

## Constitutional Court of Guatemala strengthens judicial selection rules

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By: Mirte Postema, DPLF

In a far-reaching decision, the Constitutional Court of Guatemala (CC) strengthened the country's judicial selection processes. The decision, handed down by the CC in [Case No. 2143-2014](#), held that the nominating committees (CdP)—entities responsible for the (pre)selection of judges—must: (a) **conduct investigations** to determine whether applicants for judgeships fit the required profile; (b) **interview** the candidates; and (c) **provide a public, reasoned, and express statement** of the grounds on which an individual was selected, or not selected, specifying whether the necessary investigations were conducted to demonstrate that the person meets the constitutional requirements for appointment.

The CC rendered this decision pursuant to a petition for a constitutional remedy [*amparo*] brought by an attorney who essentially argued that Article 12 of the Nominating Committees Act (LCP)—which requires the CdP to establish a “grading chart” to classify candidates on a scale from 1 to 100 according to ethical, academic, professional, and public service/leadership merits—is unconstitutional because it is not subject to weighting, creates inequality, and exceeds the requirements imposed by Article 113 of the Constitution, which stipulates that appointments to government positions shall be based on the candidate's “ability, suitability, and honesty.” Although the [CC granted provisional \*amparo\* relief in this matter on May 15, 2014](#) and suspended the part of Article 12 of the LCP that graded the candidates numerically, it ruled in its final decision of June 13, 2014 that Article 12 was constitutional.

In this decision, the CC—which cited [DPLF's Guidelines for a transparent and merit-based system for the appointment of high-level judges](#)—held that the requirements of ethical, academic, professional, and public service/leadership merits imposed by Article 12 of the LCP are an elaboration on the ability, suitability, and honesty merits set forth in Article 113 of the Constitution. Given that they do not contradict the Constitution, but rather establish a mechanism for evaluating whether the candidates meet the constitutional requirements, Article 12 of the LCP was upheld in its entirety.

Additionally, the CC made various valuable observations in the case. With respect to “the need for there to be a description of the positions to be filled,” the CC held that “**the description must be clear and previously established, so that each candidate is aware of the attributes he or she must possess in order to be a successful applicant**” (emphasis added). This description and its evaluation mechanism—the grading chart—must be applied to all persons in the same manner, so as to ensure the right to equality.

The CC also held that “[i]n determining a person's suitability and ability, it is necessary to evaluate his or her merits and attributes to conclude that he or she in fact has the qualifications required for a position. It is also necessary to **establish candidates' honesty and integrity**, in accordance with the Constitution” (emphasis added). Far from being insusceptible to weighting—which was the argument of the attorney who filed the writ of *amparo*—the Court found that, to evaluate those requirements, a nominating committee must conduct “a specific analysis of them”

and then render a decision in the matter. ([On this point, see DPLF's proposal \(in Spanish\) for the assessment of integrity.](#))

In helping to define the concepts of ability, suitability, and honesty, the CC found that **ability** must be understood as “the aptitude to perform a task; in this case, this aptitude must be to hold public office,” and **suitability** as “*being adequate and appropriate for something*” and “*with legal capacity for certain acts and positions*” (emphasis in the original). Nevertheless, it indicated that “both concepts are closely related, since the person who has the ability for a specific position might be the suitable person, *if he or she also meets other criteria necessary for his or her selection*” (emphasis added). This means that ability must be understood as an element of suitability.

The Court also elaborated on the concepts of honesty and integrity, which were discussed in [Case No. 942-2010](#)—a writ of *amparo* filed by the same attorney who brought the action in Case No. 2143-2014. It found that “an honest person is one who acts with integrity and in a manner that is upright, fair, and impartial,” and it affirmed the criterion it adopted in 2010, that “ethical merits could not be subject to a numerical quantification”; rather, **the nominating committees need to establish whether a candidate has the ethical merits necessary for an appointment**. This same criterion applied with respect to honesty: a person either is, or is not, honest. Although it is a sensitive issue, the CC made it clear that a nominating committee cannot dispense with the evaluation and consideration of these requirements.

In summarizing the obligations of the nominating committees in the judicial selection process, the CC indicated that, “[w]ith regard to the remaining aspects to be evaluated—that is, the academic, professional, and public service/leadership merits—the respective nominating committees must **objectively and reasonably weigh**” the information provided by the applicants, as well as “the **checks** they have performed, with each one of the committee members properly assessing the merits reported and **determining, in an objective, reasoned, and public manner**, whether each person put forward as an eligible candidate in fact meets the **requirements of proven ability, expertise, suitability, honesty and integrity**” (all emphasis added).

However, it was perhaps in its final assessment that the CC provided the most important instruction in this judgment. It placed emphasis on “reiterating that the committee members must perform an **objective and reasonable evaluation, based on the documents provided by the candidates, as well as on their own investigations and interviews, and they must properly consider the aspects described**. The members of a nominating committee have the obligation to “**justify, in a public, reasoned, and express manner, at the time of the vote, why a specific candidate was or was not selected**.” Additionally, they must indicate “**whether the pertinent analysis has been conducted to demonstrate that the candidate for whom he or she is voting indeed meets the requirements of ability, suitability, and honesty established in Article 113 of the Constitution**” (all emphasis added).

Prior to Case No. 2143-2014, the practices of **investigating, interviewing, and stating the grounds for their decision** were merely powers at the disposal of the nominating committees; each committee could use them at its own discretion. This custom has been changed by the recent decision of the CC. Now, each nominating committee is required to confirm the professional, personal, and ethical attributes of a candidate, interview that person (for a more in-depth discussion of these aspects, [see DPLF's suggestions \[in Spanish\]](#)), indicate at the time of voting whether it has been verified that a person meets the constitutional requirements, and state the

grounds and reasons for choosing—or not choosing—an individual. These requirements are extremely important in limiting the possibilities for arbitrary decisions in the selection process. If the nominating committees abide by them, the judicial selection processes in Guatemala will be more transparent and based on the demonstrated merits of the candidates.