REMOVAL OF CONGRESSPERSONS FROM PUBLIC OFFICE: *AN EFFECTIVE TOOL AGAINST CORRUPTION*

FERNANDO CEPEDA ULLOA

Paper to be presented at the
6th Global Forum on Reinventing Government.
Toward Participatory Methods and Transparent Governance.
May 24-27, 2005, COEX, Seoul

At the workshop: Representative Democracy, Participatory Methods and Capacity Development for Responsable Politics
Co-sponsored by Internacional IDEA

REMOVAL OF CONGRESSPERSONS FROM PUBLIC OFFICE: AN EFFECTIVE TOOL AGAINST CORRUPTION

Fernando Cepeda Ulloa

Introduction

In the fight against corruption, it is necessary to identify tools which have proven to be effective. It is fundamental to have a repertoire of "Best Practices" available, in order to advance in the pursuit of transparency for public management and entrepreneurial life, and doubtlessly, for the life of the co-operative sector, foundations and NGOs[1].

Concern over the need to find successful formulae gave way to the request that was made to me by Carlo Binetti, then representative of the IDB in Colombia, in the sense of conducting research on the matter in the country. This mandate allowed me to review anti-corruption strategies, and thus rescue an important set of mechanisms that, because of their nature, had shown considerable results in favor of integrity.

At the request of the IDB Representation in Europe, in 2003, I made a description, analysis and evaluation of one of those successful practices: removal of Congresspersons from public office (*pérdida de investidura*), which has been applied since the adoption of the 1991 Constitution.

In over ten years that the figure has been in force, this is the first time that an attempt is made at presenting its antecedents, describing the procedure for its application and analyzing case-law in regards to the specific subject of the notion of "Conflict of interests", this time extended to the subject of Congresspersons' prohibitions regime. The lessons left by this interesting and peculiar institution form part of the present case study.

Such effort, timely fostered by the IDB, will assist in the consolidation of this institution in Colombia, and in the prevention of the risks that could make it less effective, if not useless or innocuous. A synthesis of this investigation –in which lawyer Claudia Escolar participated practically as co-author- is presented in the following lines.

---

[1] The author of this study has published several books on corruption and on the subject of political finance: *La corrupción administrativa en Colombia, diagnóstico y recomendaciones para combatirla* (editor), Tercer Mundo Editores, 1994, Bogotá (2 Vols.). *La corrupción en Colombia* (editor), Tercer Mundo Editores, 1997, Bogotá. *Corrupción y gobernabilidad,* 3R Editores, Bogotá, 2000. *Financiación de campañas políticas*, Ariel Ciencia Política, 1997, Bogotá. *La lucha contra la corrupción en Colombia y recomendaciones para diseñar una nueva estrategia.*

Origins and philosophy

The figure of removal from public office (*pérdida de investidura*) was a creation of the 1991 Constituent. It was one of the innovations that achieved simple consensus, and which were not submitted to nominal or secret voting in the Constituent Assembly[2]. It was approved by acclamation. Over time, this institution has become consolidated, and it enjoys broad support.

On the face of the erosion in the credibility of representative institutions, and the public opinion's majority will to change political customs marked by clientelism, as well as to strengthen the State and counter criminal organizations, a Constituent process was promoted since the government of President Virgilio Barco (1986-1990), which finalized with the approval of the 1991 Constitution, drafted under the leadership of President César Gaviria (1990-1994). The Government stated, as one of the main purposes of the constitutional reform project it presented to the National Constituent Assembly, that of "restoring citizens' confidence in their institutions, and managing to make them feel adequately represented by them"[3]. For the case of Congress, this purpose would be attained "insofar as Colombians discover that the vices and practices which have been undermining the image and the very task of this institution are eradicated once and for all"[4].

Consequently, the governmental project included removal from public office as a mechanism of citizen oversight and control of representatives, and as "a type of sanction for Congresspersons who fail to comply with the duties imposed by their post". The grounds for the application of this measure were: violations of the prohibitions (*incompatibilidades*) régime, and unjustified absence from one fourth of the regular sessions summoned during one legislative period. It was also established that these grounds could be extended by the law to situations of conflict of interests, once the Rules of Congress had been adopted[5].

Removal from public office was justified in the governmental project as a complement to the figure of repeal of popular mandate (*revocatoria del mandato*). Indeed, it was

---

[2] See Manuel José Cepeda Espinosa, *La Asamblea Constituyente por dentro: mitos y realidades*, Presidencia de la República, Bogotá, 1993, p. xliii.

[3] *Proyecto de acto reformatorio de la Constitución Política de Colombia*, Presidencia de la República, February 1991, p. 269.

[4] Id.

[5] Article 181 of the Governmental Project stated at No. 2: "Whenever discussion takes place around matters which bear a direct incidence upon private interests with which one of its members has had any relation, such member must make this circumstance public, and his or her vote shall always be public, even if it is a blank vote". And number 3 established: "The law shall describe the disciplinary misbehaviors of the members of public corporations, their Commissions of Ethics' composition and powers, the sanctions that will be applicable for violation of the prohibitions and conflicts of interests indicated in the preceding paragraph, which may rise to removal from public office".

considered that even though the repeal of popular mandate could be used to remove any public officer elected by uninominal constituency from his post, this figure could hardly be applied to members of plurinominal lists elected for collegiate bodies. Therefore, removal from public office would be a suitable mechanism for this purpose.

The project entrusted the Constitutional Court with the mission of deciding on the removal from public office[6]. The constituents disagreed with this point, because in their opinion, given that the Court was elected by the Senate, such tribunal's Justices should not perform as judges of their electors in regards to their permanence in public office, given that this could affect the real or perceived impartiality of the judicial process. In addition, it was considered that the judicial channel to activate removal from public office had more affinity to the contentious-administrative judicial actions which have traditionally been under the jurisdiction of the Council of State.

In the report of the Commission that was in charge of drafting the constitutional Statute of Congresspersons, Constituents underscored the importance of stating with precision the scope of the prohibitions (*incompatibilidades*) regime, so as to prevent Congresspersons from using their power over other authorities and over the community in general to obtain undue privileges. This would be the only way to create the conditions required for

> "a better performance in the post (of Congressperson), and to prevent the accumulation of honors and powers (…). The position of Congressperson gives the individuals who bear it an exceptional capacity to exert influence over those who manage State moneys, and in general over those who decide on public matters, which creates inequitable conditions of competition with the ordinary people, in addition to the fact that it may lead to a generalized corruption of the public sector, because the branch of public power which should be ultimately responsible for vigilance becomes compromised with those that it should oversee"[7]

Eventually, the Constitution not only regulated in detail the prohibitions and conflicts of interests regimes, with the corresponding sanction of removal from public office, but it also enshrined a set of principles and guarantees which empower citizens to participate in political control. This is precisely the major innovation of the 1991 Constitution, because it designed the figure of removal from public office as an instrument of political control

---

6 *Proyecto de acto reformatorio de la Constitución Política de Colombia*, Presidencia de la República, February 1991, p. 251.

7 "It does not seem necessary to prove the immense loss of prestige of Congress, a phenomenon which has been increasing in the past times. Elements such as the so-called 'parliamentary assistances' (*auxilios parlamentarios*), Congresspersons' trips abroad, "absentism", the reluctance it has sometimes displayed in the study and debate of the affairs under its responsibility, the lack of a strict regime of prohibitions and conflicts of interests, have contributed to erode in a serious manner the image of Legislative Chambers before the ordinary citizen. In addition, the frequent –not to say permanent- interference of private or group interests in the decision of issues which are transcendental for the Republic. Congress appears today as an inefficient, disorganized, oscillating, incompetent, bureaucratic body, the members of which only bear electoral concerns in mind, incapable of effectively addressing the great problems and urgent solutions of a country immerse in desperation. In order to correct this situation, it is necessary to introduce serious and profound reforms, under the general name of "Statute of congresspersons" (Gaceta Constitutional, Tuesday, April 16, 1991, pp. 26-27).

by citizens within a participative democracy – a philosophical principle which was voted by Colombians in the referendum of May 27, 1990 on the creation of a National Constituent Assembly, and further developed in the governmental project presented to said Assembly in February 1991.

Thus citizens have the fundamental right to file public judicial lawsuits in defense of the Constitution and the law, which materializes their right to exercise control over their representatives (Article 40 of the Constitution). Therefore, it is a form of "empowering" and strengthening citizens to oversee the activities of their representatives, which in turn requires that those elected act transparently and prefer the general interest over their own private interests (Article 133 of the Constitution).

The profile of the figure

Definition

According to the existing case-law, removal from public office is a sanction[8] imposed upon Congresspersons and other members of popularly elected public corporations, whenever they incur in any of the grounds established by the Constitution and the Law. Therefore, violations of the regime that these public officials have to observe on account of the functions that they perform, entail not only removal from their post, but also the loss of their right to be elected in an indefinite manner, by mandate of the Constitution itself (Article 179-4).

According to the Council of State and the Constitutional Court, removal from public office "constitutes a true political responsibility judgment, which finalizes with the imposition of a sanction of a jurisdictional nature, of a disciplinary kind (…) which is the equivalent, given its effects and its gravity, to the destitution of high public officers (…) which is decided by means of a judicial sentence"[9]. For the Nation's General Solicitor (also known as the Public Ministry), this is a "special and autonomous disciplinary procedure", and the "manifestation of an external control, which has the Council of State as its natural judge and constitutes a real sanction"[10].

