



Expert Contributor

Court Decision on Judicial Reform to Have Wide Impact.

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On February 5, 2024, former President Andrés Manuel López Obrador presented before the Mexican Congress the Constitutional Reform initiative concerning the structure and functioning of the federal judiciary.

On Aug. 16, 2024, the House of Representatives published the Decree on this initiative. Subsequently, on Aug. 19, 2024, officers of the Federal Judicial Power, supported by the National Association of Circuit Magistrates and District Judges of the Federal Judiciary, initiated an indefinite nationwide strike in rejection of the initiative.

On Sept. 3, the House of Representatives approved the Decree, and on Sept. 11, 2024, the Senate approved the Judicial Reform. Finally, on Sept. 15, the Reform Decree was published in the Official Gazette of the Federation, initiating a period for the Union Congress to issue reforms to the corresponding secondary legislations.

The Executive and Legislative Powers continue with the implementation of the reform. On Oct. 7, the Executive presented two initiatives to amend secondary laws in order to carry out the electoral process for the officers of the Judiciary.

The objections to this reform took shape through amparo lawsuits and actions of unconstitutionality, resulting in judicial injunctions that were not complied with by either the Executive or the Congress of the Union. Meanwhile, the Supreme Court of Justice of the Nation accepted seven inquiries raised by judges and magistrates, which questioned the constitutionality of the reform.

On Nov. 5, the Supreme Court of Justice of the Nation decided not to proceed with the review of the project to declare the partial invalidity of the constitutional reform, as it did not reach the required eight votes to proceed with the substantive review, with seven votes in favor and four against.

Additionally, in response to concerns from officers, judges, and magistrates of the judiciary, as well as from governments and international bodies, a public hearing was held on Nov. 12, in Washington D.C., convened by the Inter-American Commission on Human Rights (IACHR). During this hearing, human rights organizations and judicial officers presented the risks associated with the implementation of the judicial reform in the country, specifically regarding the administration of justice in Mexico.

The commissioners of the IACHR expressed their concerns regarding the diagnosis that guided the Mexican state in implementing this constitutional reform.

IACHR Commissioner Carlos Bernal Pulido remarked that the Judicial Reform in Mexico is, "... an example of abusive constitutionalism, when a government attempts to dismantle the checks and balances, the controls on the Executive."

Before concluding the hearing, Commissioner Andrea Pochak specified that the purpose of the hearing was to listen to and receive information from the parties involved. Accordingly, she emphasized that the Commission is unable to take further action at this stage, as it must await the exhaustion of all domestic legal mechanisms currently underway.

The following points stand out from the judicial reform:

1. Election of justices, magistrates, and judges by popular vote and the reduction of requirements to hold these positions.

Justices of the Supreme Court of Justice of the Nation, circuit court magistrates, and district judges will be elected in a free, direct, and secret manner by the public on the same day as federal elections. To be a Justice of the Supreme Court of Justice, the following requirements will be necessary:

- Hold, at the time of the publication of the call, a law degree, with an overall grade point average (GPA) of at least 8.0 or its equivalent, and a GPA of 9.0 or its equivalent in subjects directly related to the position they are applying for, whether at the undergraduate, specialty, master's, or doctoral level.
- At least five years of professional experience in the legal field.
- Have resided in the country for at least two years prior to the publication of the call.
- Not having held the position of Secretary of State, Attorney General of the Republic, senator, federal deputy, or head of the executive branch of any federal entity during the year prior to the publication date of the call.

To be a circuit court magistrate or district judge, the following requirements will be necessary:

- Be a Mexican citizen by birth.
- Hold a law degree.
- Have obtained a general grade point average of at least eight (or its equivalent, and at least nine or its equivalent, in subjects related to the position for which one is applying, either at the undergraduate, specialization, master's, or doctoral level.
- Not having held the position of Secretary of State, Attorney General of the Republic, senator, federal deputy, or head of the executive branch of any federal entity during the year prior to the publication date of the call.

For circuit court magistrates, additional requirements include at least three years of professional experience in a legal field relevant to the position being applied for.

2. Creation of a judicial disciplinary court.

This new Disciplinary Court will be composed of five individuals elected by the citizens at the national level.

To be eligible, the magistrates of the Judicial Disciplinary Court must meet the following requirements:

- Hold, at the time of the publication of the call, a law degree, with an overall grade point average (GPA) of at least 8.0 or its equivalent, and a GPA of 9.0 or its equivalent in subjects directly related to the position they are applying for, whether at the undergraduate, specialty, master's, or doctoral level.
- Have at least five years of professional experience in legal practice.
- Have resided in the country for at least two years prior to the publication of the call.
- Not having held the position of Secretary of State, Attorney General of the Republic, senator, federal deputy, or head of the executive branch of any federal entity during the year prior to the publication date of the call.

