

Newsletter

Litigation and Alternative Dispute Resolution, and Administrative Litigation Practice Group

The Supreme Court dismissed the action of unconstitutionality filed against the constitutional reform to the judicial branch. What's next?

As we reported in our newsletter of September 19, 2024 (click [here](#) to consult it), on September 15, 2024 the "Decree by which several provisions of the Political Constitution of the United Mexican States are amended, added and repealed, regarding the reform of the Judicial Branch" ("Judicial Branch Amendment" "Judicial Reform") was published in the Federal Gazette. As a result, the National Action Party, the Institutional Revolutionary Party, the Citizen Movement Party, the local Democratic Unity of Coahuila party¹ and several members of the Congress of the State of Zacatecas, filed several Actions of Unconstitutionality against the Judicial Branch Amendment, which were filed in the Supreme Court of Justice of the Nation ("SCJN" or the "Supreme Court") under file numbers 164/2024, 165/2024, 166/2024, 167/2024 and 170/2024, all of which were joined in order to be resolved jointly.

The aforementioned Action of Unconstitutionality (and its accumulated ones), was turned to Minister Juan Luis González Alcántara Carrancá for its processing and eventual elaboration of the draft resolution, and prior legal proceedings, said draft was scheduled to be discussed in the session to be held by the Plenary of the SCJN on November 5, 2024. The project proposed to declare the invalidity of a part of the Judicial Branch Amendment and recognizing the validity of another part of the same.

These Actions are regulated by article 105, section II, of the Political Constitution of the United Mexican States and its Regulatory Law. Said article of the Constitution ordered since December 1, 1995, that the Actions of Unconstitutionality could lead the Supreme Court to declare the invalidity of norms, provided that they were approved by at least 8 Ministers; however,

the Judicial Branch Amendment modified this point and established that such declaration of invalidity could be given in case of being approved by at least 6 votes (presumably, considering that in the future the Supreme Court will be integrated by 9 Ministers). For this reason, as of the date of the beginning of this session, there was still legal uncertainty as to the number of votes required for the declaration of invalidity in question to be possible.

As is common, the Supreme Court analyzed one by one the different sections of the draft judgment subject to discussion, however, when discussing the section related to the merits of this means of defense, 4 Ministers decided against it, arguing that they did not have the authority to analyze the amendments to the Mexican Political Constitution, while only 7 Ministers decided in favor of the merits of this Action of Unconstitutionality. For such reason, the Ministers decided not to address the analysis of the arguments contained in the Unconstitutionality Action (related to substantive and procedural defects of the Constitutional Amendment), considering that this would not lead to the 8-vote vote required for an eventual declaration of invalidity.

Finally, a majority of 6 Ministers defined that in order to declare the invalidity of norms through an Action of Unconstitutionality, a qualified majority of 8 votes is required, so that the matter was definitively resolved, in the sense of dismissing the Invalidity Concepts of the means of defense in question.

Under such scenario, on November 5, the National Association of Circuit Magistrates and District Judges of the Federal Judicial Branch ("JUFED"), issued statement

¹ Known as Partido Acción Nacional, el Partido Revolucionario Institucional, el Partido Movimiento Ciudadano, el partido local Unidad Democrática de Coahuila in Mexico

30/2024, in which it regretted the Supreme Court's resolution and informed that such group will continue to challenge such reform before international organizations, considering that it is unconstitutional for violating the division of powers and the human rights of the judges and workers of the Federal Judicial Branch.

It should be recalled that, in recent months, the JUFED requested the Inter-American Commission on Human Rights ("IACHR") to intervene in relation to the Judicial Branch Reform, arguing that such reform violates the labor rights of Judicial Branch workers, jeopardizes Mexicans' access to justice and violates the judicial career. Derived from such request, the IACHR summoned a hearing to be held on November 12, 2024, in which the JUFED will present the reasons why it considers that the Judicial Branch Reform implies a breach by the Mexican State of the Inter-American Convention on Human Rights; with this, international support could be sought for the demands of the organization of Judges and Magistrates.