Removal from public office was originally devised for members of Congress. However, the Constitution itself admitted, in Article 299, its extension to deputies, by way of stating that their prohibitions and conflict of interests régime would be established by the law. A provision on the prohibitions and conflicts of interests of municipal counselors

---

[8] "All of this evinces that this is not an ordinary punishment, but an exceptional one which, therefore, requires full observance, to the maximum degree, of the constitutional guarantees and requirements of due process". Constitutional Court, Decision C-247 of 1995, José Gregorio Hernández Galindo, J.

[9] Constitutional Court, decision C-319 of 1994, Hernando Herrera Vergara, J.

[10] Concept issued by the General Solicitor of the Nation (*Procurador General de la Nación*), March 9, 1994, within Process D-470. Communication No. 38.

was included with the same purpose in Article 312, which was further developed with the adoption of Law 136 of 1994, which establishes rules for the modernization of municipalities' activities and functioning. Article 55 of this Law establishes that the members of municipal councils shall be removed from their post whenever they violate the prohibitions or conflicts of interests regimes, incur in undue destination of public resources or in duly proven traffic of influences. This sanction will be decided by the competent Contentious-Administrative Tribunal, following the procedure established for Congresspersons, in relevant part.

Later on, Law 617 of 2000, which regulated territorial entities' fiscal adjustment and the rationalization of national public expenditure, established a set of rules to ensure the transparency of departmental, municipal and district management. Several articles of Law 136 of 1994 are amended therein, in particular those that deal with the prohibitions and conflicts of interests of municipal counselors. It is worthwhile to underscore that this Law also extends the time duration of prohibitions, and broadens the grounds for removal of deputies and members of Local Administrative Boards from public office.

Finally, Law 734 of 2002 –the Single Disciplinary Code- orders public officers, in Article 22, with the purpose of

> "safeguarding the public morals, transparency, objectivity, legality, honesty, loyalty, equality, impartiality, promptness, publicity, economy, neutrality, effectiveness and efficiency that they must observe in the performance of their job, post or duties, they shall exercise the rights, comply with the duties, respect the prohibitions and observe the (different) conflicts of interests regimes established in the Political Constitution and in the legislation".

And Article 40 of this Law states in a broad manner that

> "every public officer shall declare his or her impediment to act in a given affair whenever he or she has a particular and direct interest in its regulation, management, control or decision, or whenever his or her spouse, permanent partner, or any of his or her relatives within the fourth degree of consanguinity, second of affinity or first of civil kinship, or his legal or de facto associates, should have such type of interest. Whenever the general interest that appertains to public service comes into conflict with a particular and direct interest of public officers, they shall declare their impediment".

In sum, the adoption of the aforementioned regulations proves that the Legislator has sought to advance in the application of this figure, and therefore it has broadened its scope in order to comprise the members of popularly elected corporations, which in turn has expanded the instruments of citizen oversight at the departmental and municipal levels. In the present document I will only analyze this institution in regards to the members of the National Congress.

Grounds for removal from public office

Article 183 of the Constitution, which establishes the grounds for removal of Congresspersons from public office, does not allow the Legislator to establish new

grounds, because as the case-law of the Constitutional Court has repeatedly stated, this article's enunciation of grounds has

> "very special characteristics (because) it can only operate in the cases, under the conditions and with the consequences established by the Political Charter. The grounds that give way to (removal of Congresspersons from public office) are exclusive. This means that the law may not restrict nor broaden the grounds established in the Constitution as causes for removal from public office."[11]

Indeed, Article 183 states that Congresspersons will be removed from public office in the following cases:

1. For violation of the regime of prohibitions (*inhabilidades* and *incompatibilidades*), or the conflicts of interests regime.
2. For failing to attend, during the same period of sessions, to six plenary meetings in which legislative act projects, legislative bills or censorship motions (*mociones de censura*) are being voted.
3. For failing to be sworn into public post within the eight days following the date of installation of the Chambers, or the date in which they have been called to assume public office.
4. For improper destination of public resources.
5. For duly proven traffic of influences.

Paragraph. Causes 2 and 3 shall not be applied in cases of *force majeure.*

In turn, Article 179 of the Constitution establishes in a detailed manner the regime of prohibitions ("inhabilities" or *inhabilidades*) applicable to Congresspersons. On account of this provision, the following categories of persons may not be elected for Congress: those who have been judicially convicted to prison penalties at any time; those who have exercised political, civil, administrative or military jurisdiction or authority in the character of public officers, during the twelve months that preceded the elections; those who have handled business or executed contracts with public entities in their own interest or on behalf of third parties, or who have performed as legal representatives of entities that administer taxes or "para-fiscal" contributions, during the six months that precede the election; those who have been removed from public office; those who have links with public officers who exercise civil or political authority on account of marriage, permanent partnership, or kinship within the third degree of consanguinity, first degree of affinity or single civil degree; those who are mutually linked and inscribe themselves under the same party, movement or group for the election of posts or public corporations on the same date; those who bear double nationality, except for Colombians by birth; and lastly, no person may be elected for more than one public corporation or post, nor for one corporation and one post, if the respective periods coincide, even partially.

Likewise, Article 180 enumerates in a detailed manner the prohibitions ("incompatibilities" of *incompatibilidades*) that Congresspersons must comply with. This provision states that members of Congress may not hold any public or private post or employment; promote, in their own name or on behalf of third parties, matters before public entities or before persons who administer taxes; perform as solicitors before the

[11] Constitutional Court, decision C-280 of 1996, Alejandro Martínez Caballero, J. 5. On account of duly proven traffic of influences. 6. On account of the other grounds expressly established in the law. Paragraph 1. Grounds 2 and 3 will not be applied whenever *force majeure* takes place.

same entities, nor execute any sort of contract with them. They may not be members of boards or councils of directors of decentralized entities, nor of institutions that administer taxes; they cannot execute contracts or engage in any business with natural or legal private persons who administer, manage or invest public resources, who perform as State contractors or receive State donations.

It is important to clarify that in regards to conflicts of interests, the pertinent constitutional provisions are more abstract and broad than those that regulate the aforementioned prohibitions regimes. In fact, Article 182 states that Congresspersons must inform the corresponding Chamber about the "situations of a moral or economic nature" that inhibit them from participating in the discussion of the issues submitted to their consideration. This broadness has been maintained in regards to conflicts of a moral sort. In regards to economic conflicts, instead, the Legislator has restricted its scope, as I will point out further ahead.

In addition, Article 110 of the Constitution complements the foregoing provisions by stipulating that "it is hereby forbidden for those who perform public functions to make any type of contribution to parties, movements or candidates, or to induce others to do so, save for the exceptions established in the law. The violation of any of these prohibitions shall constitute grounds for the destitution from the post or the removal from public office".

Who can request removal from public office?

According to the Constitution and the law, removal from public office may be requested by the directive boards of the corresponding Chamber and by any citizen.

When the request is formulated by the directive board of the Chamber to which the Congressperson is ascribed, it shall be sent to the Council of State, together with all pertinent documentation.

In the event that the request is presented by a citizen, it must be formulated in writing, and specify: name and identification, domicile, name of the respondent and evidence of his post of Congressperson, grounds being invoked with the due explanation, any requests for gathering of evidence and the place where notifications may be made. This request may be filed without the mediation of a lawyer.

Who decides on removal from public office, and within which term?

According to articles 184 and 237-5 of the Constitution, the Council of State has jurisdiction to study and decide on the removal of Congresspersons from public office, without possibility of lodging an appeal. This tribunal must adopt its judgment within a term no longer than twenty working days, counted from the moment of presentation of the request.

As to requests for removal of deputies, municipal and district counselors from public office, as well as the members of local administrative boards, Law 617 of 2000 states that the competent body to decide on their merits is the Contentious-Administrative Tribunal with jurisdiction over the corresponding department. This tribunal will have up to 45 working days to adopt a decision, starting on the date in which the request is filed by the directive board of the corresponding departmental assembly or municipal council, or by any citizen. An appeal may be filed with the competent chamber of the Council of State as determined by law, within a term no longer than 15 days[12].

Procedure

Law 144 of 1994 establishes the procedure for the removal of Congresspersons from public office, as follows:

a) Presentation of the request and procedure to be followed. The request must be presented to the general secretary of the Council of State. Once it is received, the president of the Council of State distributes it on the next working day, and designates the Counselor who is to draft the decision, who will then decide whether the claim is admissible or not, within the two working days after its distribution. The claim must be communicated to the relevant Congressperson during the same period.

The Counselor in charge of preparing the decision returns the request whenever the legal requirements are not fulfilled, or the relevant annexes are not provided, ordering the completion or clarification of the necessary points or documents within the following ten days.

b) Admission and response to the request. Once the request is admitted, the Counselor orders its notification to the relevant Congressperson and to the Public Ministry, with which the judicial process is initiated. Once these parties have been informed of the request, they have a three-day term to respond to it in writing, and on this same opportunity they may provide evidence, or request its gathering.

