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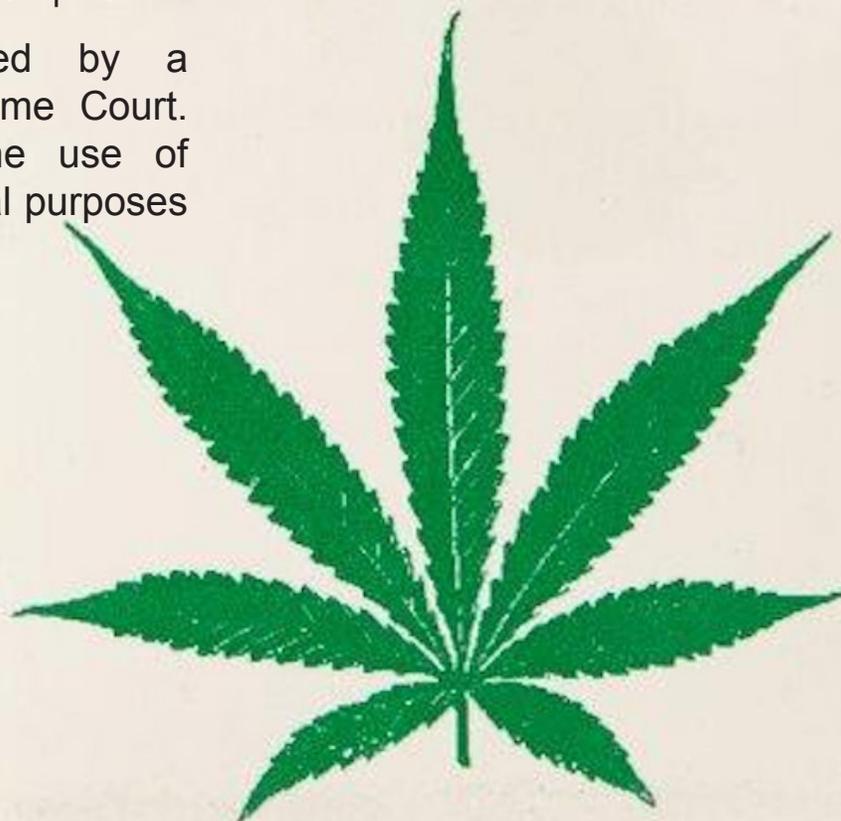
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Jurisprudence generated by a resolution of the Supreme Court. Has been legalized the use of marijuana for recreational purposes in Mexico?

by Misael Arellano.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

Jurisprudence generated by a resolution of the Supreme Court. Has been legalized the use of marijuana for recreational purposes in Mexico?

by Misael Arellano.

On October 31, 2018, the Supreme Court resolved the “*unconstitutionality of the full prohibition for recreational consumption of marijuana*” becoming such resolution a jurisprudence (concept which is explained below); but what does it means and what is the scope? This edition will make a brief overview of the legal frame work about the restriction on the consumption of marijuana for recreational purposes, the jurisprudence generation process, the Amparo trial against the law, and how this resolution will impact to the legislation about the consumption of marijuana in Mexico.

Article 235 of the General Law of Health states that the sowing, cultivation, harvest, elaboration, preparation, conditioning, acquisition, possession, trade, transportation in any form, medical prescription, supply, employment, use, consumption and, in general, any act related to narcotics (considering that the cannabis and the psychotropic “THC” are considered as narcotics by the General Law of Health¹) or any product which contain it; is subject to what is stated in: i) the General Law of Health; ii) international treaties; iii) regulations issued by the Counsel of General Public Health “*Consejo de Salubridad General*”; iv) other general rules and laws with regards to the same matter; and v) the rules issued by other offices of the Federal Executive; however, the same article also states the restriction for recreational purposes, in its last paragraph, as follows:

“...
Actions referred in this article can be conducted exclusively for scientific and medical purposes; and will require the authorization of the Secretariat of Health.”

In Mexico, as a civil law country, one of the most relevant sources of the law is the jurisprudence. The Constitution² and the Amparo Law³ states that resolutions, known as thesis, issued by the Supreme Court, generate jurisprudence when these be in accordance to five resolutions uninterrupted by one in contrary, and that such resolutions has been approved by at least 8 Ministers, in case of jurisprudence in full, or by four Ministers in case of jurisprudence from the Courtrooms. The law also states that those resolutions that resolve the contradictions of theses also generate jurisprudence.

In that sense, at the Supreme Court’s session dated on October 31, 2018 two Amparos en Revisión 547/2018⁴ y 548/2018⁵ were approved stating the unconstitutionality of the absolute prohibition for the consumption of marijuana for recreational purposes stated in articles 235 last paragraph, 237, 245 section I, 247 last paragraph and 283 of the General Law of Health. This criterion was approved for the first time on November 5, 2015 through the *Amparo en Revisión 237/2014*⁶; and then was confirmed by the *Amparos en Revisión 1115/2017*⁷ and *623/2017*⁸. In that sense and based on the reiteration of five resolutions with the same criteria by the Supreme Court about the same matter, the Jurisprudence was generated making such criteria as mandatory to any court or tribunal in Mexico.

This Jurisprudence states the unconstitutionality of five articles of the General Law of Health⁹, against the fundamental right of FREE DEVELOPMENT OF THE PERSONALITY stated in articles 1, 22 and 26 of the Universal Declaration of Humans Rights and which is not expressly stated in the Constitution, but it is considered included within its first article.

1.- Article 234 of the General Law of Health.

2.- Article 94, paragraph VII; and article 107 section XIII of the Constitution.

3.- Articles 192 and 197-A of the Amparo Law.