The Federal Judicial Council will continue to exercise the powers and duties of administration, oversight, and discipline of the Judiciary, with the exception of the Supreme Court of Justice of the Nation, until the Judicial Disciplinary Court and the judicial administration body are created.

3. Reforms to procedures to ensure prompt and efficient justice.

A maximum period of six months is established for district judges and circuit courts of the federal judiciary, or, where applicable, the Supreme Court of Justice of the Nation, to issue a ruling, starting from the date they become aware of the matter.

If the specified deadline is met and no judgment has been issued, the judicial body handling the matter must promptly notify the Judicial Disciplinary Court.

As a result of the Supreme Court of Justice of the Nation's decision not to proceed with the review of the project to declare the partial invalidity of the constitutional reform, unless another constitutional control action prevents or modifies the judicial reform, which seems unlikely, the process for the election of judges and magistrates must continue as approved. Therefore, extraordinary elections will be held on the first Sunday of June 2025, following the below timelines:

- Interested individuals may register for the calls for application from Nov. 5 to Nov. 24, 2024. (The call for the election has already been published in the Parliamentary Gazette)
- The Evaluation Committees will assess the suitability of eligible individuals by Jan. 31, 2025.
- The Evaluation Committees will select the best-rated profiles for each position and send the corresponding lists to the authority representing each Power of the Union, which will determine their conformity by Feb. 4, 2025.
- Once the Powers determine their conformity regarding these lists, they will be returned to the respective Committees to adjust to the number of applications for each position, by Feb. 6, 2025.
- The final lists will be approved by the Powers of the Union and sent to the Senate by Feb. 8, 2025.
- The Senate will compile the lists and files of the individuals nominated by each Power of the Union and send them to the National Electoral Institute by Feb. 12, 2025, to organize the electoral process.
- The voting will take place on the first Sunday of June 2025.

Regarding the controversial aspects of the judicial reform described, we could say that the election of justices, magistrates, and judges by popular vote could undermine judicial independence. Additionally, its implementation might lead to delays in the resolution of legal proceedings and incur unnecessary economic costs in the voting process.

There is a significant concern regarding a potential undermining of the separation of powers and the rule of law. The popular election of judges and magistrates could lead to the inevitable politicization of the Judiciary, compromising its impartiality and the quality of justice. While it is true that in other jurisdictions judges are elected by popular vote, that system is not structured to appoint judges who review the constitutionality, legality, and observance of human rights by the executive branch, as is the case with the federal judiciary in Mexico.

It is essential that the judicial system be composed of individuals with the necessary expertise and experience to safeguard our rights and ensure the fair and equitable administration of justice. The election by popular vote could compromise the specialization and impartiality that must characterize these positions. While the absence of a judicial career path may undermine the proper continuity of legal processes. Furthermore, it does not guarantee that those elected will possess the necessary knowledge and competencies to effectively carry out their duties.

In this regard, since a judicial career is no longer required and the only qualifications to be elected as a judge or magistrate are Mexican citizenship, a law degree, and a minimum average grade of 8, this is a gateway to new profiles within the judiciary. However, this could carry the potential risk of a lack of specialization in key areas such as life sciences, health law, and intellectual property, fields where expertise is critical, and improvisation is not an option, nor is it affordable.

Although it can be observed that the six-month deadline established for judges and magistrates to resolve a case, aims to expedite and improve the efficiency of justice, it is difficult not to consider that this measure could become problematic if it fails to account for the complexity, diversity, specialization, and differentiation of the matters and cases involved. Such a rigid timeline could lead to hasty decisions of lower quality, potentially violating the rights of the parties involved in the proceedings.

While it is true that we all desire a prompt and efficient justice, it is also true that we need resolutions of high quality, and the study of each case must be differentiated.

In the practice of Intellectual Property Law, it is well-known that a trademark litigation process will generally be more expedited than a patent dispute. A conflict involving real property rights cannot be resolved in the same manner as a class action that affects the right to and access to health for a vulnerable group, or a lawsuit for damages arising from the application, supply, or commercialization of a regulated product, which requires complex and time-consuming technical, scientific, and expert evidence, as well as samples and the collection of local and/or national data, as is the case in matters and conflicts related to the life sciences.

Regardless of the legal or political stance one may hold regarding the reform, and from a personal perspective, I consider that what we are witnessing is not so much a constructive reform aimed at enhancing the system of access to and administration of justice, but rather a historic moment characterized by a judicial reform that has been approved, published, and is in the process of implementation, in a hasty and improvised manner with revanchist and coup d'état dyes.

Life sciences, as well as health law, do not allow for improvisation; they require specialization, which the reform does not address. However, there is still an opportunity within the secondary laws and the implementation process to seek out the most qualified individuals with training in resolving disputes related to health law and intellectual property, so that they may occupy judicial positions to address

and resolve conflicts related to the right to access health care and other interdependent human rights, such as intellectual property rights, which must be analyzed in accordance with the principles of universality, interdependence, indivisibility, and progressivity.