[12] Article 48 of Law 617 of 2000. Deputies, municipal and district counselors and members of Local Administrative Boards shall be removed from public office: 1. For violation of the prohibitions (*incompatibilidades*) or conflicts of interests regimes. There shall not be conflict of interests when the issue under consideration affects the counselor or deputee in the same conditions as it affects the general citizenship. 2. For failing to attend during the same period of sessions to five plenary meetings or commission meetings in which ordinance or agreement bills are voted, as were the case. 3. For failing to take possession of public office within the three days that follow the date of installation of the assemblies or councils, as were the case, or within the three days that follow the date in which they were called to take hold of the post. 4. For improper destination of public resources. 5. For duly proven traffic of influences. 6. For the other grounds expressly established in the law. Paragraph 1. Grounds 2 and 3 shall not be applied in cases of *force majeure*.

c) Gathering of evidence. On the next working day, the competent Counselor will order the collection of the pertinent evidence, which must bee gathered in the course of the next three working days. The Counselor shall also point out the date and time of the public hearing, to be held during the next two days.

d) Public hearing. This hearing is attended by the Council of State in full and it is presided by the Counselor in charge of preparing the decision.

Parties intervene once, during the time lapse established by the presiding Counselor, and in the following order: 1) the claimant or her lawyer, 2) the Public Ministry, and 3) the Congressperson and her lawyer. At the end of the hearing, they may present a written summary.

e) Registration of the decision draft. The competent Counselor must register the draft of the decision during the next two days, and he must then summon the Full Contentious-Administrative Chamber of the Council of State to study and discuss the project. The decision shall be adopted by the majority votes of the members of such Chamber, that is to say, twelve out of twenty-three Counselors. The publication of dissenting opinions is allowed by law.

f) Execution. Once the judgment is in force, that is to say, once the legal term for filing resources (*término de ejecutoria*) has expired, it will be communicated to the corresponding Chamber, the National Electoral Council and the Ministry of the Interior and Justice.

Judgments in these process enjoy *res judicata* effects.

g) Appeals. The judgment is not subject to appeal, because this is a single-decision procedure, but it is however possible to file an extraordinary special revision claim before the Council of State itself, on the grounds established in Article 188 of the Contentious Administrative Code for any contentious administrative process, that is to say, disregard of due process and violation of the right to defense; two broad grounds that give way for calling into question practically any type of vice.

Table 19.1. Role of the Public Ministry in removal from public office procedures related to conflicts of interests (1991-October 2003)

	Intervention in favor of removal from public office.	*Intervention against removal from public office*	*Total number of judgments included in the sample*
ROLE OF THE GENERAL SOLICITOR'S OFFICE	4	23	27
DECISIONS BY THE COUNCIL OF	5	22	27

STATE			

Table 19.2. Judgments removing persons from public office – Votings

Voting	Number of judgments	% of judgments
Unanimous	6	14%
12-vote majority	1	2.3%
13-15 vote majority	11	26%
16-18 vote majority	17	40%
19-22 vote majority	7	16%
Total	42	100%

Effects

At the finalization of a process for the removal of an individual from public office, the Council of State may deny the corresponding request, case in which the relevant Congressperson may not be tried for the same facts; or it may grant the request, case in which it orders removal from public office.

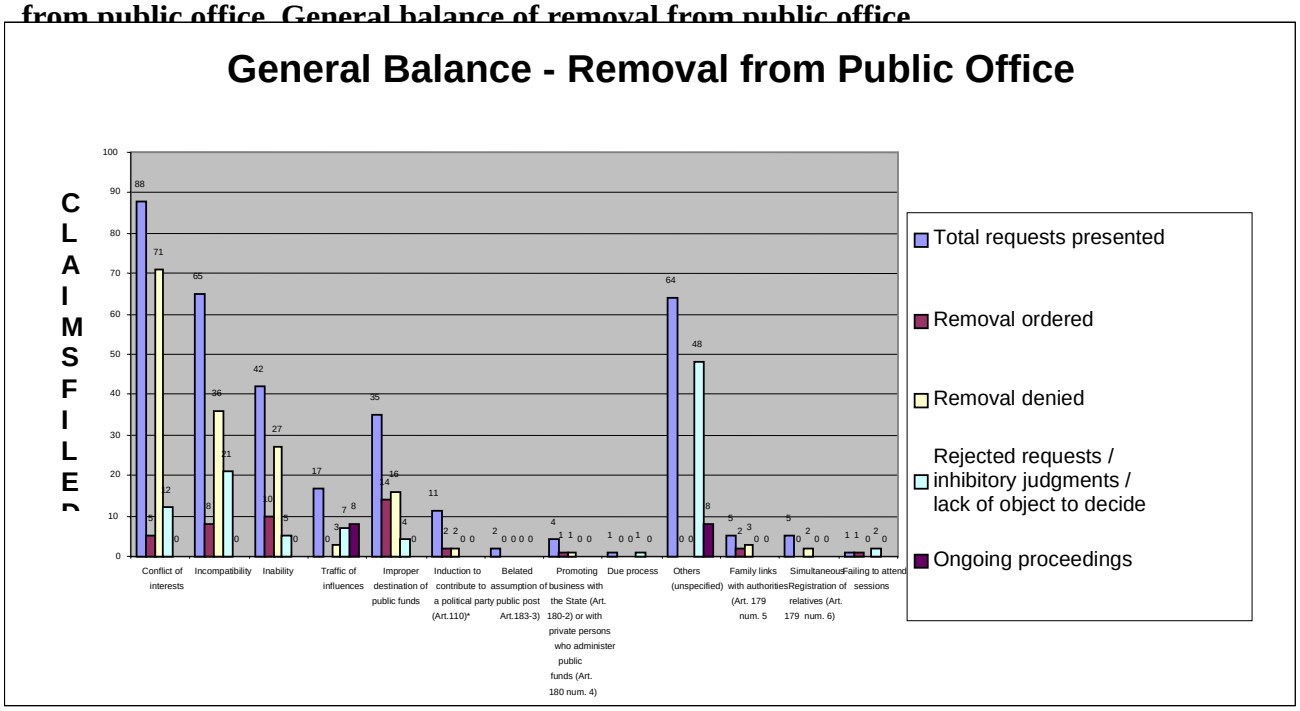
Removal from public office causes severe effects. In the case of Congresspersons, the following takes place. First, that Congressperson may not continue holding the post during the period for which he/she was elected. The next member of the list to which he/she belonged assumes the seat in Congress. Second, the former member of Congress who has been retired from public office may never be Congressperson again, on account of an explicit constitutional prohibition (Article 179-4). Third, the Congressperson retired from public office may never become President or Vicepresident of the Republic, also by virtue of a constitutional prohibition (Articles 197 and 204).

In addition to these constitutional effects, the Law has further developed the Constitutional provisions in order to produce similar effects in regards to other popularly elected posts. Therefore, those who are removed from public office may not become governors, deputies, mayors nor counselors (Law 617 of 2000, Articles 30, 33, 37 and 40, respectively) (See Figure 19.1).

However, persons removed from public office may be designated for other important public posts. This has happened during the current government, because President Alvaro Uribe designated a former Congressman who had been removed from his post and was known for his efficiency as Director of the Presidency of the Republic's National

Solidarity Network (*Red de Solidaridad Nacional*) – the office in charge of the issue of massive internal displacement of persons.

Figure 19.1. Requests presented, according to the different grounds for removal from public office. General balance of removal from public office



The *tutela* control exercised by the Constitutional Court

A few Congresspersons who have been removed from their posts have resorted to filing *acción de tutela* claims against the corresponding judgments, in order to request *tutela* judges to invalidate the respective decision by the Council of State, generally arguing that this tribunal disregarded their due process because of failures in the contentious procedure, as well as substantial rights, mainly their political rights, given that removal from public office makes those affected unfit to be elected, and their right to choose a profession or craft, because it prevents them from being active in politics. However, the Constitutional Court has been reluctant to annul the Council of State's decisions in the four cases that it has had to decide.

In the first *tutela* judgment on this matter, the Court confirmed the removal of Senator Ricaurte Losada Valderrama from public office, and noted that the plaintiff had an alternative channel different from the acción de tutela to claim the violation of his due process, given that judgments that decide on the removal from public office may be attacked by way of an extraordinary revision request filed before the same Council of State[13]. After resorting unsuccessfully to this channel, the Senator filed a new *acción de tutela* against the revision judgment, which is pending resolution by the Constitutional Court.

[13] Constitutional Court, decision T-193 of 1995, Carlos Gaviria Díaz, J.

On the second occasion, Congressman Félix Salcedo Baldión made recourse to the *tutela* action claiming that the extraordinary revision channel was ineffective, because the Law had not yet defined the judge who had jurisdiction to decide upon it. The Court expressly modified its prior doctrine on the matter –before the developments that followed its 1995 decision[14]-, and accepted that *tutela* actions could formally proceed; however, deciding on the merits, it concluded that the Council of State had been respectful of due process, and of the other fundamental rights invoked by the Congressman who had been removed from public office[15].

In the third case, removed Senator Edgar Perea also resorted, unsuccessfully, to the *tutela* mechanism. Given that the Legislator had already filled in the legal gap in relation to the judge with jurisdiction to decide on the extraordinary revision requests, and that the Council of State was deciding on those claims, the Court decided –in a "doctrine unification judgment" adopted by the Plenary Chamber- that the *tutela* was not procedurally admissible[16].

