

“No public health system can actually sustain this. Free medication prescriptions for all illnesses,
for all people is not sustainable; lawyers are prescribing medication!”
--Albin Chaves Matamoros, CCSS Dirección de Farmacoepidemiología

“The Sala IV has too much power, which has made it hard to make relevant decisions in parliament.”
Deputy Fernando Sanchez

Enforcing Rights and Employing an Accountability Function:

Costa Rica’s Constitutional Court

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Introduction

Since a minor constitutional reform in 1989, Costa Rica's judicial branch has undergone a major transformation; it abandoned its traditional deferential behavior, common among Latin American Superior Courts, with an activism that places it among the most politically significant courts in the Americas. This newly energized court exercises both an aggressive horizontal accountability function, limiting the actions of the other branches of government, as well as a willingness to support (and an ability to enforce) an expansive range of individual rights. In terms of the 2x2 table suggested for this workshop, Costa Rica's pre-1989 superior court was firmly located in the bottom right hand quadrant. It offered virtually no rights protection and imposed few limitations on other branches of government; neither keeping the channels of political competition open, nor overturning their unconstitutional actions. The reformed court is clearly situated in the top left-hand quadrant. Although its shift to the activist quadrant is complete, its heightened accountability function evolved more rapidly, its rights protection function is more complete in some areas than others.

[Insert Graph One: The Role of Costa Rica's Superior Court—about here]

This paper examines this transformation of Costa Rica's superior court from being a typically inactive, deferential Latin American Superior Court to being one of the most active courts in the Americas. The paper provides a brief explanation for the court's historical inaction followed by an examination of the minor constitutional reform that created a constitutional chamber of the Supreme Court in 1989 and set in motion the most profound change in Costa Rican politics since the Civil War in 1949. The following two sections assess the behavior of the new chamber of the Supreme Court in terms of horizontal accountability function and rights protection. The final sections offer an institutional explanation for both the pre-1989 inaction of the superior court and its post-1989 actions as well as a discussion of the lack of an effective backlash against the court.

Pre-1989 judicial behavior and the creation of the Constitutional Court

Costa Rica's contemporary constitution, promulgated in 1949, is a rights-rich document¹ that grants the Supreme Court equal status with the executive and legislative branches of the state.² The Court also enjoyed a high level of political autonomy since 1949 and financial autonomy since 1957,³ yet in spite of its autonomy the Supreme Court behaved in a similar fashion to majority of other Latin American superior courts operating in a civil law legal system.⁴ The court

¹ Constitution Article 9, "The Government of the Republic is popular, representative, alternative and responsible. It is exercised by three distinct and independent branches: Legislative, Executive, and Judicial. None of these Branches may delegate the exercise of their own functions."

² Constitution, Articles 20 to 74.

³ Since 1957 the Poder Judicial (Judicial Branch), which is controlled by the Supreme Court, has been constitutionally guaranteed no less than six percent of the state's annual budget (Constitution Article 177).

⁴ In Civil Law legal systems magistrates generally see their role as a technocratic one and consequently grant high levels of deference to the popularly elected branches and tend to assume all laws and decrees of the popular branches of government as constitutional unless they were egregiously against the letter of the law.

granted high levels of deference to the popularly elected officials and assumed decrees and laws emanating from those bodies were by constitutional unless there was a powerful reason demonstrating a law's unconstitutionality (Gutiérrez Gutiérrez, 1993, pp. 200–03); the Legislative Assembly's "power to legislate was absolute" (Urcuyo, 1995, p. 44). In the 51 years between 1938 (when the Court solidified its power to exercise judicial review) and 1989 when the Constitutional chamber of the Supreme Court was created, there were just slightly more than 150 cases of unconstitutionality filed with the Supreme Court. By contrast, in the Sala IV's first 20 months of operation, it received 228 unconstitutionality cases (Wilson 2007: 245).

