

Meaningless Reform on Property in Mexico City.

By Edgar Bezares

TERRUM

October 15, 2024
Year 19 No.05

Audio Message



Meaningless Reform on Property in Mexico City.

By Edgar Bezares

This article refers to the recent reform to the Constitution of Mexico City, published in the Government Gazette, and through which it has been thought that private property has disappeared in this city. So far, this is a wrong belief, as we will see below.

During this six-year term in which President Andrés Manuel López Obrador has been in charge, fortunately just ended, several aggressive legal and constitutional reforms of great relevance have been carried out, the most recent of which were the reform of the judiciary and the national guard regime, achieved by taking advantage of the partisan majority that the President has in his favor in Congress, being approved without restraint or in-depth analysis or questioning by the federal representatives and senators and by the local congresses of the majority of the federal entities that are required for reforms to the country's Constitution.

This situation is replicated in most of the country's states, where the governors belong to the same party that holds the majority in each state's congress, which means that any whim of the local executive power materialized in a bill or reform to a law is unquestionably approved regardless of its real social relevance or its compliance with the law, the constitution or international treaties.

"...that the invoked Article 27 of the Federal Constitution textually establishes that the original ownership of the land and water in Mexican territory belongs to the Nation."

The situation is critical, since according to the elections held in our country on June 2, 2024, the National Regeneration Movement (MORENA) party not only managed to have its candidate for President of the Mexican Republic win the elections, but the same happened in 6 of the 9 states where there were gubernatorial elections, including Mexico City, in which the winning candidates belong to that party.

As a result, MORENA and its allies currently govern 23 of the 32 states¹, in which it is also the dominant force in the local congresses, since it is currently the legislative majority in 27 of the country's states², which implies that not only the legislative reforms of the states have great possibilities of being approved, but also those reforms to the country's Constitution for which its intervention is required.

Having explained the above, I mention that Mexico City is in the situation described above, since in the aforementioned elections the candidate of Morena was also elected as governor, who, accompanied by a considerable majority of deputies in the local Congress, will be able to continue this cycle of approving laws at her own whim.

Nevertheless, one month before the elected head of government took office, that is, on September 2, 2024, a very controversial amendment to Article 3 of the Mexico City Constitution was published

1.- <https://www.eluniversal.com.mx/elecciones/como-queda-el-mapa-electoral-de-mexico-tras-la-eleccion-del-2-de-junio/>.

2.- <https://www.sinembargo.mx/14-06-2024/4513193>.

in the Mexico City Government Official Gazette, with which the outgoing interim governor intends to set his notorious partisan seal: to pass laws or reforms with essentially populist overtones in order to seem favorable to the poor people.

"...it contradictorily establishes that such property will be in the terms referred to in Article 27 of the Federal Constitution, which expressly recognizes private property..."

According to the decree of reforms issued by the Congress of Mexico City, the amendment made to subsection a), section 2 of article 3 of the Political Constitution of Mexico City, establishes as one of the guiding principles of the city *"... respect for property in the same terms of Article 27 of the Federal Constitution of Mexico..."*, whereas the text prior to the amendment established *'...respect for private property...'*; that is to say, only the word 'private' that was previously inserted was removed.

In this regard, it must be considered that the invoked Article 27 of the Federal Constitution textually establishes that the original ownership of the land and water in Mexican territory belongs to the Nation, which in turn transmits the domain of these to individuals through private property in accordance with the modalities dictated by the public interest, but the State always retains the right to expropriate the same for reasons of public utility and in all cases with the prior payment of compensation to the affected owners.

Therefore, it is evident that the Federal Constitution expressly recognizes the right to private property in Mexico in favor of the individuals who acquire it, so that any person will undeniably have the right to acquire property with all that this implies, that is, to enjoy and freely dispose of their goods without being disturbed and without their property being occupied without their consent, as established in Articles 830 and 831 of the Federal Civil Code.

