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



Essential aspects of the Constitutional Reform to the Federal Judicial Power in Mexico

By Wendy Montiel

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With 319 votes in favor, 88 against, and 0 abstentions on December 14th, 2020, the Mexican Congress¹, approved in general terms the Constitutional Reform to the Federal Judicial Power², proposed by the president of Mexico Andrés Manuel López Obrador, and developed by the president of Mexico's Supreme Court of Justice, Arturo Zaldívar, and his work team. The reform has been listed as the most important for the Judicial Power since 1994, as it claims to strengthen the pre-existing institutions to fight corruption, improve the role of the Supreme Court of Justice of the Nation (SCJN) as the maximum tribunal guarantor of the human rights recognized in the Political Constitution of the United Mexican States, and in the International Treaties to which Mexico is a party, as well as reinforce the system of jurisprudence and precedents issued by the Federal Jurisdictional Courts.

“...all the judgments issued by the SCJN with majority of votes will become mandatory jurisprudence...”

To achieve these goals, several articles of the Political Constitution of the United Mexican States, and the Amparo³ Law will be modified; also two new laws will be enacted: The Organic Law of the Federal Judicial Power and The Law of the Federal Judicial Career. In order to briefly learn the different aspects that will have the biggest impact on constitutional judicial procedures and cases, here is a list of 10 essential points of such reform:

1.- Mandatory precedents system.

Nowadays, there are three mechanism for a ruling criteria issued by the SCJN become mandatory for all the judges: contradiction, substitution, and reiteration. In the case of the last one it is required that the criteria being reiterated on five occasions, with a majority of votes of the Supreme Court Ministers (Justices) in uninterrupted sequence. The reform intends that all the judgments issued by the SCJN with majority of votes shall become mandatory jurisprudence, without the necessity to constantly resolve in the same way or on a subsequent moment, allowing this Constitutional Court to hear a bigger number of matters of constitutional importance.

2.- New format of precedent.

To avoid judges mistakenly using precedents by descontextualizing their scope, now all the precedents will contain relevant facts of the case, the legal standard, and the arguments that justify the decision, so that the lawyers can have more certainty at the moment of their implementation.

3.- Designation of courts to resolve cases of serious human rights violations.

The Federal Judiciary Council may nominate one or more specific courts to hear cases related to serious human rights violations or that have a big social impact, as an exception to the rules of competence and random appointment.

Nonetheless the reform does not mention the criteria that will be used by the Federal Judicial Council to

1.- In Mexico, our Congress is a bicameral legislature: the lower chamber and the upper chamber. The first of them approved the “Constitutional Reform to the Federal Judicial Power” in December 14th, 2020, while the second approved it the past November 27th, 2020.

2.- Lower Chamber. Parliamentary Gazette, number 5672-II. Monday 14th December, 2020. Available in <http://gaceta.diputados.gob.mx/>

3.- The Amparo's Law regulates an exceptional type of trial that serves to request, by any person, the protection from the state of their human rights established in the Mexican Constitution and in the international treaties in which Mexico is part of.

appoint the courts; also the reasons that motivate this exception are not clear, making questionable the neutrality of the courts, or the capacity for them to resolve with legal equality.

4.- Subject of the constitutional controversy.

The subject of the constitutional controversies that the SCJN will hear, will be limited to cases involving alleged direct violations to the Constitution, the recognized human rights in our constitution and in the international treaties to which the United Mexican States is party, without analyzing any legality aspects.

5.- General Declaration of Unconstitutionality.

Currently, on the second occasion that a judgment of an Indirect Amparo Review Motion (again, equivalent to an appeal) ruling is issued on the unconstitutionality of a law, a general declaratory of unconstitutionality is issued (previous refusal of the authority that issued the law to remove or correct the part that has been categorized as unconstitutional). In the reform, it will be enough that on one occasion the unconstitutionality of a norm is ruled in an Indirect Amparo Review Motion for this to be declared unconstitutional (in case that the issuing authority refuses to surmount that unconstitutionality).

