

PROMOTION OF LEGAL AID FOR OFFENDERS AND VICTIMS IN THE DOMINICAN REPUBLIC

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I. ACCESS TO JUSTICE

Access to justice is a universally recognized principle which is of central importance within the estate of law, since without access to justice citizens will not be able to make themselves heard, exercise their rights, face discrimination or hold public officials to account for state decision-making.

This principle has been consigned in several international treaties of which the Dominican Republic is a signatory, including article 10 of the Universal Declaration of Human Rights, article 25 of the American Convention on Human Rights, article 14 of the International Covenant on Civil and Political Rights, article 13 of the Brasilia rules, and more recently in the Sustainable Development Goals, especially number 16.3, which states that each nation must promote the rule of law at the national and international levels and guarantee equal access to justice for all.

Sustainable development goal 16 summarizes the interest of the signatory nations arguing that: "the rule of law and development are significantly interrelated and mutually reinforcing, which is why it is essential for sustainable development at the national and international level." Goal 3 places the machinery of judiciary systems as irreplaceable factors in achieving peaceful and just societies. This is so because equitable access to justice is essential to guarantee the fundamental principle of human dignity, in the same way it serves as a cross-cutting mechanism for the redistribution of social justice.

In the Dominican nation, following these guidelines, the principle of access to justice has been enshrined in the constitution itself, when it states in article 69 that every person in the exercise of their legitimate rights and interests has the right to obtain effective judicial protection, with respect for due process that will be made up of the minimum guarantees, the first being the right to accessible, timely and free justice.

Nationwide, the debate on justice and access to it arouses great interest in different sectors of public opinion. The Judiciary has designated itself as a standard-bearer to reform the justice system, since 1994 there are records of clear actions and adoption of policies to improve the justice service and access to it. In effect, since the last appointments of judges of the Supreme Court of Justice who can rule on matters pertaining to the development of justice, the country has undergone considerable reforms in the entire justice administration apparatus, among them, the dignification of the judiciary career, the training of human capital for the judiciary and the expansion of relevant services such as the public defender's office.

The procedural criminal law, for its part, has also enshrined the principle of fast, free and timely access to justice; we can appreciate it in the criminal procedure code, for example, which establishes in articles 11 and 12 that all persons are equal before the law and must be treated according to the same rules and that the parties participate in the process on equal terms. For the full and unrestricted exercise of their powers and rights, judges must remove all obstacles that impede the validity or weaken this principle.

These principles of access to justice, equality of parties and dignity of people have promoted the creation of institutions whose purpose is to ensure the right of defence of citizens and that they can access judicial services easily, quickly and free of charge. Next, we go on to point out those in the Dominican legal system, their legal basis and the prevailing reality today.

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II. NATIONAL PUBLIC DEFENDER'S OFFICE

A. Background

The right to legal assistance has been enshrined since the first Dominican constitution, this right to legal assistance has evolved over time and it is no longer enough that the defendant knows the accusation, but that in his defence he can provide evidence, refute those that are produced against him, and of course, choose the services of a lawyer he trusts, in case he does not have the financial means to pay for it, he must be assigned a defender paid by the State as a guarantee of the aforementioned access to justice.

Before the creation of the national public defender's office, in the Dominican Republic there was only the figure of the office defender's, who was a legal professional appointed by the Judiciary who was attached to a certain court. Needless to say, he did not have the same preparation as current public defenders.

This defender was assigned to any person who requested it and only during the trial phase. Along with them, there were some popular lawyers of university law schools, some NGOs dedicated to free legal defence and law students who carried out their legal practice, since the law at that time allowed high school graduates to represent criminal defendants.

Faced with these deficiencies, local entities and international organizations signed a cooperation agreement in 1993, among them we can highlight the participation of the Supreme Court of Justice, the Pedro Henríquez Ureña National University (UNPHU) and the Latin American Institute of Nations for the Prevention of Crime and Treatment of Delinquents (ILANUD), starting a pilot project to establish a system of free legal assistance. The project failed promptly due to lack of funding; it was only in force until 1997. We must highlight that other entities supported and financed the project, such as the United States Agency for International Development (USAID). In 1998, the Commissioner for Support to the Reform and Modernization of Justice assumed this programme until it was closed for budgetary reasons and lack of political will.

Given the lack of public defenders, in 1998, the Supreme Court of Justice, making use of the power established in Article 77 of Law no. 327 of the Judiciary Career, which deals with arranging everything necessary to organize a system of free legal assistance, approved by Resolution no. 512, dated 19 April 2002, the creation of the National Office of Judiciary Defense, in order to organize, direct and guarantee the provision of technical defence services, provided in an effective, timely, free and permanent manner, to persons of low economic resources. This office was created within the judiciary body, with administrative dependency, but technical and functional independence.

