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## THE IMPLEMENTATION OF THE ACCUSATORY SYSTEM WITHIN THE PANAMANIAN PENAL LEGISLATION

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*The following considerations are focus under a juridical-criminal optical and with the conviction of our credence's founded in the respect of the fundamental rights and procedural guaranties. In relation to the subject in reference, only we can qualify it as a historical act and without precedents within the Panamanian Penal Legislation.*

It is right to confess, that the inquisitive actual system which commanded in our penal legislation by many years, collapsed exorable and for this reason, it was imminent a system change. The central objective of the reformation process in Latin America has been the introduction of oral process, in replacement of written process. The paradigm of this change has been constituted by the instauration of the oral judgment. This system is to the altitude of the new procedural current of guarantied court.

I have to be honest, and I recognize that with the application of the accusatory system for oneself, will not resolved the important problems of the criminality increment, which fragment and puts in danger the already fragile security of the Panamanian society.

However, the before mentioned, united to the multiplicity of negative factors which contributed to aggravate the problem, such as poverty, lots of prisoners in the jails, the judicial delay, the impunity, the budget limitation to the judicial system and, also, at the jails, the squalid support to the police bodies, the organized crime, the traffic of drugs, a judicial system debilitated and obsolete, the rampant corruption which attempt against the foundations of a society in agony and others, that is why is necessary to front the problem with a more integral job and a firm state determination.

The actual reform of the penal system was the result of the State Agreement by the Justice

which finished its recommendations in the year of 2005, where by the Executive Decree No. 541; of November 17<sup>th</sup>, 2005 it was created the Codified Commission responsible of the elaboration of the Penal Code and penal procedural projects.

In the year of 2008, it was accepted the proposal of a work-groups integrated by the Judicial Organ, the Public Ministry, the Legislative Assembly, the Executive and some associations of the civil society which they have worked the proposition of improvement of the justice in Panama.

Thus, they impelled a reform to the actual Penal System and to do the transition to the accusatory system; this way was created Law No.63, of August 28<sup>th</sup>, 2008 modified later by Law No.48 of September 1<sup>st</sup>, 2009; it restructured the implementation plan of the new accusatory system; this plan will rule beginning September 2<sup>nd</sup>, 2011 at the Judicial Second District, with the same progressive judgment until it gets its implementation in the whole national territory starting September 2<sup>nd</sup>, 2014.

The oral trial rules in the accusatory system. This is the system of criminal persecution in which the functions of investigation, accusation and resolution of an illicit act are separated, securing the impartiality, independence, equality and legality of the State punitive performance.

We realized an exegesis of the pillar rules of the



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accusatory system, and we found Article 5 of the before mentioned law, which emphasizes in the separation of the functions of investigation, and they will be separated of the jurisdictional function. For this reason, with the new system an agent of the Public Ministry is not authorized to take decisions as a judge does and vice versa.

The before mentioned system comes to procure an equilibrium in the fundamental guarantees in order to the protection of the victims' rights and their murderers. That means that all the jurisdictional functions should be under the responsibility of a tribunal and the Public Ministry will persecute the faults.

In our opinion, the Warranty Judge, is the most important and innovator figure of the new system, he is responsible to attend and to discuss the audiences related to take decisions about problems which affects the fundamental guarantees, and where is going to be discuss about the viability of the accusation which is directed to a person; he performs and resolves unipersonally the matters submitted to his knowledge.

When the intervention of a Warranty Judge is required, whereas it is needed to respect rights, to control a measure or to solicit authorization, the interested part should provoke the audience in which the problem is investigated and resolved.

The opponents of the accusatory system sustain this system, in societies as ours, promotes the gangs and it increases the criminality, under the premise that the new procedure establishes as a rule that the penal judicial gear should be moved specially by the victim. Whereas, it results incoherent to maintain the idea that we have a guarantor penal system, when there is an elevated percentage of prisoners without sentence in countries as for example: El Salvador, Honduras, Bolivia, Paraguay, Guatemala and Costa Rica.

I do not agree with these arguments because, in the national plane the increase of the

criminality and the elevated percentage of prisoners without sentence, are truly problems of the past in a judicial system obsolete and governments without determination or they do not want to resolve the problematical.

The main problem which fronts the actual judicial system consists in the squalid budget assignments of the State. The history repeats, as when by many years I was in diverse charges as a judicial servant.

With approbation has been received the notice, of the United States' economic assistance for countries of the region with their struggle against the crime, whereto they will receive an assistance of 130 millions of dollars by the year of 2011. The initiative of regional security for Central America will be focus in avoid the juvenile delinquency and the reinforcement of the judicial and prison system.

In conclusion, I agree that any system added to our penal legislation if it does not have implicit the permanent compromise of economic assistance by the governments on duty, this will be destined irremediably to the failure.

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