In the fourth case, Congressman César Pérez García, who had been removed from public office, resorted to *tutela* because the Council of State, for a number of different reasons, had refused to study the extraordinary revision petition that this Congressman had filed several times. The court granted the *tutela*, because the plaintiff was being denied access to justice, and ordered the Council of State to study the revision petition he had presented[17]. This is the only case in which the *tutela* has been successful. It is noteworthy

---

[14] The Constitutional Court summarized these developments as follows: "This Court, in decision C-247/95 (José Gregorio Hernández Galindo, J.), declared itself without jurisdiction to determine which is the judge in charge of deciding on the extraordinary revision requests, insofar as this may only be defined by the Legislature. On the other hand, the bill for Statutory Law on the Administration of Justice assigned the Penal Cassation Chamber of the Supreme Court of Justice jurisdiction over the aforementioned revision. However, the Court, in decision C-037/96 (Vladimiro Naranjo Mesa, J.) declared this provision unconstitutional. It rightly considered, on the one hand, that according to articles 184 and 237-5 of the Political Charter, decisions on removal from public office are the exclusive jurisdiction of the Council of State, which means that no other judge may revise the judgments adopted in this regard by such tribunal. Likewise, admitting said possibility would entail a violation of the principle of judges' independence (articles 113 and 228 of the Constitution). On the other hand, the Court considered that the regulation of procedural channels is a matter that appertains to ordinary, and not statutory legislation."

[15] Constitutional Court, decision T-162 of 1998, Eduardo Cifuentes Muñoz, J.

[16] Constitutional Court, decision SU-858 of 2001, Rodrigo Escobar Gil, J. (dissenting opinion by Justices Jaime Araujo Rentería and Alfredo Beltrán Sierra. Impediment declared by Justice Manuel José Cepeda Espinosa and accepted by the Court).

[17] Constitutional Court, decision T-1013 of 2003, Alfredo Beltrán Sierra, J. The order issued by the Court was as follows: "To order the Council of State, Contentious Administrative Chamber, that for the reasons exposed in the segment on considerations, to give the corresponding legal course to the extraordinary revision request presented by the plaintiff on December Tenth (10), nineteen ninety eight (1998), which wa admitted by decision of January Nineteenth (19), nineteen ninety nine (1999). For this purpose, the procedures shall continue with the claim provided by the plaintiff, or with the copies that exist in the Council of State. For the purposes of complying with this judgment, on account of the reasons exposed above, the decisions adopted by the Contentious Administrative Chamber of the Council of State on August

that the Constitutional Court did not invalidate the judgment that ordered the removal of this Congressman from public office, but ordered the Council of State to abstain from refusing to give course to the extraordinary revision request.

In addition to these cases, in which the Constitutional Court has exercised control over the Council of State, it is important to highlight that some Congresspersons have resorted to the Interamerican System for the protection of Human Rights, in order to claim that the judgments which have ordered their removal from public office are in violation of their human rights. Among the arguments they have presented, two stand out in addition to those that argue violations of due process given the specificities of each case. The first one states that political rights may only be restricted by way of a criminal judgment, which would preclude removal from public office from entailing the so-called "political death". The second one holds that the effects of removal from public office are disproportionate, because the political prohibition ("*inhability*") that is derived from its application is permanent and general, regardless of the seriousness of the Congressperson's conduct, which leads to a situation in which belated assumption of public office is treated in an equal manner as the improper destination of public resources. Until the present, these claims have not been found to be justified.

An evaluation of removal from public office: implications and lessons left by the Colombian experience.

It is convenient to attempt an evaluation of the performance of this legal institution, on the grounds of a number of tables and figures which present an overall panorama of its functioning. In addition, the implications of this figure's application will be pointed out, as well as the lessons derived from the Colombian experience.

Evaluation

How frequently has it been used, and which have been the results?

From the review of the Council of State's case-law it may be inferred that removal from public office began functioning even before it was legally regulated, and shortly after the entry into force of the 1991 Constitution, given that the first judgment is dated on December 11, 1991. During the two following years, 16 new judgments were adopted, but it was only until 1994 when the use of this figure increased in a significant manner, with the approval of Law 144 of 1994, which regulates its procedure. Just that year, the Council of State issued 44 judgments.

Hence removal from public office has been requested very frequently. During the twelve years that this figure has been in force, it has been requested on 347 occasions, which

---

the Third (3) nineteen ninety nine (1999) and September Twenty Eight (28) nineteen ninety nine are hereby devoid of any effect".

represents an average of 29 times a year. Some variations are naturally observed, especially in years during which political scandals have surfaced, as happened in 2000, when amid the discussion on the repeal of the mandate of Congress by way of referendum, 100 requests for removal from public office on account of conflicts of interests were presented, that is, 28% of all claims. The same happened during the "8.000 Process", because of the introduction into a legislative bill of an article called the "drug-trick" (*narcomico*), on account of which some Congresspersons were removed from their posts. Consequently, it is evident that the main political scandals related to matters in which Congress has intervened, have been reflected in requests for removal from public office (See Table 19.3).

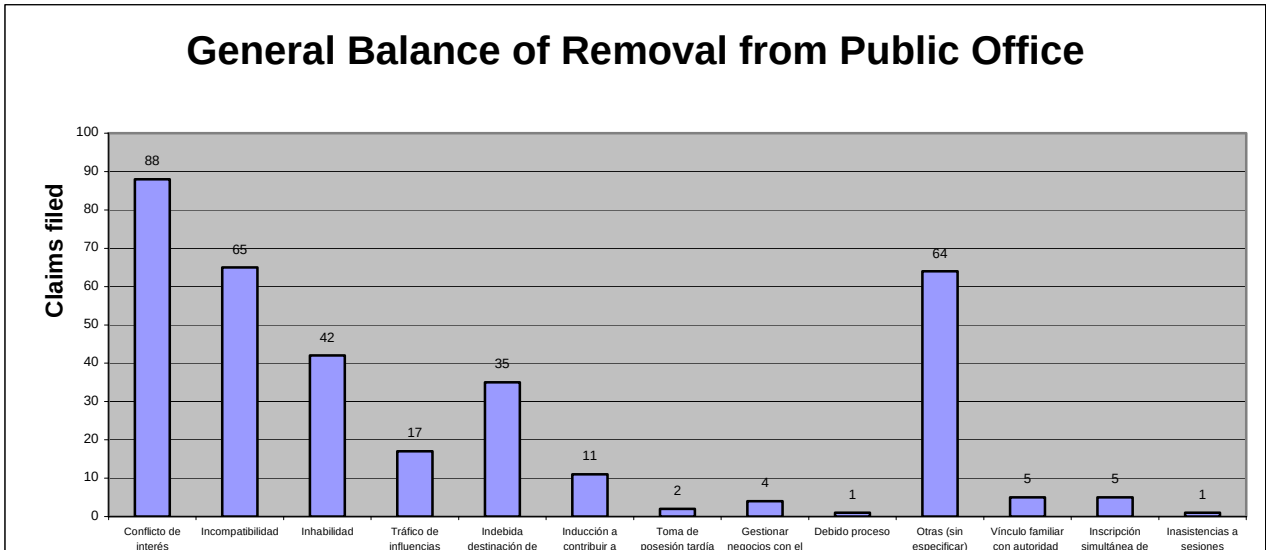
The most often invoked grounds for removal, and their results

The Council of State has removed 42 Congresspersons from public office on diverse grounds, which means that 12% of them left their seats in Congress and are affected by a perpetual prohibition ("inability") to hold popular election posts.

Conflict of interests has been the grounds most often invoked by plaintiffs. Indeed, until the year 2003, 88 petitions had been filed, out of which five were decided in an unfavorable manner for the Congressperson, which represents 5,6%. Other grounds, such as the violation of an "incompatibility", have been invoked on 65 occasions and granted in 8, that is to say 12% of the cases, whereas the violation of "inabilities" has been invoked on 42 opportunities, and accepted in 10, that is 23%. But it is unquestionable that the grounds which have most frequently led to removal from public office in relation to the number of claims, are those of improper destination of public resources – it has been ordered on 14 occasions out of the 35 times it has been requested, which corresponds to 40% (Figure 19.2.).

Conflicts of interest have been invoked as grounds for removal from public office on many occasions, because the notion is broad, it extends to conflicts of a moral nature, and it is not limited to pecuniary interests. This explains the fact that four removals from public office have been ordered for conflicts of interests of a moral sort, and only one for conflicts of economic interests (see Table 19.4).

Figure 19.2. General balance of removal from public office.



CATEGORIAS DEL EJE HORIZONTAL
Conflict of interests // Prohibitions ("inhabilities") // Improper destination of public resources // Belated assumption of public office (Art. 183-3), // Due process // Family link to an authority (Article 179-5) // Failure to attend sessions

Table 19.3 Use of removal from public office by years (1991-October 2003).

YEARS	Number of claims filed	Event that triggered an increase
1991	**1**	
1992	**2**	
1993	**14**	
1994	**44**	**Ley 144 de 1994**
1995	**14**	
1996	**23**	**"Drug-trick" (*narcomico*)***
1997	**11**	
1998	**14**	
1999	**21**	
2000	**100**	**Repeal of mandate**
2001	**56**	
2002	**42**	
2003	**26**	
TOTAL	**347**	

** – "Narcomico" means the unexpected introduction into a legislative bill of a provision that favored Congresspersons who were in any way being processed, or could be processed, on account of having links with illegal drug cartels.*

Several requests for removal from public office have been denied on account of the lack of evidence, given that the case-law requires proof of 1) the existence of a direct and private benefit, and 2) the fact that the Congressperson acted with knowledge of the conflict.