Constitutional rights were similarly ignored⁵. Indeed, the unwillingness of the court to hear rights cases became a major argument against the creation of the Constitutional Chamber of the court in 1989—that there would be no caseload for such a court. Empirical evidence appeared to support this claim. In 1980, for example, the Supreme Court received only one case of unconstitutionality and eleven amparo cases (Rodríguez Cordero, 2002: 43). Court action was further shackled by the requirement of a 2/3rds super majority of the full court to declare a law unconstitutional. The court operated very slowly and adhered to strict formal requirements and tended to reject cases that did not meet those requirements. Together these factors appeared to produce a high level of judicial immobilism that rendered the Supreme Court an irrelevancy in Costa Rican politics in the first 40 years of the 1949 constitution.

The parliamentary debates over the creation of the constitutional court were very low key and received little coverage in the media. The speed at which the Congress moved to pass the constitutional amendment was uncharacteristically swift and the final vote was virtually unopposed (43 votes in favor and 6 against). The potential for the newly created court to become

⁵ Among the first actions of the court under the 1949 constitution was to ignore the appeals of political leaders and unions who were punished for supporting the losing side of the civil war (See Wilson 2007)

a political counter-weight to the executive and legislative branches of government or its potential to usher in a rights revolution was not part of the discourse.⁶

The constitutional amendment of Article 10 in 1989 created a new chamber of the Supreme Court, the Sala Constitucional, (Constitutional Chamber, frequently called Sala IV) can “declare, by the absolute majority vote of its members, the unconstitutionality of provisions of any nature and acts subject to Public Law.” That is, its decisions are binding on all parties and unappealable and the super majority previously required to declare an act or decree unconstitutional was replaced by a simple majority of the chamber. The enabling laws that accompanied the creation of the Sala IV mandated the court to “guarantee the supremacy of the norms and constitutional principles, international law, and community law in force in the republic, their uniform interpretation and application of fundamental rights and freedoms consecrated in the constitution or in international instruments in force in Costa Rica.”⁷ According to Navia and Ríos-Figueroa (2005:202-204) the Sala IV has among the most comprehensive powers of any Latin American superior court including the power to:

1. Adjudicate conflicts of competency between government branches
2. Engage in Judicial Review: *A priori* (constitutional consultations) and *a posteriori* (unconstitutionality)
3. Engage in Concrete (based on a case) and Abstract (general interest) Judicial Review
4. Make their rulings broadly effective: *Inter Partes* for cases of *habeas corpus* and *amparo* and *erga omnes* for all judicial review and Jurisprudence.

⁶ Interviews by Wilson with former justice minister Maruja Chacón (San Pedro, 1998) and former deputy Ottón Solís (San José, August 1997).

⁷ Article 1, Ley de la Jurisdicción Constitucional

The magistrates rapidly abandoned its previous formality and broadened both standing and access; according to one of the original Sala IV magistrates, “the Sala IV had to be born running, it could not crawl.”⁸ Under the new operating rules for the court, anyone in Costa Rica (without regard for age, gender, or nationality), can file a case with the Sala IV at any time of day, 365 days a year, without need for legal representation or fees. The claimant does not even need to know the point of law upon which they are appealing⁹ and can handwrite or type the case on anything and in any language (including Braille).¹⁰

These powers, together new operating rules of the court, have created a significant new legal opportunity (LO) structure that was not previously available and that can and has been used by political parties, individuals, groups from virtually every sector of the society, from the weakest most marginalized individuals such as prisoners or AIDS patients to the most powerful, businesses and presidents (Wilson and Rodriguez 2006). As well as having a profound impact on the balance of political power in the country, the court has also brought the constitution to life placing it at the center of all political and rights questions in the country. According Sala IV magistrate, Eduardo Sancho, the Sala IV has to be understood, “not as an institution created to be at the service of the executive branch, but quite the reverse: to protect the rights of people”¹¹ What needs to be noted, though, is that apart from the small change in the constitution that created the Constitutional Chamber of the Supreme Court, nothing else changed. Three sitting Supreme Court magistrates joined the new chamber and the new magistrates elected by the

⁸ In *Sala IV* Judge Luis Fernando Solano’s words: “*La Sala tuvo que nacer corriendo, no pudo ni gatear (La Nación* September 19, 2004). Quoted in Martinez (2007:134)

⁹ The vast majority of these appeals are “recursos de amparo” (writs of protection) that permit anyone the right to demand the Sala IV maintain or reestablish any and all constitutional rights not already protected by the habeas corpus provision. They are similar in scope to the Tutela actions available in Colombia.

