processed, where references are made to this issue, see the work already cited of my authorship, "A veinticinco años de la Reforma Constitucional de 1994", for a more exhaustive analysis of the problems of regulation and compliance with the constitutional mandates in such a decisive matter.

[94] See Hernández, Antonio María, "Fortalezas y debilidades constitucionales. Una visión crítica en el Bicentenario", Buenos Aires, Abeledo-Perrot, 2012, where I analyze our cultural problems such as anomie, violence and corruption, which prevent adequate compliance with the Supreme Law.

IV. Conclusions and proposals to fight against corruption

Alfonso Santiago expressed that

> The Constitution is a legal norm, but also a political document and expression of a certain political culture that defines the values of coexistence in common. The call is formulated in the last part of Art. 36 is not limited to the normative production, but the effective practice of public ethics as a foundation of legitimacy and efficacy of our constitutional system of government. Twenty years after the constitutional reform of 1994, very little has been done and much remains to be done.[95]

For this reason, I believe that our country requires the adoption of a systemic concept of fighting corruption, with special emphasis on the need to change our deficient constitutional, legal and political culture, which has made possible a culture of corruption. It is a long-term task, full of challenges and great difficulties because we must face the strength of the *status quo*, represented by the powerful corporations that defend their privileges, in addition to the anomic behavior of our society.

I maintain that we have no other option than to advance in this cultural change that will lead us to the full validity of the philosophical and political quintessence of the Constitution, which is republican and federal democracy and its values and principles.[96]

Consequently, and as I have been proposing,[97] civic and democratic education must be promoted and deepened at all levels of education. Said education must be based, in the first place, on the principles and values of the National Constitution, which is our Supreme Law and the great political project of Argentines. This entails the revision of the study plans at the different levels, both Ministry of Education of the Nation and the Provinces

[95] Santiago, Alfonso, *op. cit.*, p. 43.

[96] Rose-Ackerman wrote: "Corruption is not the inevitable result of history and culture. Social norms can be deeply ingrained and self-reinforcing, but sometimes they change. They are not necessarily frozen in time. And, if a society is to build a legitimate democracy, the norms must change. Otherwise, widespread corruption will inexorably undermine respect for the rule of law and lead to serious distortions in the efficiency and fairness of service delivery". Rose-Ackerman, Susan, "Corruption: Greed, Culture and the State", Yale Law Journal, 2010.

[97] In our works: Hernández, Antonio María (Dir.), Derecho constitucional, Buenos Aires, La Ley, 2012, vol. I, Ch. 1; "Fortalezas y debilidades constitucionales…", *cit.*; Hernández, Antonio María; Zovatto, Daniel and Fidanza, Eduardo (comps.), *op. cit.*, and "Estudios de federalismo comparado: Argentina, Estados Unidos y México", Buenos Aires, Rubinzal Culzoni Editors, 2018.

and Municipalities, through the Federal Council of Education, to comply with Law No. 25,863, which so arranged. Said legal instrument also determined that May 1st is the Day of the National Constitution. Failure to comply with this law is yet another proof of the anomie we suffer from.

To contribute to the previous proposal, programs that spread the values and importance of the Constitution, the laws and the institutions should be broadcast from the state television and radio media.

Once again, we must remember Sarmiento: "Up the Constitution as a board and down the school to learn to spell it".[98]

It must be understood that with the knowledge and effective application of the Federal and Provincial Constitutions, Municipal Organic Charters, and the respective laws, we will have active citizens who can exercise their rights and adequately fulfill their obligations.[99] In order to active citizens", Norberto Bobbio postulated a "call to values",[100] pointing first to the ideal of tolerance,[101] followed by non-violence,[102] that of the gradual renewal of society through the free debate of ideas and the change of mentalities and way of life[103] and finally, the ideal of brotherhood (the "fraternité" of the French Revolution).[104]

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[98] *Cfr.* Summary Recapitulation that precedes Volume VIII of his Complete Works, Editorial Luz del Día.

