

# TERRUM

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Accordance with Human Rights?

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

# New Jurisprudence on Usurious Interest Construed in Accordance with Human Rights.

by Antonio Vázquez.

In this COELUM we will discuss about a recent Jurisprudence issued by the Supreme Court of Mexico which ruled contradicting previous precedents in respect usurious interest in commercial credit agreements. We think this jurisprudence is specially relevant because it is an example of the new interpretation criterion of Mexico's Political Constitution and International Treaties in which Mexico is a party and which emphasizes the importance of human rights protection.<sup>1</sup>In respect to this matter, it is important to remember that since 2011, our Constitution's First Article states the following:

*First Article. In the United Mexican States everyone shall enjoy the human rights recognized in this Constitution and in international treaties to which Mexico is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended except in cases and under the provisions of this Constitution.*

*The rules on human rights shall be interpreted based on this Constitution and on the international treaties on the subject matter offering people the broadest protection.*

*All authorities, within their scope of powers, have the obligation to promote, respect, protect and guarantee human rights based on the principles of universality, interdependence, indivisibility and progressiveness. Consequently, the State must prevent, investigate, punish and repair human rights violations pursuant to the terms established by law.*

**(Emphasis added to highlight what matters)**

"The rules on human rights shall be interpreted based on this Constitution and on the international treaties on the subject matter offering people the broadest protection."

This reform (which of course was a much broader constitutional reform than simply the amendment of a single constitutional article) has caused a major shift in how Mexican judges interpret the Law and rule the cases subject to their jurisdiction. To illustrate this, we will discuss here an example of interpretation of human rights in commercial matters and which lead to jurisprudence related to usurious/predatory interest.

## BACKGROUND INFORMATION.

1. In October 2012, the Supreme Court issued jurisprudence<sup>2</sup> resolving on the matter of usurious interest on commercial matters and in which very important considerations were the basis of the ruling, as it will be listed below:
  - a) Interest should be considered as a penalty derived from the breach of an obligation. As they are freely set by the parties, some of the agreed rates of interest could have an usurious nature.

1.- Human rights are applicable to protect both entities and individuals.

2.- 1st Jurisprudence/J132/2012 "Usurious Interest in Commercial Matters. When should it be considered to exist and in what procedural stage should it be studied"

- b) The General Law of Negotiable Instruments and Credit Operations, (*Ley General de Títulos y Operaciones de Crédito*) does not provide a limit for the quantification of interests, nor does it refer to usury.
- c) The Inter-American Convention on Human Rights (the Convention), to which Mexico is a party prohibits “exploitation of man by man”<sup>3</sup> including usury, however, it does not point out how these malpractices should be banned, nor provides a definition of usury.
- d) In commercial matters, the concept of injury provides two alternatives in favor of the affected party: Annulment of the contract or equitable reduction in overpayments.
- e) The Commercial Code governs legal and conventional interest, without a limit on the freedom of contract as far as the amount of interest.
- f) The Supreme Court found that an interest is “usurious” when there is an imbalance in the interest agreed, which is a result of the exploitation of utmost ignorance, notorious inexperience or extreme poverty of one of the parties.<sup>4</sup> In accordance with this criteria, to consider that an agreed interest is an usurious one, not only the agreed interest should be excessive, but also some of the requirements listed should be present.
- g) The party affected by usurious interests has two legal actions to submit: Annulment of the contract or equitable reduction of interest.
- h) A Judge can not analyze ex officio if a certain interest rate is usurious, it must be brought forward by the affected party.

“The Inter-American Convention on Human Rights (the Convention), to which Mexico is a party prohibits “exploitation of man by man” including usury, however, it does not point out how these malpractices should be banned, nor provides a definition of usury.”

## CONFLICTING DECISIONS.

1. Between 2012 and 2013, some Circuit Courts issued contradictory rulings on the subject of interest in commercial matters, which we will explain briefly.
2. The Sixth Appellate Court of the First Circuit ruled under Direct Civil Amparo\* 144/2013 that when excessive interest is present, the Judge has the authority to reduce interest taking into account the special circumstances and equitably of the case.

3.- Article 21 Item 3 of the American Convention on Human Rights.