B. Present

In 2004, Law no. 277, created the National Public Defender's Office. This law establishes the functional, administrative and financial autonomy of the institution within the Judiciary, remaining within it for the first five years and at the end of the aforementioned period it acquired total independence.

Law no. 277-04 not only changed the name of the National Office of Judicial Defense to the National Public Defender's Office (NPDO), but also created a career for the public defenders, clearly establishing the role of the defence attorney.

The reform of the Constitution of the Dominican Republic in 2010, at its article 176 enshrined the institutionality of the Public Defenders as an independent, administrative and budgetary body, responsible for the effective protection of the right to defence, which must be provided in response to the criteria of free, easy access, efficiency and quality, for people who for whatever reason are not assisted by a lawyer.

C. Future

The figure of the technical defender currently achieves constitutional recognition, and the fruits of the hard work carried out by public defenders every day for the benefit of low-income citizens can be appreciated. As a defender's office protocol, daily visits are made to the police detachments of all demarcations, so that citizens from the moment of their arrest – should they need it – can count on the immediate and technical assistance of a public defender, who ensures the guarantee of their fundamental rights of rapid access to justice as well as the protection of the offender's integrity.

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The most serious problem that public defence currently has is that, according to the director of that body, 87 per cent of criminal cases nationwide are handled by public defenders who provide free assistance to low-income people in conflict with the law, but without having the office, the necessary staff, much less with a decent budget that allows them to face the function for which they have been designated with greater dignity.

The same director of the National Public Defender's Office, when giving statements on the occasion of the Defender's Day in 2022, explained in his speech that in relation to the cases of children and adolescents in conflict with criminal law, public defenders attend 100 per cent of the processes – a figure that powerfully draws attention.

This constitutional body with administrative, functional and financial autonomy has spent several years complaining in the public arena about how the budget assigned to it by the State is not enough to meet the needs of the institution and make it functional. It stands out among the statistics that the national office has approximately 200 public defenders, for a population of more than eleven million inhabitants, which is not enough for the universe of active criminal cases, where eight offices have yet to be opened at the national level to be able to guarantee due process and that the rights of the processed persons are not violated.

Only in 2017, the Public Defense was seized of 3,500 cases for abandonment of private lawyers, on which they already had assets. It stands out in practice that a single public defender handles up to 11 processes on a daily basis, which technically can affect the interests of the defendants by not being able to ensure the preparation of a sufficiently technical and effective defence due to lack of time.

III. VICTIM REPRESENTATION OFFICE

Like the previous body, the representation of victims is also a constitutional mandate, the text is enshrined in article 177, when it establishes that: "The State will be responsible for organizing free legal assistance programmes and services in favour of people who lack the economic resources to obtain judicial representation of their interests, particularly for the protection of the rights of the victim, without prejudice to the powers that correspond to the Public Ministry in the field of criminal proceedings."

Even so, the treatment given by the State to this mandate does not have the same impact as that given to the public defence, which is only in charge of representing offenders. The Attorney General of the Republic has timidly had to regulate this right, when through resolution 8518, dated 13 June 2005, the National Directorate for Attention to Victims is created, a body directly attached to the Attorney General of the Republic.

If we make a comparison, this situation was the one experienced by the national public defender's office in its origins, when it was a dependency of the judiciary, which leads us to the conclusion that political interest are needed to influence the victims representation office so that the appropriate arrangements can be made and this office can stand out and become a true bastion of the rights of victims in judiciary processes.

Unlike the public defence, which has a body of professional lawyers, the victim assistance office is much more modest since they have only a few offices nationwide. Currently, extensions of the office are being created in the Duarte province in the facilities of the Center of Community Houses of Justice, with the purpose of providing greater space facilities for the services offered to its users.

The function of these victim's service offices includes directing, coordinating and articulating the efforts of the institutions and organizations committed to the protection, care, intervention and/or monitoring of victims of violence, in addition to preventing violations of citizens' rights.

As its name indicates, this office only serves people who are victims of third parties for criminal offences who receive free legal assistance and guidance services at its offices.

It is worth saying that there are so few lawyers in the victims office that other public institutions have had to provide the service in order to satisfy the demand, among them we can mention the case of the Women's Ministry, which has an entire legal department to provide assistance to victims of gender and intrafamily violence, but they only provide service when the crime perpetrated is of this nature.

This ministry has created the service whose sole purpose is to provide support to victims of violence against women and intrafamily violence, without discrimination based on race, nationality, religion, social condition, in the different legal processes carried out by the users in search of that their human rights be respected, particularly their right to live a life free from violence.

This office is not independent since it is attached to the Direction of Prevention and Attention to Violence of the Women's Ministry, and the budget of the office also draws from the annual budget item of the ministry that creates it.