“The subject of the constitutional controversies that the SCJN will hear, will be limited to cases involving alleged direct violations to the Constitution and the recognized human rights...”

6.- Creation of Collegiate Courts of Appeal.

Currently, the Unitary Circuit Tribunals are integrated by one judge, however their denomination and integration will be modified by Collegiate Courts of Appeal that will be integrated by three judges, this “seeks to enhance the debate and the deliberative process as there are several opinions, leading to quality resolutions for the benefit of the optimum administration of justice, in other words, greater certainty is given on the courts decisions”.⁵

7.- Admission of the Direct Amparo’s Review Motion.

The admission requirements of a Direct Amparo’s Review Motion, (that it’s equivalent to an appeal) will be modified, granting more discretionary capacity of the SCJN to decide in which cases this motion should be admitted, when, according to the Magistrate’s consideration, an exceptional interest in constitutional or human rights matter exists. To guarantee this discretionary capacity the ruling that rejects the Direct Amparo Review Motion will be final and not subject to further challenge.

Nevertheless, the reform does not contemplate the parameters that the SCJN will use to consider that in a case exists an exceptional interest in constitutional matters, so beyond of establish a discretionary decision, it could be an arbitrary power.

8.- Intent to prevent corruption and nepotism acts.

In the new Organic Law of the Federal Judicial Power it will be considered as a cause of administrative responsibility

4.- *The Unitary Circuit Tribunals hear the appeals in federal trials, for example in commercial matters. Also, they judge the amparo’s trials from other Unitary Circuit Tribunals.*

5.- *Judicial Reform with and for the Judicial Power. Federal Judiciary Council. February 12th, 2020. Available in: https://www.cjf.gob.mx/resources/index/doc_ReformaJudicial.pdf*

for judges and officials of the Federal Judicial Power who, in the exercise of their attributions, intervene to ensure persons with whom they are related by blood, marriage, relationships, affection, or affinity up to fourth-degree, to be hired in any Federal Court.

Also, as part of the effort to fight corruption in the Judicial Power, the Law of the Judicial Career has been created, standing the specific mechanisms that all the applicants must follow to entry or be promoted in any Jurisdictional Court, avoiding nepotism or any illegal influence.

“...the constitutional reform, while it has already approved by the Federal Congress, in continuity with the national legislative process, still requires the approval by the local congress of at least 17 of the 31 states of the Republic and of Mexico City, afterwards, if it is approved, it will be sent to the Executive Power for its promulgation.”

9.- Legitimation of autonomous bodies to file constitutional controversies.

The possibility of local autonomous bodies being able to file constitutional controversies will be expressly added to the constitutional text, seeking to strengthen the function of those autonomous bodies as a counterweight in the constitutional balance.

10.- Improvement of the federal public defender’s office.

The federal public defender’s office will be expanded to family trials. Public defenders will be trained by the new Federal Judicial Training School, “by improving this service the attempt is to highlighting the work of lawyers as the primary agents in the operation of the system. If you have good lawyering or cases, as a result you will be on the verge of creating good judgments”⁶.

On the other hand, concerning to the constitutional reform, while it has already approved by the Federal Congress, in continuity with the national legislative process, still requires the approval by the local congress of at least 17 of the 31 states of the Republic and of Mexico City, afterwards, if it is approved, it will be sent to the Executive Power for its promulgation. As for the creation of the two new laws, the next step is their promulgation by the Federal Executive Power, through the publication in the official gazette.

Finally, it is important to point out that this reform, in the opinion of the author represents a great effort to improve the function of the Federal Judicial Power and the administration of justice. However, several issues have not yet been clarified regarding its implementation, and others are questionable from the beginning, so in addition to constituting a positive effort, it also represents a huge challenge for both: the Jurisdictional Courts and the users, to achieve a successful implementation that materializes the benefits it promises to offer.

6.- Garza Onofre, Juan Jesús; López Noriega, Saúl and Reyes Martín, Javier. What dose AMLO and Zaldívar’s judicial initiative propose?. February 13, 2020. NEXOS magazine. Available in: <https://eljuegodelacorte.nexos.com.mx/?p=11031>

Mexico signs deal with Pfizer for 34.4 million doses of COVID-19 vaccine.

