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166441120

TITLE: SUBJECT: APPEALS COURT JUDGES REMOVED AS JUDICIAL  
BRANCH MOVES TO IMPROVE QUALITY OF JUDGES

ORIGDATE: 199005231920

SOURCE: STATE

DOCNO: BOGOTA 08160

TEXT:

TAGS: KJUS, PGOV, SNAR, PHUM, CO

SUBJECT: APPEALS COURT JUDGES REMOVED AS JUDICIAL  
BRANCH MOVES TO IMPROVE QUALITY OF JUDGES

1. CONFIDENTIAL--ENTIRE TEXT.

2. SUMMARY: ACTING IN THE FACE OF REPORTS OF INCOMPETENCE AND CORRUPTION, THE COLOMBIAN SUPREME COURT RECENTLY EFFECTIVELY ORDERED THE REMOVAL OF NEARLY HALF THE MEMBERS OF PERHAPS THE MOST IMPORTANT APPEALS COURT IN THE COUNTRY, ASIDE FROM THE HIGH COURT ITSELF. IN A SEPARATE DEVELOPMENT, THE COURT HAS BEGUN IMPLEMENTING A NEW LEGAL NORM WHICH REQUIRES THAT INDIVIDUAL PERFORMANCE EVALUATIONS BE PREPARED FOR COLOMBIAN JURISTS. SURPRISINGLY ENOUGH, HOWEVER, THIS NEW SYSTEM OF REQUIRED EVALUATIONS, WHICH IS DESIGNED TO REMOVE DEAD-WOOD FROM THE JUDICIAL BRANCH, DOES NOT APPLY TO SOME OF THE COUNTRY'S MOST IMPORTANT JURISTS. END SUMMARY.

3. IN AN UNEXPECTED MOVE, THE SUPREME COURT RECENTLY REFUSED TO REELECT FIVE OF THE TWELVE MAGISTRATES WHO SERVE ON THE VITALLY IMPORTANT PUBLIC ORDER TRIBUNAL AND LEFT THE FATE OF A SIXTH MAGISTRATE IN DOUBT. THE PUBLIC ORDER TRIBUNAL IS THE APPEALS COURT FOR THE DECISIONS OF COLOMBIA'S PUBLIC ORDER JUDGES, WHO ARE IN CHARGE OF HANDLING MOST OF THE COUNTRY'S MOST SENSITIVE CASES, INCLUDING THOSE WHICH INVOLVE NARCO OR GUERRILLA RELATED TERRORISM. (IN COLOMBIA MEMBERS OF APPEALS COURTS ARE CALLED "MAGISTRATES" WHILE THE TERM "JUDGE" IS USED TO REFER TO INDIVIDUALS WHO HEAR CASES IN THE FIRST INSTANCE.)

REVIEW AUTHORITY: James Cooper, Senior  
Reviewer

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4. MOST COLOMBIAN JUDGES AND MAGISTRATES ARE ELECTED BY HIGHER COURTS AND SERVE TWO YEAR TERMS. REELECTION, HOWEVER, IS USUALLY A MERE FORMALITY. ACCORDING TO SUPREME COURT MAGISTRATES JAIME GIRALDO (PROTECT) AND EDGAR SAAVEDRA (PROTECT), THE FIVE PUBLIC ORDER MAGISTRATES LOST THEIR JOBS BECAUSE OF THE POOR QUALITY OF THEIR WORK, ALLEGATIONS OF CORRUPTION, AND, IN THE CASE OF ONE MAGISTRATE, BECAUSE OF AN APPARENT UNWILLINGNESS TO STAND UP TO NARCO THREATS. GIRALDO AND SAAVEDRA INDICATED THAT THE NON-REELECTION OF AT LEAST SOME OF THE MAGISTRATES WAS RELATED TO THE TRIBUNAL'S DECISION SOME TIME AGO TO OVERTURN LOWER COURT ARREST WARRANTS ISSUED FOR NARCO KINGPINS JOSE GONZALO RODRIGUEZ GACHA AND PABLO ESCOBAR FOR ALLEGED INVOLVEMENT IN TWO INFAMOUS INCIDENTS OF MAS MURDER, THE 1988 LA NEGRA AND HONDURAS MASACRES. THE MEDELLIN PUBLIC ORDER JUDGE WHO ISUED THE ARREST ORDERS WAS SUBSEQUENTLY ASSASSINATED, APPARENTLY ON ORDERS FROM ESCOBAR AND RODRIUEZ GACHA. WITH THE OUSTER OF NEARLY HALF OF HE PUBLIC ORDER TRIBUNAL, MANY OF THE LESS IMPESSIVE PUBLIC ORDER JUDGES, WHO ARE ELECTED BY TE TRIBUNAL, ARE REPORTEDLY CONCERNED THAT THEY MAY ALSO SOON FIND THEMSELVES UNEMPLOYED.

5 THE NON-REELECTION OF THE PUBLIC ORDER MAGISTRATES COMES AS THE COURT IS IMPLEMENTING, FOR THE FIRST TIME, A NEWLY ESTABLISHED SYSTEM DESIGNED TO EVALUATE THE WORK OF LOWER COURT MAGISTRATES, WHO ARE APPOINTED BY THE HIGH COURT. AFTER A REVIEW OF THEIR DECISIONS AND  
C O N F I D E N T I A L SECTION 02 OF 02 BOGOTA 08160

STATE FOR ARA/PPC--FARMSTRONG, ARA/AND, L, HA, INM  
STATE PASS TO AID -- AA/LAC, LAC/DI  
JUSTICE ALSO FOR OIA, ICITAP, AST AG MRICHARDS  
SOUTHCOM FOR POLAD  
GUATEMALA ALSO FOR AID

E.O. 12356: N/A  
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PERFORMANCE OVER THE PAST YEAR, APPEALS COURT MAGISTRATES ARE BEING GRADED BY THE SUPREME COURT ON A SCALE OF 0 TO 100, WITH 60 HAVING BEEN ESTABLISHED AS A PASSING SCORE. THE MAGISTRATES WILL, IN TURN, USE THE SAME SYSTEM TO RATE THE FIRST INSTANCE JUDGES WHOM THEY APPOINT. JUDGES AND MAGISTRATES WHO SCORE BELOW 60 IN TWO SUCCESSIVE YEARS ARE TO BE REMOVED FROM OFFICE. EVENTUALLY, JUDICIAL SUPPORT EMPLOYEES ARE ALSO SUPPOSED TO BE RATED.