4.- https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-10/AR-547-2018-181002.pdf

5.- https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-10/AR-548-2018-181018.pdf

6.- https://www.sitios.scjn.gob.mx/encuentro_universitario/assets/ar-237-2014-marihuana.pdf

7.- https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-03/AR-1115-17-180316.pdf

8.- https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-04/AR-623-2017-180430.pdf

9.- Articles 235, last paragraph; 237; 245, section I; 247, last paragraph; and 248.

The Supreme Court's criteria with regards to the unconstitutionality of referred articles of the General Law of Health can be summarized as follows:

Articles 235, last paragraph; 237; 245, section I; 247, last paragraph; and 248 were determined as unconstitutional in the normative portions which states the prohibition to obtain an authorization from the Secretariat of Health to conduct activities related to the self-consumption for recreational purposes of the cannabis and the psychotropic "THC", which its combination is called "marijuana". Within the activities referred in such articles are the sowing, cultivation, harvest, preparation, possession and transportation of marijuana; as well the right to legally buy the seed as the first link of the self-consumption chain sought by the complainants.

"This Jurisprudence states the unconstitutionality of five articles of the General Law of Health , against the fundamental right of FREE DEVELOPMENT OF THE PERSONALITY stated in articles 1, 22 and 26 of the Universal Declaration of Humans Rights and which is not expressly stated in the Constitution, but it is considered included within its first article"

The above resolution was issued considering the following relevant considerations:

- a) Such prohibition as a disproportionate measure and that such right constitutes the necessary basis so that the chain of self-consumption of marijuana for recreational purposes protected by the free development of the personality of the complainants can be completed; and
- b) Such declaration of unconstitutionality does not imply the authorization to conduct acts of commerce, supply or any other with regards to the alienation and/or distribution of the marijuana; with the understanding that no request for such acts was made and that the exercise of the right to the free development of personality should not harm third parties. In that sense, this right cannot be exercised in front of minors, or in public places where third parties have not given their express authorization.

In consequence to this jurisprudence, a bill for the legalization of the cannabis for recreational purposes was filed before the congress on November 8, 2018. The scope of the new law will include personal, commercial and scientific purposes through the establishment of the Mexican Institute for the Regulation and Control of the Cannabis.

"Such declaration of unconstitutionality does not imply the authorization to conduct acts of commerce, supply or any other with regards to the alienation and/or distribution of the marijuana; with the understanding that no request for such acts was made and that the exercise of the right to the free development of personality should not harm third parties."

Nevertheless, it is important to clarify that this jurisprudence grants the right to obtain the authorization for the use of cannabis for recreational purposes exclusively to the claimants, which were denied based on the current legislation. Any other person pursuing authorization to use cannabis for recreational purposes, prior to the development and entry into force of the proposed legalization bill must, in the meantime, follow the same process which these claimants underwent through the five Amparos on which this jurisprudence was based.

Investors wary of Mexico's new president's plans for oil.

The newly-minted United States-Mexico-Canada Agreement (USMCA), has helped to soothe trade tensions between the longtime strategic allies and eased investor concerns about the Mexican economy. Even though it has raised the prospect of investment picking up again in Mexico, foreign investors remain wary of the incoming president's proposed policies and will be closely watching his plans for the country's oil sector. <https://www.cnn.com/2018/10/05/investors-wary-of-mexicos-new-presidents-plans-for-oil.html> 05/10/2018.

U.S. Treasury triples potential credit line to Mexico.

The United States can extend a longer line of credit to Mexico if the country faces a currency crisis, according to the terms of a new agreement entered between the two countries. The agreement comes as emerging market currencies globally face pressure from a rising U.S. dollar as the Federal Reserve lifts interest rates. Mexico can negotiate for up to \$9 billion under a currency "swap line" with the U.S. Treasury Department, up from \$3 billion under a deal last updated in 1994. <https://www.reuters.com/article/us-trade-nafta-mexico-credit/u-s-treasury-triples-potential-credit-line-to-mexico-idUSKCN1MR2XF> 17/10/2018.

Migrant Caravan Puts Mexico Back in U.S. Cross Hairs.

An estimated 6,000 migrants have entered Mexico in recent days, part of a new, and much larger, caravan of migrants fleeing the grinding poverty and violence of El Salvador, Guatemala and, for most of them, Honduras. In anticipation of their arrival at the United States border, President Trump has pressured Honduras, Guatemala, El Salvador and Mexico to halt their passage. But while Mexico has long bent to the migration mandates of the United States, the sheer number of those fleeing this time around has presented new complications. <https://www.nytimes.com/2018/10/22/world/americas/immigrant-caravan-mexico-usa.html> 22/10/2018.

President-elect Lopez Obrador slams Mexico's Pemex for crude import plan.

The President-elect has criticized state-run Pemex's plan to import U.S. light crude from refiner Phillips 66, calling it a sign of the country's failed economic policies. Pemex is set to begin crude imports in November, for the first time in over a decade. It needs them to feed Mexico's main refinery, which is working below capacity due to a lack of light oil. <https://www.reuters.com/article/us-mexico-oil-imports/president-elect-lopez-obrador-slams-mexicos-pemex-for-crude-import-plan-idUSKCN1MX2T8> 23/10/2018.

AMLO says he will fulfill promises with macroeconomic stability and no deficit.

President-elect López Obrador has pledged that his government will maintain macroeconomic stability and not put Mexico into debt while fulfilling its campaign commitments. The leftist political veteran, who will be sworn in as president on December 1, made the promises in a video message uploaded to social media in which he looked ahead to expenditure that will formally be announced in the 2019 federal budget. <https://mexiconewsdaily.com/news/amlo-promises-macroeconomic-stability-no-deficit/> 31/10/2018.

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