¹⁰ Recently, the Sala IV declared its intention to create Braille versions of all its decisions (Terra 2009)

¹¹ Corte Suprema de Justicia–Sala Constitucional, *Reseña Histórica* (1999). Available at <http://www.poder-judicial.go.cr/sala4/aniversa/historia.html>

legislative assembly had similar career trajectories to those already on the court. The legal system remained a civil law system and the Court continued to enjoy the same institutional protections of its independence as it had done since the 1950s. The actions of the new court had no precedent in Costa Rican or Latin American judicial history, but as will be shown, it exercises one of the most extensive accountability functions of any developing country (Gloppen et al 2009) and protects and enforces individual rights with only Colombia's Constitutional court as a peer (Wilson 2009).

Sala IV and political accountability

The new court has become central to many political debates in the country and is increasingly called upon to pronounce on the constitutionality of bills being debated in the congress and of the constitutionality of laws, executive decrees, and the rules and directives of the state-controlled autonomous institutions. A few examples illustrate the courts willingness to challenge the exercise of executive branch powers. In 2003, the Pacheco Administration declared Costa Rica's official support for the US-led war on Terror. The declaration was challenged at the Sala IV by politicians and private citizens alike. In 2004 the Sala IV ruled the proclamation "acted against the constitution, international law accepted by Costa Rica, and the international system of the United Nations" (resolution 2004-09992) and ordered the executive to instruct the US government to remove Costa Rica from its published list of supporters. The Court responded to criticism that it had no authority to interfere with the executive branch's power to conduct international relations by accepting executive branch power to conduct international relations, but noted that these actions still had to abide by the constitution and its international agreements (La Nación July 2, 2006).

In another case the Sala IV ruled unconstitutional a Presidential decree permitting beach front areas to be developed by private businesses (Resolution No. 2004-07378). In the first of these cases it was private citizens that challenged the executive's power and in the second it was environmental experts from a government agency who were concerned about deforestation acting simultaneously with local governments who viewed the decree as a power grab by the executive branch (Barker 2005).¹² A final example of limiting the actions of the executive branch came in 2003 when the court ruled the cutting of the school academic year to meet a budget shortfall was unconstitutional. The Court's argued the Executive was bound by all international agreements signed by previous governments. Thus, in this case a previous Costa Rican government's signing of the Convenio Centroamericano sobre la Unificación de la Educación Básica, required all Costa Rican school children to receive a minimum of 200 days schooling per academic year (Resolution No. 11515-02). Thus, the court again limited the policy-making space within which the executive branch could construct solutions to the education budget crisis.

The impact of Sala IV rulings on the president's already weak decree-making power is perhaps reflected in the declining number of presidential decrees. During the 1980s, Costa Rican presidents issued more than 10,000 decrees, but once the Sala IV started to operate (late 1989), the total number of presidential decrees fell by more than 40 percent to 6,200 (PEN, 2001:124).

The Legislative Branch

The Sala IV has not limited itself to keeping the executive branch bound by the constitution; its impact on the Legislative Assembly has been even more profound. The creation

¹² It is not unusual for find executive branch agencies keeping the Sala IV's ruling in mind when making future plans. See, for example, the 2008 report on costal development, which has numerous references to Sala IV decisions that might limit the options of the developments.

of the Sala IV, though, has diminished the power of the Assembly to make laws. Deputies from smaller parties were historically unimportant in the policy making process now have two significant new opportunities to impact a government's chosen policy, once during the law making process and once afterwards. When a bill is under consideration in the congress, any 10 deputies can require it be sent to the Sala IV for Legislative Consult. Once a bill becomes a law, it is also possible to challenge its constitutionality.