[99] Norberto Bobbio under the title: "El ciudadano no educado" considered this as the sixth unfulfilled promise of democracy. And he remembered John Stuart Mill in his work "Considerations on representative government", with his distinction between active and passive citizens, pointing out that democracy required the former. On the contrary, the latter gave rise to political apathy as a serious phenomenon that questioned even consolidated democracies. Bobbio, Norberto, "El futuro de la democracia", Barcelona, Plaza & Janes, 1985, pp. 38-40.

[100] *Ibidem*, p. 48.

[101] "If today there is a threat to world peace, it comes once again from fanaticism, or else from the blind belief in the truth and in the force capable of imposing it. Needless to give examples: we have them before our eyes". *Idem*.

[102] "I have never forgotten the teaching of Karl Popper, according to which what essentially distinguishes a democratic government from a non-democratic one is the fact that only in the former can citizens get rid of their rulers without bloodshed. The much-mocked formal rules of democracy have introduced, for the first time in history, coexistence techniques, whose purpose is to resolve social conflicts without resorting to violence. Only there are these rules respected, the adversary is no longer an enemy (who must be destroyed), but an opponent, who tomorrow will be able to take our place". *Idem.*

[103] "Only democracy allows the formation and expansion of silent revolutions, as has happened in recent decades with the transformation of the relationship between the sexes, which is perhaps the greatest revolution of our times". *Ibidem*, pp. 48 and 49.

[104] "Much of history is made up of fratricidal fights. In his Philosophy of History, Hegel defines history as an "immense slaughterhouse". Can we take away the reason? In no coun-

Furthermore, teach and disseminate the examples of those who embodied the republican political virtues in public life,[105] starting with the heroes of May like Moreno, Castelli, and Belgrano.

In this way, we will affirm the solidity of our republican institutions and participatory and deliberative democracy, based on values that reject corruption.[106]

Politics must be prioritized and closely linked to ethics. Political parties must be strengthened and in compliance with Art. 38 of the National Constitution, educate and train their members and leaders, with interdisciplinary studies, among which those of public law stand out because they must govern with the Constitution in hand in a rule of law.

The effective implementation of the right of access to information must be ensured more transparent governments[107] and more empowered and participatory society. The remarkable importance of freedom of expression and the pr, essential for democracy, cannot be ignored. Indeed, a free, critical, and independent press is essential for reporting and investigating corruption, as occurred in our country.[108]

The anomie that we endure is very closely linked to the inadequate functioning of the two institutions that have the greatest responsibility in ensuring compliance with the laws: the Judiciary and the Police.[109] Conse-

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try in the world can the democratic regime endure without becoming a custom. But can it become a custom without recognition of the brotherhood that unites all men in a common destiny? It is a much more necessary recognition today, in which every day we become more aware of this common destiny, for which we must, guided by that little bit of light of reason that illuminates our path, act accordingly". *Ibidem*, p. 49.

[105] To which Montesquieu referred and that we have mentioned previously in this work.

[106] In effect, both in the judicial processes of "Mani pulite" and in "Lava Jato", the solid and constant popular support was decisive for the success achieved.

[107] Bobbio considers as the fifth unfulfilled promise of democracy that of not having eliminated the existence of invisible powers. After pointing out the importance of the transparency of power in democracy, he recalls Kant's principle enunciated in the Appendix to Perpetual Peace: "All actions relative to the rights of other men whose maxim is not susceptible to publicity are unjust". Bobbio, Norberto, *op. cit.*, p. 34, We have already analyzed previously that one of the characteristic elements of corruption is secrecy.

[108] The constituent work of 1994 should be highlighted in this sense, because among other aspects, it incorporated as a fourth guarantee in Art. 43, that of the secrecy of the sources of journalistic investigation, based on the proposal formulated as Vice President of the Drafting Commission. *Cfr.* Hernández, Antonio Maria, and Chiacchiera Castro, Paulina, "El derecho a la libertad de expresión", in Hernández, Antonio María (dir.), Derechos humanos del derecho constitucional, Buenos Aires, La Ley, vol. I, Ch. X, in the point "El secreto de las fuentes de información periodística", pp. 659 et seg.