Regardless of what happens in international instances, the Judicial Branch Reform will continue its course in Mexico, as it has been occurring under the timelines established therein. Below, we highlight the most recent and upcoming milestones within the framework of the Reform in question:

● Pursuant to the Judicial Branch Reform, the Congress of the Union must publish the secondary laws by **December 15, 2024²**. To date, only two laws have been reformed, as described below:

a. On **October 14, 2024**, the General Law of Electoral Institutions and Procedures was amended, regarding the rules for the election of Judges, Magistrates and Ministers by direct vote of the citizens.

b. On **October 15, 2024**, an amendment to the General Law of the System of Electoral Appeals was published in the Federal Gazette, regarding the updating of the means of appeal in the election process of members of the Judicial Branch.

● On **October 15, 2024** was published in the Federal Gazette the "Public Call to integrate the lists of candidates who will participate in the extraordinary election of the judges who will occupy the positions of Ministers of the Supreme Court of Justice of the Nation, Magistrates of the Superior and Regional Chambers of the Electoral Tribunal of the Judicial Branch of the Federation, Magistrates of the Court of Judicial Discipline, Circuit Magistrates and District Judges of the Judicial Branch of the Federation, Magistrates of the Court of Judicial Discipline, Magistrates of Circuit and District Judges of the Judicial Branch of the Federation", which establishes the bases for candidates to register and participate in the process of evaluation and nomination of candidates to occupy the positions subject to popular vote for the extraordinary election of ministers, magistrates and judges in **June 2025**.

● In addition, on **October 31, 2024**, the Evaluation Committees of the Executive, Legislative and Judicial Branches were formed, which will be in charge of evaluating the suitability and eligibility of the candidates for a position as judges at the federal level.

● Applicants to participate in the election in accordance with the Judicial Reform have until **November 24, 2024** to register and have the required documentation.

● The Evaluation Committees will verify the profiles that meet the applicable requirements and will announce the selected candidates on **December 15, 2024**.

● The Evaluation Committees will filter the applicants in two phases. The first one will be an evaluation with a scale from 1 to 100 with knowledge tests and the second one with a series of interviews. The best evaluated profiles will be announced on **January 31, 2025**.

² On November 6, 2024, the President of Mexico announced that during the same month she will send to the Congress of the Union certain legislative reform initiatives to materialize the Reform of the Judicial Branch, such as the Organic Law of the Federal Judicial Branch, which will establish, among other things, the regulation of the Disciplinary Tribunal.

- From the best evaluated profiles, each of the Evaluation Committees (Executive, Legislative and Judicial Branch) will form a list of: i) 10 best evaluated persons for each position in the cases of Supreme Court Ministers, Magistrates of the Superior Chamber and regional chambers of the Electoral Tribunal and Magistrates of the Judicial Discipline Tribunal and ii) 6 best evaluated persons for each position in the cases of Circuit Magistrates and District Judges.
- If the best evaluated profiles show that there are more than 10 candidates, then each of the Evaluation Committees will purge the list by public insaculation better known as “tombola”, so that on **February 4, 2025** the selected candidates will be announced.
- The Evaluation Committees will send the list of candidates to the Senate of the Republic on **February 8, 2025**.
- On **February 12, 2025**, the Senate will send the final list to the National Electoral Institute to organize the electoral process.
- The candidates selected to participate in the electoral process will have 60 days to campaign, in which public or private financing will be prohibited.
- By **March 2025** at the latest, all the States of the Republic must adapt their Local Constitutions to be in accordance with the Judicial Branch Reform, seeking that by the year 2027 the Local Judicial Branches are elected and renewed.
- On **June 1, 2025**, the extraordinary election of 2025 will be held to elect i) the 9 Ministers of the SCJN, ii) the vacant Magistrates of the Superior Chamber of the Electoral Tribunal of the Federal Judiciary, iii) the Magistrates of the Regional Chambers of said Electoral Tribunal, iv) the Magistrates of the Judicial Discipline Tribunal and v) 50% of the Circuit Magistrates and District Judges.
- On **September 1, 2025**, the candidates elected will take their oath of office before the Senate of the Republic and the Federal Judiciary Council will be extinguished to give way to the Judicial Discipline Tribunal and the Administrative Body.

We remain at your service to discuss any of the points regarding the contents of this Newsletter.

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