There are numerous examples of the willingness of the court to redefine and limit the Legislative Assembly's lawmaking powers. This willingness is clearly illustrated by an examination of the Sala IV's decisions on presidential re-election. The original 1949 constitution allows presidents to seek re-election after sitting out two 4-year terms. A 1969 constitutional amendment to Article 132 (Law 4.339) removed this right and prohibited presidents from ever seeking re-election. This constitutional amendment remained unchallenged until 1999 when former president Oscar Arias Sanchez (PLN 1986-1990) indicated his interest in seeking a second presidential term. Arias's initial strategy was to have his supporters propose a constitutional amendment in Legislative Assembly, which Arias argued was the only body that could reverse the prohibition, court action would be a "undemocratic." The Assembly, though, was not supportive of reversing the amendment and instead allowed the bill's progress to slow to a crawl. In response, Arias filed a case with the Sala IV, which rejected the case in a close split decision of 4 to 3 against (Expediente no. 7428-7990); soon after, the Assembly voted overwhelmingly to defeat the motion (32 against and 13 in favor) (Urbina 1999).

Having missed the opportunity to contest the 2002 election, Arias's supporters returned to the Sala IV in early 2003 and convinced the Sala IV to reverse its earlier decision and to declare the constitutional amendment barring presidential re-election unconstitutional. The

details of the argument are published elsewhere (Wilson 2006), but it is important to understand the significance of the ruling and what it meant for Legislative power. The court argued that the Legislative Assembly did not and does not have the power to “reduce, amputate, or limit rights and fundamental guarantees, or political rights of the citizens, or the essential aspects of the country’s political organization” through constitutional amendments. This power was exclusively held by an elected constitutional convention, not the legislative assembly (Resolution No. 2003–02771). Thus, in declaring the 1969 constitutional amendment unconstitutional, the court spelled out clearly the limitations on the power that can be exercised by the Legislative Assembly.

The Sala IV has also willingly played a role in re-equilibrating the balance of power in the Legislative Assembly through its central role in adjudicating the constitutionality of bills as they move through congress. Many times, it is enough that these deputies just threaten to send a bill to the Sala IV for a legislative consult unless it modified in line with his/her policy preferences (La Nación, 2, July, 2006). Thus, policy-making power of smaller parties has been strengthened, while the majority party’s has been significantly diminished. The creation of the court and the existence of a legislative consult that can require any bill be examined by the Sala IV for its constitutionality (both procedurally and substantively) with the signature of just 10 deputies, gives significant levels of policy-making power to smaller parties. As one Sala IV magistrate notes, “the legislative consult is used as a political weapon” by minor parties in the congress. As the Congress is increasingly populated by smaller parties and no majority party, this tactic has become a logical and preferred *modus operandi* that can change, delay, or kill government supported legislative that frustrates many government party deputies.

In these two areas of holding popularly elected officials to account, the Sala IV has re-oriented the governance of Costa Rica and while the former Attorney General Roman Solis claimed the “the Sala IV leaves the legislative and executive branch with little power” (Wilson, 2005:61), or Deputy Sanchez complained that “most deputies believe the Sala IV has too much power and has too much political space,” making it “difficult to make relevant decisions in parliament.” He concluded, “if Sala continues like this – what is our role as a congress?”¹³

Enforcing individual rights

The second broad area of Sala IV actions has affected the enforcement of individual rights. A quick look at the caseload growth of the Sala IV shows the legal route is an attractive option for many individuals to seek protection of or enforcement of their constitutionally mandated rights. In its first full year of operation, the Sala IV considered 1,600 cases, by 1997 there were approximately 7,000 cases and then 10,000 cases in 2000. By 2007, the court was regularly hearing 17,000 cases per year, the vast majority cases of amparo.¹⁴ But as Rachel Sieder et al. (2005:3) note “greater activism on the part of the courts does not necessarily or automatically signal the strengthening of individual or group rights.” Indeed, this is the core of Rosenberg’s (1993) argument that activist court do not usher in social change or Epp’s (1998) claim that deep-pocketed support organizations are pivotal to rights enforcement by courts.