Mexico has signed an agreement with Pfizer to acquire 34.4 million doses of its COVID-19 vaccine, as announced by the country's health ministry. Mexico expects to receive 250,000 doses in the month of December and will prioritize vaccinating health care workers. www.reuters.com/article/us-health-coronavirus-mexico/mexico-signs-deal-with-pfizer-for-34-4-million-doses-of-covid-19-vaccine-idUSKBN28C2VK 02/12/2020.

Law requiring central bank to buy up excess foreign cash triggers criticism.

The bill must still be passed by the lower house of Congress to become law. The ruling Morena party, which has a majority in both houses of Congress, says the objective of the legislation is to ensure that migrants can send remittances home in cash. It says that an accumulation of foreign cash in Mexico could disrupt foreign currency markets and spur black market trading in which migrants' family members get fewer pesos for the foreign currency – most commonly US dollars – they are exchanging. Morena's leader in the upper house, said that tourism workers in Mexico would also benefit from the law because banks would more readily accept foreign cash knowing that the Bank of México will buy what they cannot sell themselves. www.mexiconewsdaily.com/news/law-requires-central-bank-to-buy-up-excess-foreign-cash/ 11/12/2020.

Mexican lawmakers vote to restrict foreign agents despite U.S. pressure.

Mexico's lower house of Congress amended a security law to restrict the presence of foreign agents on Mexican soil, despite U.S. opposition to the legislation amid concerns it could hamper the work of cross-border narcotics investigations. The amendment is widely seen as a broadside against the United States, after weeks of tension with Washington over anti-drug operations. The legislation does not specifically target the United States, but it was proposed by President Andres Manuel Lopez Obrador after a diplomatic bust-up over the arrest of former Mexican defense minister Salvador Cienfuegos in Los Angeles in October on drug charges. www.reuters.com/article/us-mexico-usa/mexican-lawmakers-vote-to-restrict-foreign-agents-despite-u-s-pressure-idUSKBN28P206 15/12/2020.

Mexico begins vaccinations amid virus surge.

Mexico began its coronavirus vaccination campaign on the 24th of December becoming the first country in Latin America to do so and providing a sliver of hope to the population amid a roaring resurgence of the virus. The head nurse at the Rubén Leñero hospital in Mexico City was the first person in the country to get the Pfizer-BioNTech vaccine, as part of the government's strategy to focus on health care workers in December, January and February before moving on to the older Mexicans considered most at risk. www.nytimes.com/2020/12/24/world/americas/mexico-coronavirus-vaccine.html 24/12/2020.

Mexico takes controversial step to limit private fuel imports.

Mexico's government has issued new regulations to limit the ability of private firms to import fuel. The rules issued by the energy ministry are part of a drive by President Andres Manuel Lopez Obrador to put an end to fuel imports and make Mexico oil-independent. Among the changes set out in the government's official gazette, the energy ministry will now offer import permits for five years rather than 20 years. Mexico's antitrust regulator COFECE had fiercely criticized a draft proposal for the new regulation and urged the economy ministry to carry out further analysis. www.reuters.com/article/us-mexico-energy/mexico-takes-controversial-step-to-limit-private-fuel-imports-idUSKBN2910ML 27/11/2020.

When will more Pfizer and CanSino vaccines arrive in Mexico?

President Andrés Manuel López Obrador explained that new lots of Pfizer Covid-19 vaccine will arrive throughout January to be applied to medical personnel who are dealing with the pandemic in Mexico, with a total of 1,420,575. The President explained the form of distribution and days foreseen to vaccinate all the health personnel: starting by covering 5 States of the Republic with the first application of the vaccine on January 4th and achieving that on the 25th of the same month 27 States are covered with the second dose. He also announced that he will also begin vaccinating older adults with doses of CanSino. Furthermore, A total of 15.5 million Pfizer vaccines are expected to arrive by June 2021. <https://www.milenio.com/politica/vacuna-covid-19-llegan-dosis-pfizer-mexico> 29/12/2020.

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