Those who were removed from public office incurred in conducts that were manifestly contrary to the rules of the game in force, but in some cases related to "incompatibilities", the Council of State displayed a certain severity, which led the affected parties to resort to *acción de tutela* in order for the Constitutional Court to invalidate the sanction. In contrast, on the subject of conflicts of interests, the Council's doctrine -in the sense that conflicts are not configured when legislative bills regulate in an impersonal, general and abstract manner an issue in which a Congressperson could have some interest- is so indefinite that it could be applied as an excuse in any case, given that all laws are by definition impersonal, general and abstract.

Cases of conflicts of interests have arisen in the context of the discussion of legislative bills, constitutional amendments and budgetary or planning provisions, as well as during the elections of public officers such as the Public Ombudsman (*Defensor del Pueblo*), but not during the course of debates in the exercise of the political control function.

Against whom has it been directed?

It has been directed against Senators and Representatives from all political currents and from the diverse regions of the country, because there are no immunities before this figure. Such has been the case of prestigious Congresspersons such as María Isabel Rueda (one request), Antonio Navarro Wolff (one request), Germán Vargas (one request) and Ingrid Betancourt (four requests). One of the Congresspersons who has been the most frequent target of these requests is Fabio Valencia Cossio, on six opportunities. Other recurrent targets of these petitions have been Juan Fernando Cristo, Alberto Santofimio or Carlos Espinosa (on four occasions). Some Congresspersons were initially sued in an unsuccessful manner, as was the case of César Pérez García, but because of a later request on account of the same grounds, he was removed from public office.

Those who have been removed from public office have been new territorial political leaders, as well as traditional politicians with great political weight. In fact, even though some of them were considered to be untouchable, the figure of Removal from Public Office managed to prevent Congresspersons who incurred in any of the conducts sanctioned by the Constitution and the law from maintaining their seat in Congress, sometimes shielded behind their immunity and others behind the possibility of being elected, even though they were serving a criminal penalty in prison. This took place before the adoption of the 1991 Constitution.

Observation of the number of Congresspersons who have been removed from public office in each Chamber reveals that they were 27 Representatives among a 163-member Chamber, and 15 Senators out of a 102-member Senate (see Tables 19.5 and 19.6).

Table No. 4 Conflicts of Interests – Main judgments
(1991- October 2003)

No.	DATE	REF.	Respondent	INTEREST	DECISION	Voting	Plaintiff

	(d/m/y)						
1	01/12/93	AC-632	Álvaro Araujo Noguera	Economic (family society)	Removal from public office, but not on these grounds[18]	2 Dissenting opinions, 4 Concurring opinions	Citizen
2	20/01/94	AC-796	César Pérez García	Economic (subsidy)	Removal from public office	DO 1 CO 4	Citizen
3	24/03/94	AC-1276	José Blackburn Cortés	Economic (tax)	No	DO 1	Citizen
4	26/07/94	AC-1499.	Fuad Char Abdalá	Moral (approval of an Act)	No	CO 4	Citizen
5	4/08/94	AC-1433	Gabriel Acosta Bendek	Economic (private employment)	No	CO 1	Citizen
6	23/08/94	AC-1675.	Vivianne Morales	Moral (approval of a religious Act)	No	CO 1	Citizen
7	13/03/96	AC-3. 299	Ramón Elías Náder	Moral (criminal)	No	DO 6 CO 4	Citizen
8	03/05/96	AC-3302	Armando Holguín Sarria	Moral (criminal)	No	DO 5 CO 4 Abs. 2	Citizen
9	03/ 19/96	AC-3300	Gustavo Espinosa Jaramillo	Moral (criminal)	Removal from public office	DO 7 Abs. 1	Citizen
10	16/04/96	AC-3304	Alberto Santofimio Botero	Moral (criminal)	No	DO 9 CO 7 Abs. 1	Citizen
11	16/04/96	AC-3301	José Guerra de la Espriella	Moral (criminal)	No	CO 1	Citizen
12	14/05/96	AC-3300	Francisco José Jattin	Moral (criminal)	Removal from public office	DO 7	Citizen
13	07/05/96	AC-3451	Carlos Augusto Celis Gutiérrez	Moral (criminal)	No	DO 9 CO 7 Abs. 1	Citizen
14	27/705/96	AC-3453	Tiberio Villarreal	Moral (criminal)	No	CO 9	Citizen
15	04/06/96	AC-3549	Álvaro Benedetti Vargas	Moral (criminal)	No	CO 3 Abs. 4	Citizen
16	10/03/98	AC-5371	Rafael Humberto Alfonso Acosta	Moral (criminal)	Removal from public office	DO 5 CO 1	Citizen
17	07/07/98	AC-5878	Oscar Celio	Moral (criminal)	Removal from	DO 4	Citizen

[18] Removal from publico office was ordered on account of a violation of the prohibitions (incompatibilities) regime, even though the plaintiff invoked the grounds of conflicts of interests, but the Council of State concluded that it had not been configured.

			Jiménez Tamayo		public office		
18	06/10/98	AC-6289	Pedro Vicente López Nieto	Moral (disciplinary)	No	CO 3	Citizen
19	04/05/99	AC-7085	Luis Emilio Valencia Díaz	Political (designations)	No	DO 1 CO 5	Citizen
20	04/05/99	AC-7087	Carlina Rodríguez Rodríguez	Political (designations)	No	DO 1 CO 5	Citizen
21	27/04/99	AC-7084	Juan José Chaux Mosquera	Political (designations)	No	DO 2 CO 4	Citizen
22	01/06/99	AC-7083	Rodrigo Rivera Salazar	Political (designations)	No	CO 2	Citizen
23	29/06/99	AC-7090	Jorge Humberto Mantilla Serrano	Political (designations)	No	CO 2	Citizen
24	17/10/00	AC-11116	Gustavo Ramos Arjona	Political (repela)	No	CO 2	Citizen
25	26/02/01	AC-12262	Jorge Julián Silva Meche	Political (investments in his department)	No	-	Citizen
26	10/02/01	11001-03-15-000-2001-0132-01 (PI)	Julio Manzur Abdalá	Economic (subsidy)	No	-	Citizen
27	20/11/01	11001-03-15-000-2001-0130-01 (PI)	Lorenzo Rivera Hernández	Económic (impact of acts by electric generation company)	No	CO 1	Citizen
28	27/08/02	11001-03-15-000-2002-0446-01 (PI-043)	Juan Fernando Cristo Bustos	Económic (contracts and regulation - campaign sponsor)	No	CO 2	Citizen

Tabla No. 5 List of Senators who have been removed from public office according to the grounds invoked (in chronological order)

No.	SENATOR	GROUNDS	DATE
1	Samuel Alberto Escrucería Manzi	Inability (Art.179-1)	Sept. 8, 1992
2	José Ramón Navarro Mojica	Incompatibility (Art.183-1)	Oct.5, 1993

3	Alvaro Araújo Noguera	Incompatibility (Art.180-1 y 2)	Dec. 1, 1993
4	Regina Betancur de Liska	Inducing contributions to political movements or parties (Art. 110)	Aug. 17, 1994
5	Ricaurte Losada Valderrama	Incompatibility (Art.180-1)	Sept. 7, 1994
6	Gustavo Espinosa Jaramillo	Conflict of interests (Art.183-1)	March 19, 1996
7	José Francisco Jattín Safer	Conflict of interests (Art.183-1)	May 14, 1996
8	Henry Cubiles Olarte	Incompatibilities (Art. 180-2)	Nov. 13, 1997
9	Carlos A. Oviedo	Incompatibilities (Art.183-1)	July 13, 1999
10	Humberto Pava Camelo	Inability (Art.179-5)	Feb. 1, 2000
11	Edgar Perea	Incompatibility (Art. 180)	July 18, 2000
12	Gentil Escobar Rodríguez	Inability Art. 179-2 y 3)	June 26, 2001
13	Luis Alfonso Hoyos Aristizábal	Incompatibility (Art.180-2)	July 11, 2001
14	José Antonio Gómez Hermida	Criminal conviction (Art.179-1)	Sept.4, 2001
15	Jaime Vargas	Improper destination of public funds (Art. 183-4)	May, 2003

Tabla No. 6 List of representatives who have been removed from public office, according to the grounds invoked (chronological order)