4.- These requirements are set out in Article 17 of the Federal Civil Code for the legal concept of Injury.

\* “Amparo” = A Constitutional proceeding unique to Mexican law that is a judicial protection against unconstitutional laws acts usually performed by the authorities. There is no adequate translation for this term into English.

3. The Seventh Collegiate Court of the First Circuit ruled under Direct Civil Amparo\* 369/2012 that when excessive interest is present, the affected party doesn't need to prove that any of the Injury requirements is met, since the Convention prohibits Usury (this decision was prior to the Jurisprudence mentioned in previous paragraphs).
4. The Thirty-First Circuit Appellate Court ruled under the Direct Civil Amparo\* 193/2012 that when interest is excessive, it is against the Convention and therefore the Judge can indeed reduce such interest but cannot absolve the debtor from paying interest, nor reduce interest to a statutory interest level.

## **NEW JURISPRUDENCE BY CONTRADICTION**

As you can see, there were some different criteria on the way of ruling those cases in which the Judge determines that the agreed interests are excessive and even usurious. The Supreme Court analyzed the contradiction of the criteria that was submitted and determined that there was indeed discrepancy among the rulings. It further revised the criteria supported by the above-mentioned Jurisprudence and reached the following conclusions:

1. The Supreme Court of Justice differs from the approach taken in Jurisprudence 1st/J 132/2012 and determines that based on the fact that the Convention sees Usury as a form of exploitation of man by man, this statutory provision should apply to every case where the interest freely agreed by the Parties leads to one of the parties benefiting exclusively and abusively from its counterparty.
2. The Court can examine ex officio whether the interest agreed by the Parties is usurious and it is not necessary to meet the requirements of the concept of injury for the Judge to determine the reduction of interest.

This new jurisprudence was published as Contradiction of Thesis 350/2013 and became effective on February 19, 2014.

As you can see, the Supreme Court emphasizes the protection of a human right contained in a Convention to which Mexico is a party and determines concretely how the Judge can protect this right in favor of the affected party.

## **New Record on Foreign Investment.**

The entry of foreign capital has reached record levels after registering 2.045 billion pesos as of November 6th, which is an estimated equivalent of 151,000 million dollars. The new record came despite the strong and volatile movements in emerging markets that did not predict sun growth in foreign investment the financial analyst state. The next step the Mexican government must take in order to continue with such growth is the demand of Treasury Bonds at lower rates and for a shorter amount of time. This, in addition to the attractive interest rates offered in the Mexican money market can boost the foreign investment to even superior records. *El Economista. 19/11/2014.*

## **Mexico to discuss canceled \$3.75 billion train contract with China.**

Mexico's transportation minister will meet with Chinese government officials on Monday to discuss the cancellation of a \$3.75 billion high-speed rail contract that was awarded to a Chinese-led consortium, Mexico said on Sunday. The deal for the project, which had earlier this month been granted to a group led by China Railway Construction the sole bidder, was abruptly revoked after opposition lawmakers claimed it was fixed. *Reuters. 23/11/2014.*

## **Mexican government is not closed to lower taxes.**

The government of President Enrique Peña Nieto "is not closed to lower taxes" if conditions permit would be subject to an evaluation from 2016, said Finance Minister Luis Videgaray. He discarded medicines and food be subject of higher taxes. He reiterated that the government set three axes in tax matters: no new taxes, no increase existing taxes and not reduce current tax benefits. *Milenio. 27/11/2014.*

## **The BMV performed the first operation in South America.**

Pedro Zorrilla, deputy director of the Mexican Stock Exchange, said the integration of Mexico to the Integrated Latin American Market (MILA) offers issuers the ability to have greater liquidity and operational. The Mexican Stock Exchange today performed the first operation in the context of their integration into MILA. The transaction was conducted by GBM Mexico, through GBM Chile. *Milenio. 29/11/2014.*

## **Treasury ministry finance Bancomext.**

The National Foreign Trade Bank (Bancomext) received from the Secretariat of Finance and Public Credit, the amount of capitalization per thousand 800 million pesos to strengthen the balance of your loan portfolio. These resources will be used to finance economic zones in the south of the country. *Milenio. 29/11/2014.*

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