[109] In the "Second Survey of Constitutional Culture", which we directed with Zovatto and Fidanza, the majority of those interviewed pointed out the malfunctioning of the Ju-

quently, we consider the respective reforms to be of special importance because they are the institutions that must combat corruption as efficiently as possible. Concerning Judiciary, its most important value must be ensured as the basis of the republican system: independence from both political and economic powers.

For me, the elevation of the constitutional culture and legality is essential, since, with the fulfillment of the norms, principles, and values of our republican and federal democracy, a substantial advance will inexorably take place in the fight against corruption.

I do not doubt that the strict application of the constitutional regulations and of the international and national instruments that we have analyzed, with an adequate functioning of the various control bodies of the republican systems enshrined in the Federal, Provincial, CABA, and in the Municipal Charters and Organic Laws, it would distance us from the culture of corruption.

Next, I present other proposals to improve the normative tools of this fight, without an order of priority in this regard, since I reiterate that it is a systemic approach:

1. Those carried out by the Group of Experts of the IDB and mentioned in the point on Corruption in Latin America, to which I refer to avoid repetition.

2. Those of Transparency International in the Integrity Pact and Code of Conduct for Companies and Tools for citizen control of corruption, referred to above.

3. As I had mentioned above, three Projects of great importance in the fight against corruption must be sanctioned as Laws by Congress: the reform of the Public Ethics Law, the extinction of domain to recover what was stolen, and the new Penal Code.

4. Concerning a specific and relevant issue, such as the financing of political parties, I share these proposals by Daniel Zovatto for comprehensive reform:

> One, bank the contributions to reduce cash donations as much as possible and favor their traceability. Two, improve the fair conditions of electoral

diciary as the first cause of anomie. Cf. Hernández, Antonio María, "Perceptions on the Constitutions, laws and some federal issues", in Hernández, Antonio María; Zovatto, Daniel and Fidanza, Eduardo (comps.), *op. cit.*, p. 66. On the other hand, both Institutions, Justice and Police, deserved low weighting in the analysis of trust in institutions. *Cfr.* Zovatto, Daniel, "Perceptions on democracy and institutions", in Hernández, Antonio María; Zovatto, Daniel and Fidanza, Eduardo (comps.), *op. cit.*, pp. 38 et seq.

> competition, regulate official advertising, and increase the period of prohibition of government acts aimed at capturing the vote. Three, penalize patronage and the use of public resources for partisan purposes. Four, allow companies to make contributions, with a maximum limit of 2% of the total expenses allowed for a party, accompanied by clear limits regarding those companies that must be excluded to avoid conflicts of interest. Five, increase transparency and accountability to combat the current high levels of opacity. Six, implement the registration of contributions and expenses in real-time. Seven, launch an online supplier registry. Eight, include the regulation of social networks along with traditional media. Nine, strengthen Electoral Justice (increasing the number of auditors of the National Chamber and the flow of information from various sources). Ten, toughen the sanctions regime, including the candidates among the responsible subjects.[110]

5. Regarding the Judiciary, the following proposals by Daniel Sabsay must be taken into account to ensure the independence of the Judiciary: 1) Modify Law 26,080 of 2006 to ensure the balance of the sectors in the composition of the Judicial Council; 2) Reestablish the powers of administration of the Judiciary by the Council, as provided by the Constitution; 3) That the Congress appoints prestigious jurists to represent it before the Council; 4) That the Council advance in the fulfillment of its functions of control of the Judiciary.[111]

To this, I add the modification of the Federal and Provincial Criminal Procedure Codes, to speed up the processes against corruption. I insist that the existing impunity must end, which is one of the most determining causes of our underdevelopment and anomie.