Even if Courts rule in favor of individual rights cases, if they cannot make their decisions stick, these will indeed be hollow victories. In the following section, I suggest the exponential growth in the number of cases might reflect an increased recognition of the availability of a

¹³ Interview with the author, June 2008, Asamblea Legislativa, San Jose, Costa Rica.

¹⁴ Amparos have, since the creation of the Sala IV, made up a very large percentage of the judicial body’s caseload. Currently, over 90 percent of the caseload is amparo cases.

Legal Opportunity (LO), but that it is important to take a closer examination of some of the cases to reveal what kinds of rights cases are won and if these are hollow victories or ones that actually affect the protection of individual rights.

[Insert Graph One about here]

The ability of individuals and groups in Costa Rica to seek protection or enforcement of their constitutional rights has been well covered in the existing literature (Wilson and Rodriguez 2006; Wilson 2007; Murillo 1994), here I briefly summarize a few of the diverse types of cases to illustrate the profundity of the rights protection afforded by the court and the ability of the Court to make its rulings stick. In particular, I examine the rise of Health Rights cases over the last 10 years. Health rights cases are of particular interest due to the high financial costs imposed on the state and because it is a subset of individual rights protection that represent a convergence of the court's accountability functions (overruling the health minister's priorities) and the legislative branch (overriding strategic health plans) and individual rights. These cases are also interesting because health care rights claimants are more likely to be successful than any other kind of rights claim, especially with respect to access to state-funded medicines. Finally, the right to health care is not in the 1949 constitution, rather it is a derived right that has been constructed from the Constitutional protection of human life (Article 21),¹⁵ the right to social security protection

¹⁵ Article 21, "Human life is inviolable."

(Article 73)¹⁶ and numerous international treaties signed by Costa Rican governments (Vega 2007:150).

While it is clear that the majority of amparo claimants lose their cases at the Sala IV, the very low barriers to filing cases make it easy to try that LO and to return with a second (or third) case later. A study of the Sala IV's decisions during its first 10 years notes an average success rate of only 25%; the overwhelming majority of cases are rejected by the court. Success, though, is not uniform across different types of amparo cases. For example, cases of discrimination are famously difficult to prove and are generally unsuccessful, but right of access for disabled people are more likely to be successful. The ability of marginalized groups to win the support of the Sala IV to have their rights upheld is discussed elsewhere (Wilson 2007, Wilson and Rodriguez 2006), but it should be noted that some of the most marginalized groups in Costa Rica have won cases at the Sala IV including gays, women, prisoners, disabled people, and children.

Health Rights

One of the earliest health rights cases was filed in 1992. The claim involved a person living with HIV/AIDS claiming a right to state-funded antiretrovirals, which had been denied by the CCSS (the state agency with the remit for health care) arguing it was not on the official recommended medications list (Lista Oficial de Medicamentos, LOM), was not a cure for HIV/AIDS, and was too expensive. In this instance, the court accepted the CCSS's argument and ruled against the claimant (Resolution No. 280–292).

¹⁶ Article 73, "Social security is established for the benefit of manual and intellectual workers, regulated by a system of compulsory contributions by the State, employers and workers, to protect them against the risks of illness, disability, maternity, old age, death and other contingencies as determined by law."

When three HIV/AIDS patients filed a similar case in 1997, the CCSS made the same costs-based argument, but this time the Sala IV sided with the patients (Resolution no. 5934–5997). The court argued, “What good are the rest of the rights and guarantees . . . the advantages and benefits of our system of liberties, if a person cannot count on the right to life and health assured?” This argument became the basis of a nascent right to Health based on international treaties and the Costa Rican constitution’s right to life (Article 21) and the right to social security (Article 73). Subsequent health cases frequently refer to the arguments of this HIV/AIDS decision. What is interesting in this case is that although the ruling was originally *inter partes*, it quickly took on an *erga omnes* effect forcing the CCSS to provide antiretroviral medications not just to the patients who filed the claim, but to any patient with a valid prescription from a CCSS doctor. The concrete impact of this rights claim to health care are reflected in the significant decline in morbidity rates for people with HIV/AIDS in Costa Rica since the Sala IV’s decision. The lessons learned from the AIDS case were not lost on other patients suffering from chronic illness. The huge costs of the medications and the contagion effects on other patients is shown in Table One.

