

Supreme Court

CNA filed a guarantee of unconstitutionality for the interim authorities of the Public Prosecutor's Office

The National Anti-corruption Council, through its executive director, Gabriela Castellanos, filed at the Constitutional Chamber of the Supreme Court of Justice, through action due to form and content (as established in Article 184 of the Constitution of the Republic and Article 75 of the Law on Constitutional Justice) against Legislative Decree 0001-2023-CP/CN, published in the Official Gazette on November 1, 2023, containing the interim election of the Attorney General and Deputy Attorney General.

As a matter of form, the legal position that has been presented indicates that the challenged decree is a provision that is attributed the character of a law, without having been created by the legislative body (art. 75, paragraph 3 of the Law on Constitutional Justice).

To understand the invocation of this ground of unconstitutionality, we must keep in mind that said legislative decree has the character of a law, this considering Advisory Opinion 6/86 issued by the Inter-American Court of Human Rights, which defines the expression of law.

Within these criteria it is established that: *The norm is of a general nature, it is adhered to the common benefit, elaborated by constitutionally provided legislative bodies and under constitutional procedures established in the Political Constitutions.*

However, the creation of a rule must include specific aspects or areas such as the material scope of validity, the territorial scope and the temporal scope. With these considerations we can analyze whether the legislative body that issued such decree enjoys constitutional legality.

In this case, the Standing Committee of the National Congress has the following characteristics:

- a) It does not have an indefinite duration (per Article 207 of the Constitution). In other words, its temporal scope of validity is of definite time.
- b) Therefore, the powers of the Permanent Commission can only be invoked when the temporal scope established by Article 207 of the Constitution is activated.
- c) The conditionality and exceptionality of the Permanent Commission: it only exists if the necessary conditions required by the Constitution of the Republic are met, according to which the Board of Directors, before closing its sessions, shall form the Permanent Commission and it must operate during the recess of the National Congress, categorical extremes that did not occur.

This point is of utmost importance to justify and demonstrate the existence of unconstitutionality: the fact that the Permanent Commission has an attribution does not imply that there are no temporal limitations for its application. Therefore, if its actions are not framed within that temporal scope of validity, its provisions will be unconstitutional.



Why is the temporal scope of application not complied with?

To be able to invoke the grounds for absolute fault and therefore the constitutional provisions of the Permanent Commission, this body must be valid at the time the event takes place.

And that is precisely what is not happening. In other words: *the Permanent Commission intends to develop a norm (Legislative Decree No. 001-2023-CP/CN now denounced as unconstitutional) to elect interim authorities of the Public Prosecutor's Office, when the election of the authorities should have taken place months before (before September 1, 2023).*

Therefore, the only rule that resolves the situation is the provisions of Article 233 of the Constitution and Article 208, paragraph 11 of the Constitution, invoked by the Permanent Commission, does not apply.

Likewise, within the content of the guarantee of constitutionality, it is indicated that said decree issued by the Permanent Commission of the National Congress, presents unconstitutional defects in its content, given that there is a violation of the principle of superior law that leads to a breach of the value of constitutional supremacy by contravening the norms contained in articles 232 and 233 of the Constitution.

It must be kept in mind that under the principle of "Iura Novit Curio" or translated as the "Judge who knows the Law", which has been developed by the same Constitutional Chamber of Honduras in its SCO-416-13 decision, indicates that the judge in charge of exercising constitutional and conventional control according to articles 18 and 320 of the

Constitution of the Republic, respectively, is obliged to observe said provisions when there is a conflict between an ordinary law and the Constitution, the Constitution must prevail, just as when there is a conflict between an international treaty and an ordinary law, the former will prevail.

Therefore, in the present case, the only way out that enjoys constitutional legality is the procedure framed in Articles 232 and 233 of the Constitution of the Republic, which establishes that the legislative body legitimized to carry out the process of selection and appointment of the highest authorities of the MP is the National Congress, through the vote of the 128 deputies that make up its plenary and whose decision rests on the favorable vote of 2/3 of its totality of members.

Therefore, the Legislative Branch should be urged to promptly elect the prosecutors in accordance with the constitutional processes.

