

TERRUM

Briefing, analysis, opinion and insight of legal affairs in Mexico
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in matters of Antitrust,
Telecommunications and
Broadcasting.

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

New Federal Courts specializing in matters of Antitrust, Telecommunications and Broadcasting.

by Juan Antonio Tiscareño.

The specialization of the courts has occurred over time all around the world. At the beginning of the creation of judicial systems, justice was administered by courts which decided every type of case: criminal affairs, family affairs, and commercial disputes, etcetera. The study of cases following a specific subject was created later. To the extent the society became more complex, states were forced to improve their judicial systems, in order to meet the demands of the people seeking justice. Mexico was not an exception.

Currently in our country, the federal courts are divided on 32 circuits¹, but not all of them have specialized courts. In different circuits², the same court studies cases related for example, to labor law or civil law. This situation is undesirable for various reasons that I will indicate later. Nowadays, the only justification for not having specialized courts could be the lack of budget or the absence of sufficient cases to create a specialized court to handle them. Fortunately Mexico has been progressing continuously on this matter, and the tendency in the future, is the specialization of all courts in Mexico.

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By means of the General Accord number 22/2013 of the Federal Judicature (*"Consejo de la Judicatura Federal"*) dated on August 9th, 2013, the creation of two new district courts was decreed, together with two new collegiate circuit courts, specializing in matters of antitrust, telecommunications and broadcasting. The establishment of these courts will provide a number of advantages that I will explain in the following paragraphs.

The Federal Judicature is the entity in charge of the administration, supervision, and discipline of the collegiate circuit courts, unitary circuit courts and district courts, with the purpose of ensuring their independence, objectivity and impartiality³. This entity has complete technical and legal independence in order to issue its resolutions. Also, the Mexican Constitution and the Organic Law of the Federal Government entitles the Federal Judicature to determine the number and territorial limits of the federal courts, along with their specialization.

1.- State courts are also specialized due to the matter subject to analysis, and the concrete designation of such courts relies on the government of each State. In this article I will only focus my analysis on federal courts.

2.- The circuits are referred to the different States of the country, but are related to federal courts, not to state courts.

3.- The Federal Judicature has its origin in the initiative to reform the Federal Constitution presented by the President to the Congress, on December 5, 1994. This reform was intended to further the consolidation of the federal judicial system, through the strengthening of its constitutional functions, as well as the autonomy of their bodies and independence of its judges, in order to increase the effectiveness of their duties. Having been discussed and approved by the Congress, the initiative of the President culminated its publication in the Official Federal Gazette on December 31, 1994. The Federal Judicature, in the terms set by constitutional amendment, was installed on February 2, 1995.

By virtue of the executive order published in the Official Federal Gazette on June 11th, 2013, several articles concerning telecommunications were amended. The transitional provisions of this executive order indicate that the Federal Judicature should establish collegiate circuit courts and district courts, specializing in matters of antitrust, telecommunications and broadcasting, and that this should be done within 60 calendar days from the date that the amendment entered into force. This period elapsed on August 10th, 2013.

"The speedy installation of the courts – taking into consideration the transformation of the former courts, along with the utilization of the personnel that was working in those courts – is an important virtue of the General Accord."

The seat of these specialized courts is Mexico City. The Commission for the Creation of New Government Bodies (*"Comisión de Creación de Nuevos Órganos"*), based on statistic studies, had determined that they should shut down other courts, in order to transform them into these new specialized courts. The speedy installation of the courts – taking into consideration the transformation of the former courts, along with the utilization of the personnel that was working in those courts – is an important virtue of the General Accord. The Federal Judicature will have the duty to provide specialized training programs to the judges, court clerks and public officers, in order to strengthen their professional and academic formation. It is important to note that although the courts are in Mexico City, they have jurisdiction over the whole of Mexico.

Advantages of the new courts

The creation of these new and specialized courts will bring a series of benefits. Here is a list of the more relevant advantages:

1.- Profound knowledge of the cases

The specialization of the judges helps them to perform a deeper analysis of the cases submitted to their attention. An insightful review of the problems is vital to design a correct, creative and complete solution to the case in front of the court.

2.- Better quality of rulings, and therefore, less probabilities of modification or revocation

Another important benefit of the specialization will be the issuance of better quality rulings. A ruling issued without a sufficient understanding of the case will be grounded in generalities and ambiguities that may not satisfy the needs of the parties, giving them no choice but to file a remedy with the purpose of obtaining a better decision. The creation of these courts will prevent that problem also.

3.- Lower resolution times

If the courts are specialized, they will have the capacity to resolve the controversies on a speedier basis. Clearly, a deficient knowledge of specific topics will result on an obstruction of the judicial work, therefore the specialization is not only convenient but necessary to prevent this dilemma.