Likewise, the ethical obligations in the exercise of judicial positions must be controlled, per the respective regulations.[112] It is worth remembering here the opinion of Francis Bacon: "The Judge must be more wise than ingenious, more respectable than likable and popular, and more circumspect than presumptuous. But first, he must be complete, this being for him the main virtue and the quality of his trade".[113] By the way, I am referring

[110] "Political financing: a comprehensive reform is urgent, not a sum of patches", *La Nación*, *www.lanacion.com.ar*, February 21, 2019.

[111] See the article "No more can be expected: the corrupt elements of Justice must go", Infobae, electronic version of February 28, 2019. Reference was also made to the complaint involving Federal Judge Luis Rodríguez in the case of the notebooks and their prosecution was requested.

[112] See Malem Seña, Jorge, "The corruption of the judges", pp. 145 et seq.

[113] Bacon, Francis, "Essays on morality and politics", Spanish version, Buenos Aires, Editorial Lautaro, 1946, p. 257.

not only to the Federal Judicial Power but also to those of the Provinces and the CABA.

I am convinced that to achieve the high objectives set forth by the 1994 Constitutional Convention concerning the Judiciary, —which must be the pillar of the rule of law, as proposed in coincidence by point 16 of the 2030 Agenda for Sustainable Development of the UN—, special emphasis must be placed on strengthening the institutions created, according to the constitutional design carried out, that is, the Council of the Judiciary, the Trial Jury and the Public Ministry.

Likewise, careful attention must be paid to questions of the professional ethics of judges and lawyers and the teaching of Law in our Universities.

Concerning the ethics of judges, it is necessary to advance in the strict application of the Ibero-American Code, approved by the Ibero-American Judicial Summit, and the same for the ethics of lawyers, by the respective Bars.[114]

Likewise, this issue should be the object of special interest in the training of our Law professionals at Universities.

6. An Ethics Commission must be created in each Chamber of Congress and the Provincial and CABA Legislatures and Deliberative Councils for the Monitoring and Control of compliance with the laws and ordinances sanctioned against corruption in each of the various orders state, in addition to those relating specifically to each of these legislative bodies.[115]

7. Anti-corruption measures must be implemented in the Public Administrations of the various state orders. In this sense, Malem Seña highlights the study carried out by the Anticorruption Office of our country, between 1998 and 1999, entitled "Exploratory study on transparency in the Argentine Public Administration", where the existing problems were pointed out, which require changes in administrative procedures, in tenders, in contracts, in personnel, and administrative careers. Likewise, and as a guide in this matter of the ethics of the public function, the author proposes to recall the conclusions of the Report on "Standards of conduct in Public

[114] See Orgaz, Alfredo, "La moral del abogado", a conference given on August 29, 1959 in the Hall of Lost Steps of the Palace of Justice of Córdoba, when he was president of the Supreme Court of Justice of the Nation. There he refers to the notable examples provided in the exercise of the profession by the Lawyers Abraham Lincoln and Mahatma Gandhi. (Review of the Córdoba Bar Association, No. 2, 1977, pp. 9 et seq.)

[115] For example, in the United States Congress, the Committees on Ethics in the Senate and Standards of Official Behavior in the House of Representatives, which analyze the conduct of Legislators. *Cfr.* Thompson, Dennis F., *op. cit.*, Ch. 4, "Legislative Ethics", pp. 159 and 160.

Institutions" of the Nolan Commission, created in Great Britain in 1994. There, 7 principles were proposed basics in this matter: altruism, integrity, objectivity, responsibility, transparency, honesty, and leadership.[116]

Finally, I insist that the fight against corruption must be developed systemically, encompassing all its aspects, both cultural and normative. It is a task as formidable as it is urgent given the extreme gravity of the situation and it will surely require a long time to be carried out. However, I encourage an acceleration in this process, through the exemplary role and ethical and republican leadership of political and social leadership that acts up to its responsibilities.

[116] *Ibidem*, Ch. 2, "Public Administration and Corruption", pp. 72 et seg. The study was done by the Direction of Planification of Transparency Policy.