[Table One: Three cases of litigated rights to health care—about here]

Since the success of the 1997 decision, the number of amparo cases claiming a right to medications has increased every year. And, unlike the low levels of success for amparo cases (approximately 25 percent), these medical cases win in over 60 percent of the cases (CCSS

2008).¹⁷ In most cases the court has argued that the prescription from the patient's treating doctor outweighs the technical medical criteria used by the CCSS's Comité Central Farmacoterapia to determine which medicines should be on the LOM (Vegas 2007:177). The Sala IV has been deaf to the concerns of the CCSS about the budgetary ramifications of its medical decisions. Even in the recent cases where the court ruled in favor of 22 women suffering from breast cancer to receive Herceptin (Trastuzumab), the court remained unmoved by the financial worries of the CCSS. The CCSS complained that treating these 22 patients and 9 others accounted for one percent of the CCSS's total medicine budget (¢472 million). The Sala IV rejects the CCSS's cost arguments stating, "sick people should not have to pay for the results of bad planning on the part of the CCSS" (*La Nación* November 16, 2006). This was echoed a recent interview with another Sala IV magistrate who responded to the potential ethical problem of the Sala IV's medical decisions noted "True, resources are limited, but this is only an ethical dilemma to the extent that you have utilised all your resources properly.....if you are wasting your resources, the ethical argument does not apply." He went on to note that "nothing that has happened as a result of court decisions (in terms of health litigation) has affected CCSS from a budget point of view; as a result, this ethical dilemma that you raise does not apply. If you can prove that costs will affect others, show me, then we will consider it."¹⁸ This position is supported by the office of the Defensoria de los Habitantes' public health lawyer Carlos Valeria who argues "We do not think that economic issues are reasons not to defend a human right for medical attention. We tell

¹⁷ Drawn from data presented by Eduardo Doryan, Executive President of the Caja Costarricense de Seguros Sociales (CCSS, Social Security agency). If all cases involving a right to health care are considered, the success rate is approximately 50 percent.

¹⁸ Interview with the author, Magistrado Suplente Fernando Sosto. San Jose June 2008.

CCSS we do not accept that kind of explanation, they must simply find the budget for that. Sala IV holds the same position as we do.”¹⁹

Although Deputy Fernando Sanchez argues “We are going over the top in terms of individual provisions and rights and we are forgetting about our role as a society.” The Court, though, has shown its unwillingness to uphold individual rights when they are hugely unpopular. While the court protected gays from police harassment in the 1990s, it rejected same sex marriage claim in 2008. But as the examples above illustrate, the Sala IV has been willing and able to rule against the executive and legislative bodies as well as to uphold a very expansive view of individual rights. These actions, though, have also raised serious criticisms of the court and its actions, especially from politicians and government agencies that have lost significant cases.

Reigning in the Court

Since its inception, though, criticism and praise of the constitutional court has been much more animated and reflects a realization on the part of politicians, bureaucrats, and citizens that the court was willing and able to play a central role in the country’s political life. As one senior politician, Constantino Urcuyo, notes “the appearance of the Sala IV has put a brake on the abuse of power” by the legislative assembly (Urcuyo, 1995:46). While the Court is generally unpopular with politicians sympathetic to the government, their criticisms have frequently turned into support when those same politicians are relegated to the opposition benches (Solano 2007?). The up-and-coming third party, PAC, has also frequently attempted to use the court, but has also