No.	REPRESENTATIVE	GROUNDS	DATE
1	Juan Fernando Góngora Arciniegas	Inability (Art 179-1)	Oct.7, 1993
2	Leovigildo Gutiérrez	Incompatibility (Art 180-1 and 2)	Dec. 1, 1993
3	César Pérez García	Conflict of interests (Art 183-1)	Jan. 20, 1994
4	Emiro Raúl Pérez Ariza	Inability (Art.179-1)	June 3, 1994
5	Félix Salcedo Baldión	Incompatibility (Art.180-2)	Aug.26, 1994
6	Alfonso Uribe Badillo	Improper destination of public funds (Art.183-4)	Oct. 19, 1994
7	Rafael Humberto Alfonso	Conflict of interests (Art.183-1)	Jan. 19, 1998
8	Oscar Celio Jiménez Tamayo	Conflict of interests (Art.183-1)	July 7, 1998
9	Armando Pomárico	Improper destination of public	June 20, 2000

		funds (Art.183-4)	
10	Octavio Carmona	Improper destination of public funds (Art.183-4)	May 30, 2000
11	Luis Norberto Guerra	Improper destination of public funds (Art.183-4)	May 23, 2000
12	Darío Saravia Gómez	Improper destination of public funds (Art.183-4)	Aug. 8, 2000
13	Emilio Martínez Rosales	Improper destination of public funds (Art.183-4)	Oct. 3, 2000
14	Miguel Angel Flórez	Improper destination of public funds (Art.183-4)	Nov. 28, 2000
15	Juan Ignacio Castrillón	Improper destination of public funds (Art.183-4)	Feb.5, 2001
16	Luis Javier Castaño Ochoa	Inability (Art. 183-1 and Art.296 of Law 5/92)	June 5, 2001
17	Mario Rincón Pérez	Improper destination of public funds (Art.183-4)	July 17, 2001
18	Fabio Martínez	Improper destination of public funds (Art. 183-4)	July 5, 2002
19	Luis Alfonso Hoyos	Inability (183-1)	July 11, 2001
20	Franklin Segundo García Rodríguez	Improper destination of public funds (Art.183-4)	Nov. 22, 2001
21	Ancízar Carrillo	Inability (Art.179-2)	Aug. 28, 2001
22	Lorenzo Rivera Hernández	Improper destination of public funds (Art.183-4	Jan. 28, 2002
23	Jaime Lozada Perdomo	Inability (Art.179-2)	March 19, 2002
24	Carlos Alberto Martín Salinas	Inability (Art.179 y 181)	March 5, 2002
25	Francisco Canossa Guerrero	Inability (Art.183)	May 14, 2002
27	Miguel Angel Santos Galvis	Inability (Art179.)	May 21, 2002

Who has made use of it?

In the overwhelming majority of cases, plaintiffs have been citizens. They have filed 319 claims, that is to say 90% of the requests for removal from public office. The activism of four citizens stands out, because they are responsible for 72% of the requests. They have been a decisive factor in the application of this figure.

On the contrary, controlling bodies have applied the figure on 20 occasions, which amount to 5% of the cases. Senate itself has only invoked it on three occasions, and the Chamber just once. The General Solicitor's Office (*Procuraduría General de la Nación*), which has been the most active among all institutions, has only done it in 13 cases (see Table 19.7).

Implications of removal from public office

Several indicators have been applied in order to identify the implications of removal from public office. Taken as a whole, they signal that the institution has borne a significant impact in the sense of preventing the continuation of certain corrupt practices, and ensuring that in extreme cases Congresspersons lose their seats, even though this has not been enough to completely depurate politics, nor to improve the image of Congress or the Parties. These are indicators of a different order.

Table 19.7. Who act as plaintiffs in procedures for removal from public office

Institutional indicators

	PLAINTIFF	Number of claims filed
CITIZENS	One claim per plaintiff	130
	Luis Andrés Penagos Villegas	53
	Pablo Bustos Sánchez	37
	Emilio Sánchez Alsina	19
	Two claims per plaintiff	17 (2)
	Carlos José Castro Fresneda	14
	Myriam y Pablo Bustos Sánchez	8
	Humberto Rodríguez Escobar	6
	Jaime Rodríguez C.	5
	Flavio Restrepo Gómez	5
	Jaime Rafael Pedraza	3
	Rafael Narváez García	2
	Rubiel Orlando Espinosa Triana	3
SUBTOTAL		319
INSTITUTIONS	General Solicitor's Office (*Procuraduría*)	13
	Senate of the Republic	3
	Penal Decision Chamber of the Supreme Court of Justice	1
	Cordoba Department Network of Citizen Overseers (*Red de Veedurías Ciudadanas*)	1
	Chamber of Representatives	1
	Pasto Municipal *Personero*	1
SUBTOTAL		20
	Plaintiff unidentified in the Council of State information	8
SUBTOTAL		8
TOTAL		347

At the level of case-law, there are three indicators that do not cease to be illustrative on account of being evident. First, removal from public office has not remained in the paper, it has worked in practice and as a result of it, 42 Congresspersons have been removed from their posts. Second, all of the legal grounds for removal from public office have been invoked and applied by the Council of State, which indicates that the institution has been operating in its integrity. Third, up to date no judgment by the Council of State has been invalidated or revoked, even though 10% of them have been questioned, unsuccessfully. This indicates that the Council of State has not incurred in excesses.

At the legislative level, several phenomena may be observed, which prove that Congresspersons have tried to reduce the rigor with which this figure has been applied. And they have also sought to extend it to other members of public corporations. Both

phenomena indicate that far from being innocuous, removal from public office is perceived as effective and, therefore, as fearsome by Congresspersons themselves.

Removal from public office has been extended to the members of other public corporations. It has gradually gotten to cover Departmental Assemblies Deputies, Municipal and District Council members, and even the members of local administrative boards, as was indicated in the segment of this investigation related to the figure's legislative development.

As to the attempts at reducing the rigor of this figure in regards to Congresspersons themselves, the ones that purport to hamper its development, limit the presentation of removal from public office requests, weaken the Council of State, increase the majorities to decide on removal from the post and limiting the grounds that may be invoked, are outstanding. All these attempts have been enshrined in laws issued by Congress itself, but they have failed on account of having been declared unconstitutional by the Constitutional Court.

After the adoption of the Constitution in 1991, a number of requests for removal from Congresspersons from public office were filed before Congress had regulated the contentious procedure to be followed by the Council of State in these cases. However, this did not prevent the figure from initiating its performance. The Council decided upon more than 15 requests, according to the general contentious-administrative procedure. This led to several removals from public office, but also to the formulation of unsuccessful legal attacks against some of them, on account of having been adopted before the necessary legislative regulations. These were issued by Congress in 1994 by way of Law 144, which established the special procedure applicable to removal from public office.

In the laws that regulate this figure, Congress introduced several obstacles purported to reduce its effectiveness. These were struck down by the Constitutional Court on the grounds of their unconstitutionality. Firstly, in Law 5 of 1992 –Organic Law of Congress-, in order to limit the initiation of removal from public office proceedings, it was stated that the directive boards of the Chambers could not refer any situations in which the grounds for such removal had been configured to the Council of State, without prior approval of the remission by the corresponding Chamber in full. The Constitutional Court considered that this provision restricted access to a procedure that the Constituent had opened up to any citizen, without imposing any further requirements[19].

Secondly, Congress tried to undermine the authority of the Council of State as the ultimate judge for removal from public office. For this purpose, it created an extraordinary special revision channel against judgments that decided on such removal, and gave jurisdiction to the Supreme Court of Justice, and not to the Council, for deciding upon such requests. The Constitutional Court considered that since the Constitution itself had established the competent judge for this type of proceedings, the Legislature could

[19] Constitutional Court, decision C-319 of 1994, Hernando Herrera Vergara, J.

not add a new judge, qualified as the latter may be. According to the Court, the Council has exclusive jurisdiction[20].

In third place, Congress tried to modify the majorities required to decide upon the removal from public office. First it increased the number of Counselors, by establishing that the members of the Consultative Chamber of the Council of State integrated, together with the members of the Contentious Chamber of the same Council, the competent judge to decide on requests for removal from public office. The Constitutional Court decided that Council of State counselors who only perform consultative functions for the Government cannot carry out adjudication tasks, and therefore, the Justices of the Consultative Chamber could not be added to those of the Contentious Chamber[21]. Later, in the Statutory Law on the Administration of Justice, members of Congress included a paragraph that increased the voting majority to two thirds of the members of the Contentious Chamber. Given that this law was submitted to prior and automatic judicial review by the Constitutional Court, said tribunal struck down this qualified majority provision because of its unconstitutionality, given that it violated the democratic principle even before it entered into force[22].

Fourthly, Congress has tried to restrict the grounds of requests for removal from public office exclusively to Article 183 of the Constitution. With this Congress not only sought to emphasize the restrictive character of these grounds, but also to exclude other grounds which are established in other articles of the Constitution itself, such as Article 110, which refers to certain modalities of electoral campaign finance. The Constitutional Court has accepted that the grounds for this mechanism are only the ones stated in the Constitution, but it also held that these are not restricted to the ones established in Article 183[23].

---

[20] Constitutional Court, decision C-037 of 1996, Vladimiro Naranjo, J. The Court warned: "Therefore, the Court shall declare the unconstitutionality of the third and fourth paragraphs of the article under review (Article 16 of the project of Statutory Law on the Administration of Justice), given that, as it has been pointed out, the decision to entrust the Penal Chamber of the Supreme Court of Justice jurisdiction over the requests for revision of judgments by the Contentious-Administrative Chamber that order the removal of a Congressperson from public office, violates articles 113, 158, 183, 184, 228 and 237-5 of the Charter. It is worthwhile to note that this declaration of unconstitutionality is not tantamount to an exclusion from the legal system of those provisions or expressions of the article at hand that were also enshrined in article 17 of Law 144 of 1994, and were declared constitutional by this tribunal, because naturally, being contained in such regulation, they maintain their force and their legally binding character".

[21] Constitutional Court, decision C-319 of 1994, Hernando Herrera Vergara, J.

