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L A T A M

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

# TERRUM.

**Unfeasibility of Judicial Reform.**

**By Edgar Bezares.**

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## Unfeasibility of Judicial Reform.

by Edgar Bezares.

Today, every democratic constitutional state bases its functioning on the classic division of powers: executive, legislative and judicial, each of which is responsible for different functions. The first, the public administration of the state; the second, the creation of laws; and the third, the resolution of conflicts in accordance with the text of the laws. The Mexican Constitution provides for such division in Article 49.

In our country, through different mechanisms expressly regulated in the Constitution, only the President of the Republic, who is the head of the executive branch, as well as the congressmen, who make up the Congress of the Union, that is, the legislative branch, are elected by means of popular vote.

The designation of the members of the Federal Judiciary follows different rules. In principle, it should be emphasized that its highest body is the Supreme Court of Justice of the Nation, which is composed of 11 justices divided into two chambers. Each of these members is appointed by the Senate but chosen from a list of three candidates sent by the President of the Republic. In other words, two branches of government are involved in the selection of the justices.

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However, the lower instances of judges in the Federal Judiciary are the circuit magistrates who make up the Collegiate Courts and the district judges who are the heads of the District Courts and are at the lowest level of the judiciary, whose appointment is made by the Federal Judiciary Council based on objective criteria that can be summarized in their professional performance and judicial career<sup>1</sup>.

Nowadays, the Judiciary is going through difficult times as it is being questioned about the actions and probity of its judges, magistrates and ministers, since the federal government headed by the President of the Republic Andrés Manuel López Obrador (AMLO), intends to invade the sphere of autonomy enjoyed by the Judicial Power of the Federation, by demanding resolutions convenient to its authoritarian and populist interests, to which this public power has strongly resisted, privileging the constitution and the laws and giving important setbacks to the public administration and the legislative power in its decisions.

Given this resistance from the judiciary, the President has used his media power to attack it and repeatedly make society believe that the justices, magistrates and federal judges are corrupt, that their salaries are excessive and that they are not functional for the administration of justice in the country, because they are "distant from the people".

Therefore, on February 5, 2024, AMLO sent to the House of Representatives, among others, a bill to reform the Mexican Constitution in order to establish substantial changes in the federal and local judicial power for each

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1.-Article 97 of the Mexican Constitution

state, which includes the modification of Articles 17, 94, 95, 96, 97, 98, 99, 100, 101, 105, 107, 110, 111, 116 and 122.

Essentially, the reform contains 4 fundamental aspects: 1) that justices, magistrates and district judges be elected through direct and secret election by the citizens; 2) that the Federal Judiciary Council be replaced by the Court of Judicial Discipline and by a judicial administration body; 3) that the number of Justices of the Supreme Court be reduced from 11 to 9 and that it work in plenary and not in two chambers; and 4) that justices, magistrates and judges may not receive more remuneration than the President of the Republic<sup>2</sup>.

Regarding the proposal that judges of all instances be elected by direct vote of the citizens, this proposal is not viable for Mexican society, since the election of judges, magistrates and justices cannot be left to the discretion of the population, as this would lead to the establishment of a judiciary full of politicians whose knowledge and experience to impart justice in accordance with substantive and adjective legislation would be questionable or void.

Furthermore, based on the bill of reform, the "candidates for judges" (as absurd as it reads) would be appointed 10 by the executive branch, 10 by the legislative branch and 10 by the judicial branch, which would mean that those elected would be elected not by their personal legal qualities, but by virtue of the political strength of whoever appointed them. That is to say that, for instance, considering the present moment, those proposed by the president would be the judges elected by the majority of voters, since he has high social approval, in such a way that the background and experience of the candidates would not matter at all, and the electorate would vote based on their loyalty to the person or power that proposed those candidates, with which those candidates would have a partisan profile and would help to permeate the influence of the executive branch in the judiciary by having the majority of judges "on their side", strengthening the empire desired by AMLO.

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An obvious consequence of the popular election of judges would be that those elected would lack one of the main characteristics of all judges: impartiality. This would occur because, following the previous example, having been appointed by the president, the judges would have an obligation of obedience and submission in matters in which that person would demand it, losing their autonomy, capacity and the trust of the citizens.

In a democratic state, of course, it is not wrong for judges to be elected by the people they are to serve, as this is even the case in some developed countries such as Switzerland and some cities in the United States of America. However, in countries like Mexico, where there are serious social problems such as corruption and organized crime, this is not feasible because our society would first need to improve and eliminate these problems, otherwise they would permeate the election of judges, corrupting their appointments, performance and impartiality<sup>3</sup>.

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2.- AMLO's reform initiative. Available at [http://sil.gobernacion.gob.mx/Librerias/pp\\_ContenidoAsuntos.php?SID=&Clave=4696973](http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=&Clave=4696973)

3.- Alejandro Sainz. Conference: The models of selection of judges in the Constitutional State. Supreme Court of Justice of the Nation. February 14, 2024. <https://www.youtube.com/watch?v=esLIETlpldI>

In addition to the foregoing, pretending that each of the judges and justices that make up the federal judiciary be elected through the vote would represent a completely absurd, bureaucratic and onerous task, because in a country so extensive territorially and with such a large population the number of judges required is very large, because in 2016 there were only 775 federal judges and 389 district judges appointed nationwide<sup>4</sup>, distributed by regions or "judicial circuits", so that if elections had to be held to renew each of these judges directly and individually as the president intends, it would represent an excessively costly issue for the country.

With regard to the other aspects of the reform, suffice it to say that seeking to replace the Federal Judiciary Council with a Judicial Disciplinary Tribunal, whose five judges would also be popularly elected, implies the unnecessary disappearance of a functional, solid and prestigious institution among those who practice law, only to satisfy the unstoppable whims of a president who at all costs wants to subjugate and infiltrate a public power that is alien to his own: the judiciary.

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Likewise, the proposal to abolish the two chambers of the Supreme Court so that it may function and deliberate as a plenary body does nothing to correct any deficiencies that may exist in the Court, but only alters the current structure and distribution of cases. The same applies to the proposal that the salaries of justices, magistrates and judges may not exceed that of the President of the Republic, since there is no justification why the salary of the head of the executive branch should be the maximum salary parameter for the other branches of government beyond the public administration, especially since the nature and functions of the positions of federal judges are completely different and of a different technical complexity and relevance.

In conclusion, it is possible to say that due to the conditions of our country, the constitutional reform is not viable, even less so if it is based on the premise that its only objective is the interference of the executive power in the judicial power in order to have under its absolute control the functions of the state. And although the judiciary has some problems and can be improved, these are not solved with any of the points included in the proposed reform initiative, but with the constant training of judges and establishing mechanisms to control their performance, but not by politicizing the judicial function.

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4.- Statistical Annex 2016. General Direction of Judicial Statistics. Judicial Branch of the Federation.

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