

# DIRITTI COMPARATI

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## JUDICIAL REFORM IN MEXICO: AN INSTITUTIONAL SETBACK

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On February 5, 2024, the President of Mexico sent various constitutional reform initiatives to Congress, including one related to the judiciary. These reforms accentuate the concentration of power in the presidency of the Republic, especially that concerning federal and local jurisdictional bodies. Access to justice is difficult and its administration and delivery present defects, among which its slowness and cases of corruption stand out. This last phenomenon affects the entire public administration and the area of justice does not escape this damage. In Mexico there is consensus regarding the need to introduce changes in all areas of justice, not only in the courts.

The reforms proposed by the President overlooked the real changes needed and the multiple ideas to achieve them. His initiative chose to do away with what had been achieved and to impose a regressive reform. Once again, the lack of a Ministry of Justice or an equivalent government agency became obvious. Mexico is the only OECD country that lacks this type of institution. Judicial efficiency, the quality of the regulatory system and its real effects are not measured.

The teaching of law is another problem for justice because it is not regulated. In the country there are around 2,300 law schools, most of which are very deficient. The ratio is 1.8 legal teaching centers per 100,000

inhabitants. In comparison, the United States has 198 accredited law schools, with a ratio of .06, and in Spain the degree is taught in 62 institutions, with a ratio of .12 per 100,000 inhabitants. In Italy there are around 55 law schools, with a ratio of .09.

In addition, there are 442 thousand lawyers registered in the Mexican census, which means 340 for every 100 thousand inhabitants, almost three times as many as in Europe, where the ratio is 131. In addition, membership in a bar association is not compulsory, which means that there is a lack of controls regarding their professional training and updating and their ethical suitability, to the detriment of those seeking justice and of the judges. Lawyers with a degree but without knowledge or without ethical commitment defraud the trust of those they represent and are a source of corruption in the judicial system.

Access to justice is also affected by the low number of judges. Mexico has around 5 per 100,000 inhabitants, while the European average is 19. Corruption is a widespread evil in the public service and affects the administration of justice to varying degrees, although it is the public space where the greatest efforts have been made to reduce its incidence.

### **Content of the reform in justice**

In view of the existing shortcomings, the President of Mexico presented an initiative for constitutional reforms with the aim, in his words, of promoting impartiality, guaranteeing independence, combating corruption and improving the quality of the administration of justice. None of his proposals address these problems; on the contrary, they will exacerbate existing ones, introduce additional ones and revoke the progress made in the last three decades. The reforms were approved without admitting observations or deliberation. The Chamber of Deputies processed it in expeditious terms on September 2 and 3, 2024, the same happened days later in the Senate and in the state congresses. All the reform requirements were met with unusual speed and its promulgation was carried out with the same celerity.

In essence, the changes consist of:

- appointing judges by popular election

- reducing their salaries, and
- subjecting them to a disciplinary body that censures their sentences

### **1) Popular election of judges**

The reform provides for the election by popular, universal and direct suffrage of ministers of the Supreme Court of Justice, federal magistrates and judges, and magistrates and judges of the states and Mexico City. There are approximately 1,647 federal judges and a little more than 5,000 state judges. In total they add up to 6,730.

The electoral process will begin with the self-nomination of the candidates, which will be followed by an evaluation by committees that each power body (Presidency of the Republic, Federal Congress and Supreme Court) will appoint at its discretion. These committees will freely assess the merits of the applicants to draw up lists of potential candidates. A draw will then be held to adjust the list to the number of vacancies available. In the states of the Federation the same procedure will be followed, but in this case with the participation of the governors, local congresses and local higher courts of justice.

To aspire to be a judge, there will no longer be a judicial career. It will be enough for the candidates to have a law degree issued by any of the almost 2,300 schools without certification and have a grade point average of 8 points, on a passing grade scale that goes from 6 to 10. The required grade corresponds to that of a student with average performance in a highly demanding institution. They will also be required to have a professional experience of only 5 years in the case of ministers of the Supreme Court, and 3 in the case of magistrates, federal judges and state judges. All those who wish to try their luck may register as candidates.