[22] Constitutional Court, decision C-037 of 1996, Vladimiro Naranjo, J. The Court stated: "As to the first situation, it must be stated that the High Statute enshrines, as a general principle that must inspire the Legislature's regulating activities, a mandate by which the decisions of public corporations shall be adopted by simple majority, except for the special cases restrictively provided for in the Constitution. But, should the foregoing not be sufficient, the Court considers that the decision to establish a special quorum requirement violates the autonomy of the Council of State to determine the manner, the procedure and the necessary requisites to adopt, within its chambers, the decisions that correspond to its jurisdiction. It is necessary, therefore, to declare the unconstitutionality of the expression 'two thirds of', included in the provision under review".

[23] Id.

In regards to these grounds, Congress also tried to subordinate some of the ones established in Article 183 to the existence of a prior criminal conviction, thus creating a legal situation ("*pre-judicialidad*") that would preclude the presentation of requests for the removal of Congresspersons from public office grounded on the improper destination of public resources or traffic of influences, insofar as no penal judgment imposing a penalty existed. Congress included a paragraph in the Organic law of Congress with this precise purpose. The Constitutional Court struck it down invoking the argument by which criminal "*pre-judicialidad*" was a disproportionate restriction of the Council of State's exclusive jurisdiction, and of citizens' access to justice[24].

From this summary of the attempts made by Congress to restrict the functioning of the figure at hand, it may be inferred that the latter is perceived as an effective (dangerous?) tool by Congresspersons themselves, to such a point that they have tried to place obstacles which would make its application very difficult. The routes which have been chosen to try and restrict the efficacy of this figure have been varied, ranging from the Organic Law of Congress to the Statutory Law on the Administration of Justice, including the law that regulated the figure itself. This has been done without propitiating public debate. These have been processes which have been ignored by the public opinion.

On the face of the decisions by the Constitutional Court, Congress decided to amend the Constitution itself, with the aim of introducing some of the obstacles that the Court had stopped. Availing itself of the referendum project presented by the President of the Republic Alvaro Uribe on August 7, 2002, Congress added an article that broadened the grounds for removal from public office to a set of procedural principles and authorizations aimed at giving constitutional foundations to future legislation that could restrict the application of the figure. For example, in the so-called "Point 7" of the referendum: a) the establishment of qualified majorities for deciding on the removal from public office was authorized; b) it was stated that there would be the possibility of filing an appeal against the decisions by the Council of State; c) that the effects of removal from public office would not always be tantamount to a perpetual "inability" to hold public posts, but could be of lesser scope, in order to respect the principle of proportionality, among others[25].

---

[24] Constitutional Court, decision C-319 of 1994, Hernando Herrera Vergara, J. Justice Eduardo Cifuentes Muñoz expressed a dissenting opinion in the sense that the presumption of innocence made it reasonable to create this type of requirement for such situations. In this same verdict, other provisions of the Regulations of Congress were struck down on account of violating the principle of Uniformity of Subject-Matters of Legislation –*unidad de materia*-.

[25] Text of Question 7 of the Referendum, on removal from public office. Article 183 is amended in numbers 2 and 3, and added numbers 6 and 7, as well as the paragraphs, of the following text: Article 183. Congresspersons, deputies, municipal counselors and any other members of popularly eleted corporations shall be removed from public office: 2. For failing to assist, without a justified cause, during the same ordinary sessions period, to six (6) plenary meetings, or meetings of the respective commission, which have been summoned to vote legislative act projects, legislative bills, projects for ordinances, agreements, censorship motions or the election of public officers, as were the case. 3. For failing to assume possession of public post within the eight (8) days that follow the date of installation of the corresponding corporation, or the date in which they were called to assume post. 6. For violations of the regime of electoral campaign finance, for purchase of votes, or for participating in "electoral migration". 7. For procuring or accepting

It is interesting to observe that a referendum aimed a creating tools "against cheap politics (*politiquería*) and corruption" ended up including some obstacles to one of the most efficient mechanisms to counter these phenomena. It is noteworthy that in the constitutional reform advanced by Congress itself in parallel to the discussion of the referendum, new grounds for removal from public office were included, in particular a very important one that consists in violating the upper limits set for campaign expenses and contributions, as well as the other provisions on campaign finance, but not the aforementioned obstacles.

The results of the voting of such referendum were very suggestive, and even more, surprising. The contradictory message included in point 7 –a broadening of the grounds for removal from public office, but also obstacles for its application- led this provision to receive at the same time the highest percentage of affirmative votes (94,72%) and the highest number (956,250) and percentage of blank votes (14,4%), which is the equivalent, within the political context of this voting, to a vote aimed at preventing this question of the referendum from reaching the participation threshold required for its validity, should it obtain a majority approval. It also obtained a large amount of negative votes –the second highest voting for NO-. The verdict of citizens led the original design of the 1991 Constitution to remain unaltered. Point 7 received the second lowest voting (22,6% of the total participation), a result which indicates that the people preferred not to run the risk of changing an institution which has worked quite well. This reinforces what I will state later on about the support given by public opinion to the removal of Congresspersons from public office.

Should it be necessary, another indicator of the impact of removal from public office over Congresspersons is their behavior in regards to impediments. It has become frequent for members of Congress to declare that they are impeded from participating, every time that there exists a risk of configuring a conflict of interests, with the purpose of shielding themselves from an eventual request for their removal from public office. The commissions that study the impediment declarations usually conclude that such impediments do not exist, which protects the corresponding Congressperson, given that the Council of State has not imposed any removals on the grounds of having taken part in the discussion of a bill after the Congressperson's declaration of a private interest has been rejected as an impediment.

---

donations with public resources, whatever their form of approval or execution. Paragraph 2. The law shall regulate the grounds for removal of the members of public corporations from public office, in order to secure the principles of proportionality, legality, due process and culpability. Likewise, the law shall establish the procedure to be observed and shall set a qualified majority to impose the sanction and its modulation, in accordance to the principle of proportionality. This provision shall have no retroactive effects. The President of the Republic is hereby empowered to adopt, within the term of 90 days, counted from the moment of entry into force of this constitutional reform, by way of a decree with legislative rank, the provisions contained in the present article. Paragraph 3. Any public officer who offers bureaucratic quotas or benefits to a Congressperson, deputy or counselor, in exchange for the approval of a legislative act project, a legislative bill, ordinance or agreement projects, shall be punished for incurring in major mishbehavious with destitution from his or her job."

Under certain circumstances, the opponents of a given legislative bill warn their colleagues that if they vote it, they could incur in grounds for a conflict of interests, which proves that Congresspersons understand that this tool fulfils a dissuasive function. But the designation of a commission to study the eventual conflicts dissipates all fears, for the above mentioned reason.

Hence Congresspersons have accommodated their behavior to the Council of State's case-law, availing themselves of the variations, exceptions or gaps that the latter has identified. Perhaps the most protruding example of this political accommodation is posed by the lack of application of the "Interests Registration Book". As it has been noted, the Council of State has affirmed that the omission in registering a private interest in said book is not, in itself, a misbehavior that justifies the imposition of removal from public office. Thereby, it is not only difficult for citizens to have access to this book –which is public-, but in addition not all Congresspersons intend to have the reality of their situations reflected in its pages.

Indicators of a political nature

To these indicators of an institutional type, other indicators of a political nature are added, which also prove that the institution of removal from public office is perceived as an effective tool to cleanse parliamentary practices.

In fact, it is especially significant that the broadening of the grounds for removal of public office has been included in the two referendum projects against corruption which have been presented to Congress up to present. In other words, whenever thought has been given to sanctions which have dissuasive and effective force in order to give importance to a new prohibition, it has always been attempted to turn such prohibition into a new additional cause for removing Congresspersons from public office. Thus, in the referendum project presented by the Government of President Pastrana to Congress at the beginning of 2000, which was later retaken by a group of citizens who sought to obtain the support of 10% of the electoral census -required to ensure the summoning of the referendum even against the opposition of Congress-, it was proposed to broaden the grounds for removal from public office so as to include the cases of those who violated the campaign finance and publicity regimes, negotiated votes or serviced their campaign contributors, among others[26]. Given that the President withdrew his support to this

[26] Article 6 – Strengthening of Removal from Public Office. Members of public corporations shall be removed from public office for failing to attend six plenary or commission meetings during the same period of sessions; for violation of the regimes for the finance and publicity of electoral campaigns; for negotiating with votes; for participating in electoral migration practices; for unduly intervening in the management, direction or use of budget resources; for procuring the designation of public officers or the selection of contractors, and for failing to declare their conflicts of interests while participating in the discussion or approval of legislative bills that benefit their campaigns' contributors. This does not affect the grounds established in Article 183 of the Political Constitution, which shall also be applied to the members of departmental assemblies and municipal and district councils. Governors, municipal and district mayors shall also be removed from public office for violation of the prohibitions regime; for improper destination

confrontational initiative, because it included the repeal of the mandate of Congress; and since the National Electoral Council later refused to admit the count of the signatures in support of the citizen committee that promoted a popular initiative referendum as signatures in support of the text of the articles itself, the project was ultimately not submitted to popular vote. In contrast, the second referendum proposed in 2002 by President Alvaro Uribe was submitted to popular decision on October 25, 2003, after a long process of negotiation with Congress and after the review of the procedure by the Constitutional Court. Point 7 of this referendum proposal broadened the grounds for removal from public office, including the violation of the campaign finance regime, the purchase of votes, the transfer of electors, among others. But at the same time, it included the procedural obstacles I have mentioned before. The results of the voting, as I pointed out, were a definitive manifestation of popular support both to the figure and to its original design, established in the 1991 Constitution.