¹⁹ Interview with the author. San Jose June 2008

consistently been one of the court's most severe critics. The party leader, Otton Solis, has been a constant critic of the court²⁰ since its inception and recently revealed the PAC's intention to reforming the court. The party argues the Sala IV has "abandoned constitutional criteria in many cases and become an eminently political body."²¹ This is, perhaps, not unrelated to the PAC's failure to use the Sala IV to declare the CAFTA free trade agreement unconstitutional and the court's presidential reelection decision. But to date, there have been no successful reforms of the court, not even ones initiated by the court. In Colombia, for example, there has been a concerted effort to reign in the reach of the Court (Palacios, 2001:12-12; Gloppen et al. 2009), but apart from the numerous animated calls to reform Costa Rica's court, no effective legislation has been passed to limit either the court's accountability function or its rights protection.

When the court agreed to rule on the presidential re-election for a second time in 2003, the criticism of the court grew louder (Díaz, 2003). This ruling produced a vitriolic backlash from deputies in both major parties in the congress, with some labeling the Sala IV a 'super power' (Bermúdez, 2003). Ex-deputy Alberto Cañas, for example, classified the Sala IV's reelection ruling as a "golpe de estado" as did former president Luis Alberto Monge (PLN). Another PLN militant claimed the court's ruling was a "judicial barbarity," while Jorge Eduardo Sánchez, the PUSC secretary general, claimed that the Sala IV had usurped powers and had become a "co-administrator and co-legislator" (Díaz, 2003).

A leading PLN deputy recently noted that most deputies think the Sala IV has "too much power, which has made it hard to make relevant decisions in parliament." But rather than assign

²⁰ Interview with the author, San Jose Costa Rica (date??)

²¹ 2009. "PAC demanda renovación completa de Sala Constitucional." *El País*. <http://www.elpais.cr/articulos.php?id=3450>.

blame to the court for grabbing power, he notes the problem is due to the multiple parties in the congress and the lack of a majority. “Because we are so divided, we have given political space to Sala IV. This space is clearly opened by the lack of decision-making power in Congress. The Sala IV is part of that general trend where there are a number of accountability institutions that are increasing their power over politicians.”²²

Beyond voicing criticism of specific Sala IV actions and its perceived overreach, little has been done to reign in its accountability functions. Apart from a recent very contentious reconfirmation for two Sala IV magistrates who voted in favor of the Presidential reelection issue, few actions have attempted to systematically reduce the power of the chamber.²³ In Colombia where magistrates cannot seek to serve beyond their single 8-year term, the executive and legislature can replace the retiring magistrates with new, more restrained ones

In Costa Rica, on the other hand, constitutional amendments are difficult to achieve and are the product of a deliberately slow process. Thus, unlike the Colombian congress, their counterparts in Costa Rica do not possess this legislative tool to limit the actions of the court. Indeed, in Costa Rica the congress and executive have very limited legislative tools at their disposal to influence either the composition of the court or the content of the constitution.

Historically, the president’s party tended to enjoy majority support in the congress. Since 1998, though, the party controlling the executive has failed to win more than a plurality of congressional seats. Simultaneously, the number of smaller parties has increased, making it more difficult still to cobble together winning coalitions in the congress and to pass laws of any kind, without even attempting to limit the powers of the Sala IV. The ability of Congress to

²² Interview by the author June 2008, in the Legislative Assembly, San Jose, Costa Rica

²³ In these two re-election cases, the necessary 2/3rd vote to prevent the automatic re-election was not obtained.

write and pass laws was also compounded by the very existence and behavior of the Sala IV itself.