6. SURPRISINGLY, THE COUNTRY'S MOST IMPORTANT JURISTS, THE PUBLIC ORDER JUDGES AND MAGISTRATES WHO HANDLE MAJOR TERRORISM CASES, ARE NOT SUBJECT TO THIS SYSTEM OF REQUIRED EVALUATIONS. THEY WERE EXEMPTED ON THE GROUNDS THAT THE PUBLIC ORDER SPECIAL JURISDICTION WAS CREATED BY STATE OF SIEGE DECREES AND WILL DISAPPEAR WHEN THE STATE OF SIEGE IS LIFTED. ALTHOUGH RIGOROUS REVIEW OF THE WORK OF SUCH JUDGES AND MAGISTRATES IS NOT MANDATED, SUB-STANDARD JURISTS CAN, AS THE SUPREME COURT RECENTLY DEMONSTRATED, BE REMOVED EVEN WITHOUT TWO YEARS OF NEGATIVE EVALUATIONS OF THEIR WORK.

7. COMMENT: ONE OF THE BIGGEST PROBLEMS FACING COLOMBIA'S JUDICIAL BRANCH IS THE LAZINESS AND, IN A NUMBER OF CASES, DOWN-RIGHT INCOMPETENCE OF MANY JUDGES AND HIGHER COURT MAGISTRATES. THE RATING SYSTEM WHICH IS NOW BEING IMPLEMENTED PROVIDES A MUCH NEEDED TOOL FOR WEEDING OUT SUCH POOR PERFORMERS AND, ALMOST AS IMPORTANT, FOR IDENTIFYING DESERVING JURISTS WHO MERIT PROMOTION. MUCH DEPENDS ON HOW THE SYSTEM IS IMPLEMENTED--THE SUPREME COURT AND THE APPEALS TRIBUNALS MUST BE WILLING TO GIVE A FAILING GRADE TO THOSE JUDGES WHO DESERVE ONE AND THE JUDICIAL BRANCH MUST ENSURE THAT JUDGES WHO FAIL IN TWO CONSECUTIVE YEARS ARE ACTUALLY REMOVED. IDEALLY, GRADED EVALUATIONS SHOULD ALSO BE REQUIRED FOR THE COUNTRY'S MOST IMPORTANT JURISTS, PUBLIC ORDER JUDGES AND MAGISTRATES, WHILE RETAINING THE JUDICIAL BRANCH'S CURRENT ABILITY TO REMOVE THE MEMBERS OF THIS HIGHLY SENSITIVE JURISDICTION IN LESS THAN TWO YEARS TIME IF

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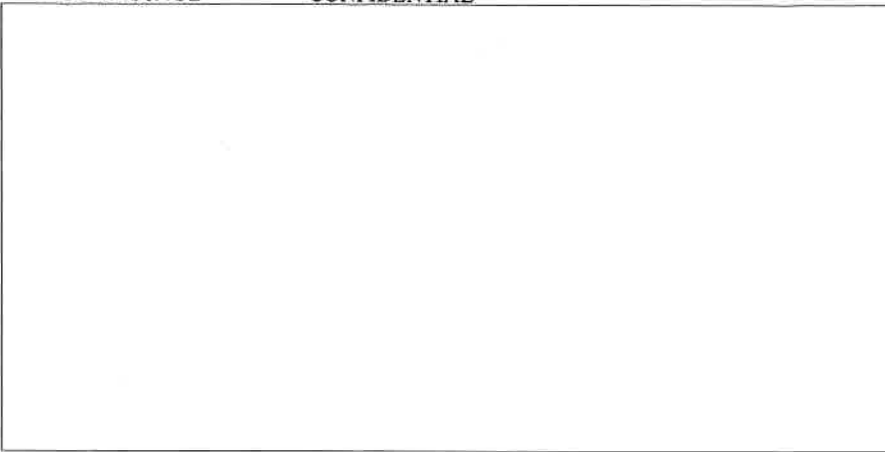
THE SITUATION SO WARRANTS.

8. PAST EFFORTS TO IMPROVE THE QUALITY OF THE JUDICIAL BRANCH HAVE MET WITH CONSIDERABLE RESISTANCE FROM JUDGES THEMSELVES. NEVERTHELESS, THE FORCED PERSONNEL CHANGES IN THE PUBLIC ORDER TRIBUNAL SUGGEST THAT THE SUPREME COURT IS BECOMING INCREASINGLY DISPOSED TO TAKE ACTION AGAINST MAGISTRATES WHO LACK THE INTEGRITY, COURAGE, AND COMPETENCE NEEDED TO BE A GOOD JURIST.  
END COMMENT.

MCLEAN

END OF MESSAGE

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DECLASSON: MR

DOCPREC: O

DOCST: ACTIVE

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SOURCE-INFO: STATE IN O BOGOTA 08160 BOGOTA 199005231920  
TAGS: TAGS: KJUS, PGOV, SNAR, PHUM, CO  
TO: TO RUEHC/SECSTATE WASHDC IMMEDIATE 5870  
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