In addition, the polls indicated in both referenda that the proposal to broaden removal from public office is highly popular. For example, in the last survey carried out before October 26, 2003, it was the second most popular topic, with a 97% support among those interviewed. In such a way that Colombians, in general, see in the institution of removal from public office an appropriate tool to fight against corruption.

Nonetheless, the functioning of removal from public office has not been sufficient to improve the image of Congress, which may not be taken as an indicator of inefficiency, but as an evidence of just how deep the credibility of representative institutions in Colombia has fallen. Furthermore, one should not discard the possibility that each piece of news related to a judgment removing a Congressperson from public office reinforces the opinion's perception that there is corruption in Congress. The poll that is summarized in the Table on the favorableness of institutions indicates that even though the positive image of Congress has slightly improved, rising from 25% in 2000 to 39% in 2003, it still remains as the institution with the lowest favorable perception by public opinion (see Figure 19.3). The climate of optimism generated by President Uribe and the efforts made by Congress to work more in tune with citizen expectations, have translated into an increase of nearly 14% in favorable opinion, an important but by all means insufficient achievement.

The results of the referendum's voting also offer instructive indications in this regard. The referendum point that sought to reduce the size of Congress –both of the Senate and of the Chamber of Representatives- was the one that received the lowest voting among all, which proves that, in spite of its negative image, Congress is considered as a necessary democratic institution by the very same Colombians who disapprove certain parliamentary practices. Another interpretation could suggest that the traditional political majorities were successful in promoting the rejection of this proposal by way of abstention.

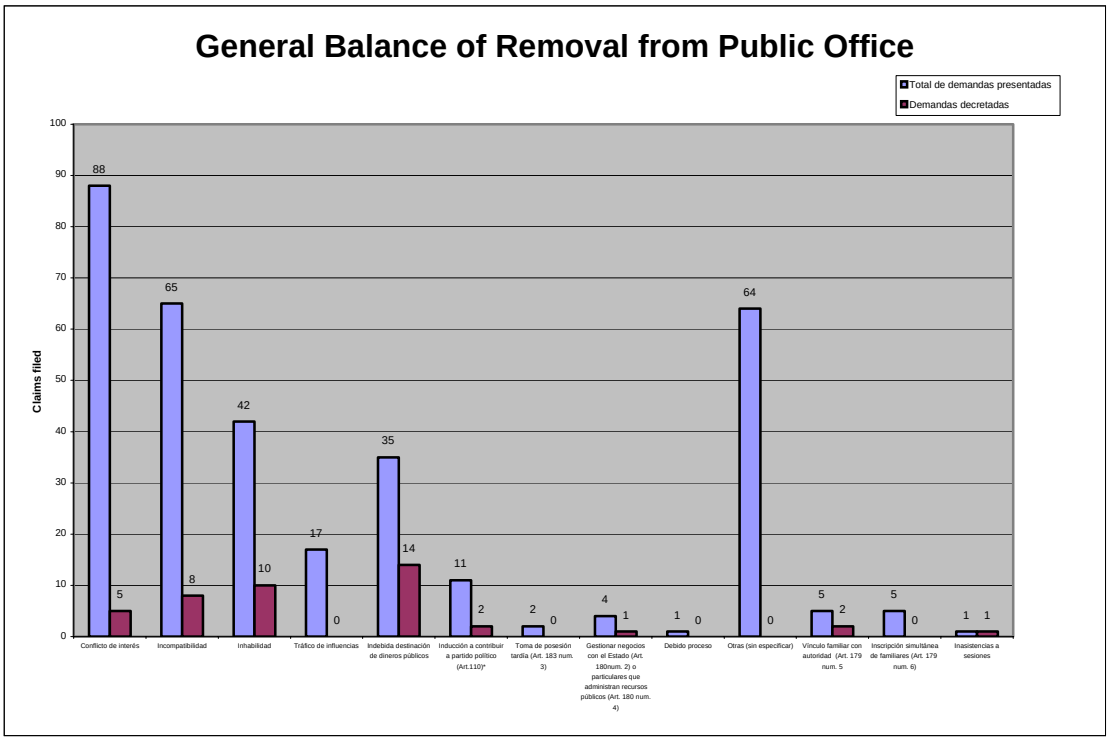
---

of public resources; for violation of the electoral campaign finance and publicity regimes; for negotiating votes and participating in electoral migration practices. The Council of State shall be competent to decide upon the procedures for the removal of Governors and Mayors from public office.

Conclusions

On the grounds of the preceding analysis, it is possible to draw some lessons about the figure of removal from public office as a tool in the fight against corruption. These may be grouped into three categories: success factors, failure factors and sustainability conditions.

Figure 19.3: General balance of removal from public office



Success factors

The main factors that explain the fact that in Colombia 42 Congresspersons have been removed from public office, are the following:

In the first place, the factors related to the *figure's design* stand out:

- The body with jurisdiction to impose removal from public office is a judicial corporation which is independent from Congress and bears the highest status within the corresponding segment of the Judiciary, which for the Colombian case is the Contentious-Administrative Jurisdiction.
- Requests for removal from public office may be filed by the public, that is to say, by any citizen, who does not have to prove an interest in the decision nor

demonstrate that he/she is among those who have felt deceived for having elected or supported the relevant Congressperson.

- Congress has no mechanism to delay or prevent citizens from requesting the removal of one of its members from public office, in such a way that it is impossible for the *esprit de corps* to operate in order to protect a Congressperson.
- The procedure for imposing removal from public office is eminently judicial, which confers legitimacy to it in matters of high significance and large political implications.
- The definition of the grounds for removal from public office is based on objective facts, in such a way that it is not necessary to prove bad faith, fault or imprudence, which enormously alleviates the burden of proof that falls upon the plaintiff, and allows the evidentiary stage and the judge's argumentation to be less stringent and more simple.
- The term given to the judge to adopt a final decision on the request must be brief, in order for the institution to be repeatedly perceived as effective in a moment that is close in time to the scandal that motivated the request for removal from public office. Thus the figure is differentiated from ordinary judicial procedures, which are traditionally slow and vexatious.
- The regulation of the figure must be controlled by an independent judicial body, such as the Constitutional Court, in order to prevent Congress itself from introducing hindrances or obstacles to the functioning of removal from public office.
- The functioning of this figure must not be linked in its application or evolution to the pressures of public opinion or of civil society sectors, which does not mean that the latter may not contribute to its efficient operation. Its institutional design must make it practically self-sufficient, and make its setting in motion depend on the initiative of but one single citizen.

As to the factors of a political nature, the following are outstanding:

- The existence of a handful of activists who are willing to run the risks of presenting requests for the removal of influential Congresspersons from public office.
- A sustained opinion tendency in favor of the fight against corruption and political transformation.
- Support by the communications media, through news coverage of the initiation of processes for the removal from public office, and the corresponding public hearings, as well as the final decision.
- The timely presentation of requests for the removal from public office, amid the political scandal that gives rise to them.

Failure factors

The factors which have led to failures in imposing removal from public office in extreme cases, or to exposing this figure to the risk of losing its effectiveness, are the following:

In regards to the factors of an institutional type, it is necessary to highlight the following:

- The power of Congresspersons to regulate removal from public office, albeit unavoidable in a democracy, allows them to try and diminish its effectiveness through the establishment of procedural rules of the game purported to hinder its operation.
- The doctrines applied throughout the relevant case-law may create excuses and gaps which can prevent the imposition of removal from public office in extreme cases, even though the grounds have been defined in an objective manner.
- The extension of the principles of disciplinary law, or what is even more counterproductive, of criminal law to the realm of removal from public office, tends to distort this figure of citizen control over Congresspersons in cases of lack of compliance with objectively defined minimum duties.

In regards to the factors of a political nature, it is worthwhile to underscore:

- The lack of public and periodical balances of the performance of this institution, which indicate its achievements and its flaws.
- The indifference of the communications media towards institutional reforms that restrict removal from public office.
- The accommodation of Congresspersons to the new rules of the game, not in order to transform their political and parliamentary practices with the aim of purifying them and making them more transparent, but in order to reduce the risks of being removed from their posts on account of maintaining them. This is clearly the case in matters of conflicts of interests, with the creation of commissions that study the impediments formulated by Congresspersons and conclude that there is no conflict at all.

Sustainability factors

Removal from public office has existed for 12 years in Colombia. This is very little time for an institution. No substantial reforms that distort it have been materialized, even though it has affected 42 Congresspersons, many of them quite powerful, and some of them considered untouchable. All of this is significant and valuable. The most relevant sustainability factors for this figure have been the following:

- The constitutional enshrinement of the essential features of removal from public office, in such a way that it may be applied without the need for further legislative developments. This preserves it from junctural reactions against it, and has prevented its scope from depending on the main victims of its effective application: Congresspersons.
- The existence of controls over attempts to distort the figure. This role was entrusted to the Constitutional Court, which has verified whether the laws adopted

by Congress respect the profile and the spirit of the constitutional configuration of removal from public office.

- The existence of a political current that believes in the benefits of the institution and defends it, even if this force or movement is not majoritarian.
- The efficient functioning of the Council of State, which reaffirms its necessary character, its importance and legitimacy.