The lack of successful proposals to limit the powers of the Sala IV is not due to a lack of desire on the part of the popularly elected branches. Rather, it is a difficult technical hurdle to cross as it would require a super majority (38 out of 57 deputies) to successfully change the law. The current governing party (PLN) has only 25 members in the Legislative Assembly, and the weakness of parties makes it unlikely that they could muster all those votes, never mind convince 13 more deputies from other parties to support a judicial reform project to limit the powers of the court. This is particularly true for some smaller parties like the Movimiento Libertario (ML), which is the most frequent user of the Sala IV to block, delay or amend government-sponsored bills. The party has harnessed the power of the Sala IV to enhance their own legislative power and to influence and/or delay policy

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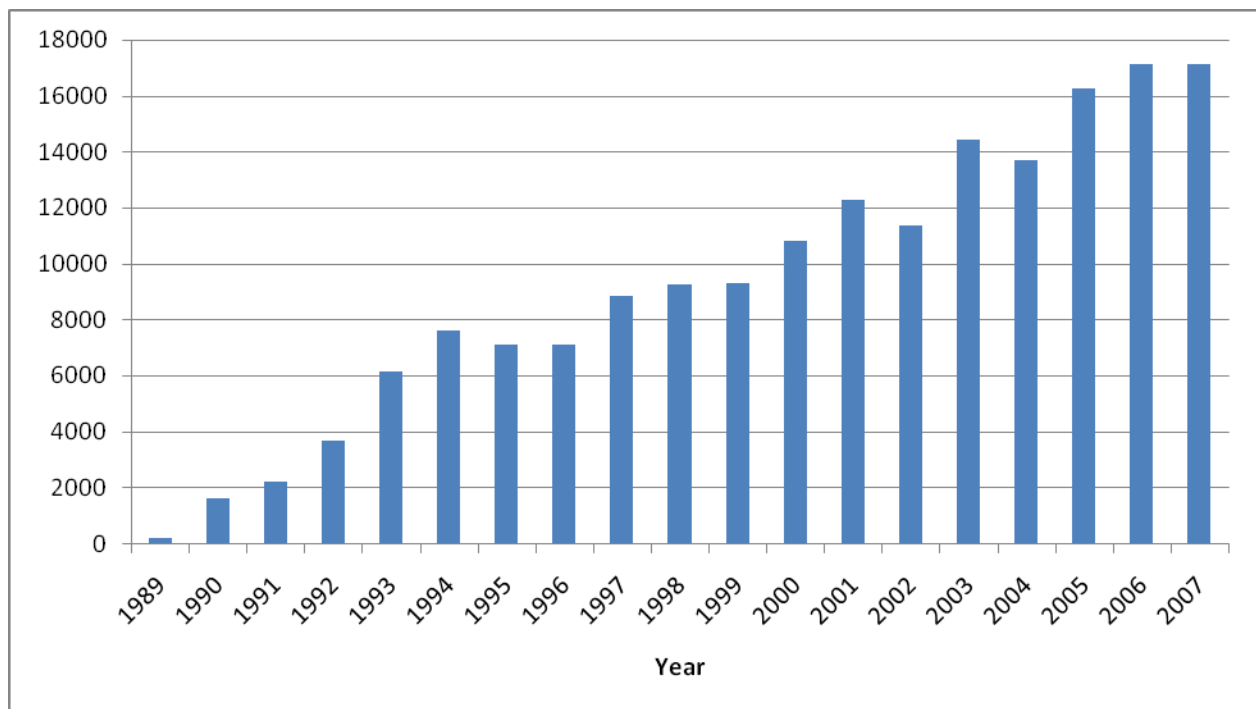
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Graph One: The Political Role of Superior Court in Costa Rica



Graph two: Sala IV caseload, 1989-2007



Source: Sala Constitucional available at <http://www.poder-judicial.go.cr/salaconstitucional/estadisticas/1989-2007/estadisticas1989-2007.htm>

Table One: The costs of three early cases of litigated health rights, 1999

Illness	# of patients	Monthly Cost/patient	Annual Cost/patient	Total cost/Year US\$	% of Medicine budget	% of Population covered
HIV/AIDS	680	\$667	\$7,281	\$5,013,933	11.31	0.02
Amyotrophic Lateral Sclerosis	19	\$800	\$960	\$18,240	0.41	0.0005
Multiple Sclerosis	32	\$968	\$11,616	\$371,712	0.83	0.0009
Totals				\$5,568,045	12.57	0.0214

source: http://www.nacion.com/ln_ee/1999/noviembre/29/sida.gif