As a first matter, it should be taken into account that, as stated in the initial part of this paper, the federal and local governments and congresses prevailing in Mexico have dedicated themselves to issuing laws and reforms lacking in any sense and contrary to the Federal Constitution, so that the reform in question is one more of them, since the reformed text of the local Constitution is completely useless, as, on the one hand, it simplistically speaks of "property" by having suppressed its qualifier of "private", but, on the other hand, it contradictorily establishes that such property will be in the terms referred to in Article 27 of the Federal Constitution, which expressly recognizes private property in favor of individuals. Therefore, the reformed local Constitution ends up recognizing private property in a dissimulated manner.

It is important to keep in mind that, in accordance with Article 133 of the Federal Constitution, the principle of constitutional supremacy prevails in our country, which means that the Federal Constitution and the international treaties that establish human rights have superiority over any other laws, even over the constitutions of each state, which must be in accordance with the aforementioned, so that if the latter recognizes private property, any provision to the contrary

is unconstitutional. In addition, a local constitution, such as that of Mexico City, cannot in any way reduce or restrict human rights, such as the right to property, enshrined in the federal constitution.

According to the interim chief of government Marti Batrez, the reform was necessary because the Constitution of Mexico City was in contradiction with the Federal Constitution before the reform because *"...there is private property, but there is also public property and there is also social property, and there are private companies, cooperatives, ejidos, communities and public companies..."* therefore, with the reform its text is aligned with the Constitution of the Republic³. However, this is not true, since, as we have seen, the human right to property is safeguarded not only in Article 27, but also in Articles 14 and 16, which are the basis of the right and defense of private property in Mexico, so there was no need for this absurd reform in this regard.

"... the human right to property is safeguarded not only in Article 27, but also in Articles 14 and 16, which are the basis of the right and defense of private property in Mexico..."

Ignacio Morales Lechuga, editorial columnist and notary public, considers that the reason for this reform represents a hard blow to the people of Mexico City, as private property is suppressed as a human right and thus the government of Mexico City intends to carry out a series of expropriations to solve the housing problem in the country's capital⁴. However, as has been said, in no way does this reform jeopardize this human right which is fully protected in the Federal Constitution and which until now has remained untouched, in addition to the fact that objectively there are no elements to demonstrate any hidden intention of the city government through the reform, especially if expropriation has always been a power of the Mexican government and does not depend on the modification of the referred local constitutional precept.

In my opinion this local constitutional reform is meaningless and has mostly populist and protagonist purposes to make citizens believe that the city government is looking after their interests, while in reality they are only concerned with their own and their party's interests, when in reality they only care about their own and their party's interests, which given the results of the elections mentioned at the beginning of this text will continue to occur in the following years both in the Federation and in the states of the country.

3.- Message from the Head of Government, Marti Batres Guadarrama, during the Publication of the Reform to the Constitution of Mexico City.

<https://jefaturadegobierno.cdmx.gob.mx/comunicacion/nota/mensaje-del-jefe-de-gobierno-marti-batres-guadarrama-durante-la-publicacion-de-la-reforma-la-constitucion-de-la-ciudad-de-mexico-en-materia-de-propiedad-privada-publica-y-social>.

4.- <https://www.eluniversal.com.mx/opinion/ignacio-morales-lechuga/adios-a-la-propiedad-privada/>

TERRUM

EDGAR BEZARES

Associate

Mr. Bezares is an associate in the litigation group. He has many years of experience in civil and commercial aviation, and has been involved in the repossession of several aircraft throughout his career.

Education

- Attorney at law by Universidad Nacional Autónoma de México in Mexico City
- Post-graduate studies in Amparo Law by Universidad Panamericana

Memberships

- Member of the Mexican Contact Group for the Aviation Working Group

Publications

- Edgar has written multiple articles related to aircraft finance and leasing in COELUM and TERRUM

Languages

- English
- Spanish



Prol. Reforma No. 1190 25th Floor,
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
www.asyv.com / www.asyv.aero

Find us in



Audio Message



www.linkedin.com/company/asyv



The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.