### **2) Disciplinary body**

The reform includes a Judicial Disciplinary Court, made up of five members, elected by popular vote for six years. It will be the repressive control body of the judges, empowered to determine whether their resolutions conform to the “principles of objectivity, impartiality, independence, professionalism or excellence” (art. 100).

Except for ministers, this Court may impose various sanctions on federal

judges, including dismissal from office. Federal magistrates and judges must remain in the judicial circuits where they were elected, although in “exceptional cases” the Court may assign them to a different circuit (art. 97), which contradicts the supposed link between electors and elected. The general rule that judges remain in the territory where they are elected will facilitate their co-optation by local interests, including political, economic or criminal groups.

### **3) Salary reduction, election and judicial career**

All judges, federal and local, will be given the maximum salary provided for in the budget for the President of the Republic. It is omitted that presidents have numerous additional benefits and that their official emoluments are symbolic. What is relevant about the constitutional provision that makes the president's salary the reference for all public servants is that it ratifies the presidential supremacy in Mexican institutional life.

As for the salaries of judges, for several decades it has been considered convenient to make them attractive to stimulate their judicial career, prevent them from emigrating to the private sphere, protect them from possible illegal gifts and contribute to their independence. This criterion is abandoned as of the 2024 reform. Although salaries in the labor market are higher than those received in the judiciary, the possibilities of a career encouraged retention in the judicial system. This permanence has functioned as a bulwark against corruption.

### **Context of the reform**

The archaic nature of the Mexican presidential system means the verticality of presidential decisions. Added to this is the fact that Congress lacks investigative powers in relation to the functioning of the administration, has limited intervention in only a few presidential appointments and does not have political controls over senior public officials. As for federalism, it is qualified by the discretionary distribution exercised by the presidents of 80% of the non-programmable budget. As an additional fact, 24 of the 32 state governors are related to the president's political party.

An additional contextual element consists of the electoral interference of

criminal organizations. During the 2024 federal campaign, numerous incidents of threats, attacks, deprivation of liberty and homicides against candidates for elected office were recorded. Almost all these crimes remain unpunished.

### **Consequences of judicial reform in terms of human rights**

Under conditions such as those described, the independence of elected judges will be affected by:

1. a) the concentration of presidential power and its hegemonic vocation for power,
2. b) the concentration of power of state governors and their tradition of cacique control,
3. c) the violence of criminal groups aimed at intimidating and co-opting candidates and elected officials,
4. d) the submission of electoral bodies to political or economic powers, and
5. e) the biased institutional design for selecting and nominating candidates, and for controlling judges after they are elected.

In the parliamentary process of the reform, the figure of faceless judges was included, thereby confirming its orientation against human rights, in addition to contradicting the hypothetical transparency associated with the election of judges.

The negative effects of the reform will accumulate over time. The progressive decline in judicial independence and the corresponding deterioration of human rights will accentuate the gradual dismantling of the rule of law in Mexico.

### **Consequences of judicial reform in terms of the institutional system**

The new Mexican judicial system was adopted by the constitutional review body at the initiative of the President of the Republic and implemented in a hasty manner, without prior analysis or diagnosis of the real need for a reform in justice, without listening to the judges or those seeking justice and without seeking the consensus of the political forces represented in Congress.

Direct popular election is a technique for selecting political representatives and heads of some government bodies. In the case of judges, the use of the popular vote in Mexico raises the question of determining the content of the campaigns of the candidates to be judges. According to the Constitution, the candidates will campaign for two months without receiving public or private resources, which generates the question of the source of financing for the candidates. This opens one of the various loopholes through which the influence of groups and interests will slip and the channels that criminal organizations can use. This is a very sensitive part of the reform, due to the foreseeable outcome of corruption associated with the election, where it will be impossible to avoid the interference of criminal groups, economic interests, political parties and factions, regional, local, and municipal bosses, interest groups, and even professional organizations.

The election system will make the judicial civil service no longer attractive to new candidates and its best elements will emigrate at the rate they find other options. The combination of deficiencies, plus the effects of clientelism, patronage, and electoral corruption will lead to a judiciary very different from the current one. The improvisation of judges and the lack of professional support teams will multiply and deepen corruption. Due to its irrationality, judicial reform is destined to fail.