4.- Greater satisfaction of citizens

The government must not establish conditions that restrict or prevent access to justice to the citizens. On the contrary, it has the obligation to find the path to better administration of justice. Article 17 of the Mexican Constitution prescribes that every person has the right to receive justice by courts that will be expedited to impart it, in the terms established by law, promptly, thoroughly and impartially. The guarantee of the correct administration of justice is expressed in three fundamental rights: the right to access to the courts, the right to a fair and reasonable process, and the right to execution of the decision of the court.

“The specialization of the judges helps them to perform a deeper analysis of the cases submitted to their attention.”

The right of access to justice is also acknowledged in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations in 1948, and the agreements that Mexico has signed and ratified, including the International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights of 1969.

We are confident that the incorporation of these new specialized courts into the Mexican legal system will help fortify the judicial machinery for the benefit of all people that have to go to trial.

President Peña Nieto Proposes Tax Overhaul.

Pressing ahead with plans to reshape Mexico's economy, President Enrique Peña Nieto proposed on Sunday a sweeping overhaul of his country's tax system, intended to collect billions of dollars to finance new social programs. In a speech from his residence, Peña Nieto described the broad outlines of his plan, which would eliminate many loopholes and exemptions that favor the richest Mexicans. He proposed new taxes on capital gains, carbon emissions and soft drinks, and increase income taxes for those making over 39,000 dollars a year. Still, he said, his proposal was "good news for Mexican families," because the revenue it would generate would pay for a new universal pension for all Mexicans over 65, a new unemployment insurance scheme and more spending for schools and infrastructure. *New York Times*. 08/09/2013

Mexico's Senate approves members of new telecoms regulator.

Mexico's Senate on Tuesday approved seven nominees to head a new telecommunications regulator created by a sweeping sector overhaul that seeks to boost competition and tame billionaire Carlos Slim. The regulator, known as Ifetel, will replace a weaker regulatory agency and have new powers to police a telecommunications market dominated by Slim's America Movil and Televisa. *Reuters*. 10/09/2013

Mexico: IFAI publishes security guidelines for public consultation.

The Mexican Data Protection Authority (IFAI) published - on 10 September 2013 - their draft Data Security Guidelines (the Guidelines) for public consultation. The Guidelines recommend companies adopt a Safety Management System of Personal Data (SGSPD), as well as internationally recognized standards issued by the International Organization for Standardization (ISO) and the Organization for Economic Co-operation and Development (OECD). The Guidelines outline the recommended process for the adoption of a SGSPD. *El Universal*. 12/09/2013.

Government will contribute to the salary of workers of VW.

Volkswagen Mexico and its union refused the decision to cut 1,252 workers after agreeing with the federal and the state governments that they will cover the payroll. Antonio Flores Trejo, General secretary of workers' representation, explained that through the National Employment Service, authorities will provide the equivalent of 20% of the cost to maintain this template over based not form October to December, but declined to give out the amount. *The Economist*. 17/09/2013.

Salamanca wants another setter.

Salamanca, Guanajuato.- "Mazda and Toyota have mayor factories, but the land still has favorable conditions to accommodate more setters". This in words of Mayor Justino Arriaga Rojas, who said he will not waste this opportunity and leave the arrival of a new automotive setter investment we have turned into industrial parks; it was no coincidence that Mazda has laid eyes on Salamanca. We are in the center of the state, with great connectivity and railways. It is expected that next year will have a breakthrough in the construction of Salamanca-León highway; it will connect with the Salamanca-Morelia highway and go to Lazaro Cardenas. Salamanca is well connected and that helps us in relation to other places, "he said. In days past, it was announced that fights a setter Guanajuato more, the sixth for the state. Negotiations with BMW and Hyundai are to consolidate the automotive cluster, although state officials have avoided specifying what progress we have. *The Economist* 17/09/2013

Ternium ask to change Green tax.

The "Green Tax" proposed in the initiative of Tax reform by the Federal government needs to be modified in favor of the ones who pollute less, stated the steelmaker Ternium this Wednesday, after admitting that the reform will affect them, in the event of approval. The "Green Tax" it is an assessment of five dollars for ton of emission of carbon dioxide emitted to the atmosphere. This in words of Maximo Vedoya executive president of the firm in Mexico, in the inauguration of the Industrial Center of Ternium in the state of Nuevo Leon, that represented and investment of 1,100 million of dollars. *CNN Expansion.* 18/09/2013

IDE (foreign direct investment because for his acronym in Spanish) accumulates 23,900 MDD in his first half: Secretary of Economy.

In the first half of the year, Mexico registered a Foreign Direct Investment (IDE) of over 23,900 million dollars, this in word of the Secretary of Economy Ildefonso Guajardo Villarreal. This was in his participation in the inauguration of Ternium the new steel complex of the town of Pescaderias, in the state of Nuevo Leon, in his words the Foreign Direct Investment increased 2.5 times that was reports in the same period of 2012. *The Economist.* 18/09/2013

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