

# MEXICO'S SUPREME COURT – FROM A TRADITIONAL COURT TO KEY ACTOR OF SOCIAL CHANGE

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**Book review: CONSTITUTIONAL PRECEDENT IN THE MEXICAN SUPREME COURT:**

**50 leading cases – First edition – Ciudad de Mexico, Mexico:**

**Suprema Corte de Justicia de la Nacion, september 2022 –**

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**of Mexico's Supreme Court of Justice and the Human Rights Office**

**of Mexico's Supreme Court of Justice –**

**Introductory note by Arturo Zedillo, Chief Justice**

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## I. Introduction on the constitutional role of Mexico's Supreme Court within the national judicial system

Regardless of the type of constitutional review system - through a separate Constitutional Court or by mandating this responsibility to the supreme court of a country -, the initial role of constitutional jurisdictions was to ensure the protection of citizens' fundamental rights, including in their relationship with the Law, by assuring that the courts and all other public authorities, including the Legislative bodies respect the essential core of rights provided by a country's constitution or representing a genuine natural right, based on the customs and traditions of that country, within the framework of a democratic society and based on the rule of law.

Thus, the traditional role of a constitutional jurisdiction is to obey the law and ensure compliance with the fundamental law of all other state entities. However, the pace of social and technological progress and social transformations have led constitutional jurisdictions to find themselves faced with new social situations, for which written law was sometimes obsolete or far too rigid to meet society's expectations.

In responding to this challenge, many constitutional jurisdictions have gone from mere guardians of the Constitution to promoters of novelty and progress, placing themselves at the forefront of a process that has brought remarkable legislative transformations and laid the foundation for fairer and more inclusive legislative systems. By reconsidering their own competences, whether by legislative or jurisprudential means, constitutional jurisdictions have sometimes become the initiator of updating

and aligning a nation's laws with its new social realities, thus going beyond the limits of their traditional role and assuming a certain role of positive legislator.

For Mexico's Supreme Court, such a fundamental reform of its own jurisdiction was brought about by the judicial reform of March 2021. According to the Court's Chief Justice, "with these Constitutional amendments and the consequent legal reforms, the Supreme Court was consolidated as a true Constitutional Court and a key actor for social change"<sup>1</sup>.

Comprised of eleven justices, appointed by the Chamber of Senators for a 15 years tenure in office, the Supreme Court is the peak of the country's judicial system and works in Plenary and two Chambers, one of which hears civil and criminal cases and the other one deals with labor and administrative cases. Both the Plenary and the Chambers of the Supreme Court can issue precedents that are binding for all judicial authorities in the country (both Federal and local courts).

The main mechanisms by which the Supreme Court performs its duties concern the creation of Case-Law by mandatory precedents, the resolutions adopted in Actions on Grounds of Unconstitutionality and Constitutional Controversy<sup>2</sup> and resolutions adopted when resolving Contradictions in Criteria<sup>3</sup>.

The key change brought by the constitutional and legal reform of March 2021 was the transition from a system of creating case-law by reiteration for the Supreme Court to a system of precedents, much like the one used by the U.S. Supreme Court.

Before the reform, the criteria used by the Supreme Court were to be considered binding for all the other national courts only if the criteria complied with the reiteration procedure, which meant that these criteria had to be based on five decisions not interrupted by another to the contrary, resolved in different sessions and by a qualified majority of the justices, both in Plenary sessions and Chamber session.

Such a system was obviously in contradiction with the pace of social, economic and technological changes within the society and the reform brought up a much more evolved and fast system, based on precedent. According to the new procedure the reasons issued to justify the decisions of the Supreme Court are to be considered binding by all other judicial authorities as long as they are taken by a majority of at least eight votes in the Plenary and four votes in the Chambers<sup>4</sup>.

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<sup>1</sup> Introductory note by Chief Justice Arturo Zedillo, p.XVI. The presentation of the organization and role of the Mexican Supreme Court is based on information provided by the introductory note.

<sup>2</sup> Both types of resolutions are handled by the Plenary and the reasons that justify its decisions will be considered mandatory for all the judicial authorities of the country as long as they are approved by a qualified majority of the justices (at least 8 votes).

<sup>3</sup> This type of resolutions highlight another essential constitutional role of the Supreme Court regarding the unification of case-law. The resolutions may regard discrepancies in criteria held between the Court's chambers, between the regional plenaries or between the collegiate circuit courts.

<sup>4</sup> Each Chamber is composed of five justices.

It is the opinion of this reviewer that the extremely strict qualified majority needed for a decision to become precedent (approximately 80% of the total number of justices, both for the Plenary and Chambers) is intended to ensure the relevance and stability over time of a decision that acquires precedential value and to reduce the possibility of controversial or high-importance issues being resolved on a one-off basis linked to the current composition of the Supreme Court.

According to the Court's Chief Justice, "these changes were of such importance that, to respond to them, on May 1<sup>st</sup>, 2021, by agreement to the Plenary, the Eleventh Epoch of the Mexican Federal Judicial Weekly began".

It should also be mentioned that, in referring to constitutional rules, both the Mexican Supreme Court and the other courts don't refer only to the provisions of the Constitution itself, but above all to a "block of constitutionality" made up of human rights from national and international sources which are binding in the Mexican legal system, including the case-law of the Inter-American Court of Human Rights<sup>5</sup>. This was upheld by the Mexican Supreme Court in its ruling in the case of *Contradiccionde tesis 293/2011*, which is reviewed in the first section of this book.

## II. Contents of the reviewed book

The book is comprised of 50 leading cases which are part of the Tenth Epoch of the Mexican Federal Judicial Weekly<sup>6</sup>, which started in 2011, following the constitutional reforms published on June 6<sup>th</sup> and 10<sup>th</sup> 2011. The only exception is case 148/2017, to which I will refer to next and that is part of the Eleventh Epoch of the Mexican Federal Judicial Weekly.

According to the authors, the case selection aimed at choosing decisions that "have a high legal value and have been crucial to trace the path followed in the interpretation of certain human rights cases or related situations".

The cases are grouped within eleven sections, regarding the Standard of Constitutional review, Right to the free development of ones personality, Right to freedom of expression and information, Right to equality and non-discrimination, Gender, Rights of children and adolescents, Rights of indigenous peoples and communities, Economic, social, cultural and environmental rights, Guarantees in criminal proceedings, Right to access to justice and due process and Civil and patrimonial liability of the state.

The area of criteria and issues covered by the Court in the 50 emblematic decisions presented in the book is impressive. It goes from traditional principles and

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<sup>5</sup> Inter-American Court of Human Rights was established by the American Convention on Human Rights adopted in 1969 by the Inter-American Specialized Conference on Human Rights.

<sup>6</sup> The Mexican Federal Judicial Weekly is the official means of publication of the decisions and precedents of the Federal Judiciary, established in 1870.

constitutional values -the standards of constitutional review, the federalization of crimes committed against journalists, incorporating a social model to avoid discrimination against persons with disabilities, the prosecution of cases of femicide and violence against women, the interpretation of the principle of the best interests of the children and adolescents, the right to non-discrimination and free development of one's personality, interpretation of intercultural justice or establishing a right to housing – to key issues of the modern world – consolidating a progressive constitutional doctrine on the right to a healthy environment that places nature at the center of judicial protection, being the first constitutional court on the American continent to declare norms that prevented access to marriage for same-sex couples unconstitutional, declaring the unconstitutionality of the absolute prohibition of the recreational consumption of marijuana or sanctioning the mistreatment of animals in various contexts.

For example, in case 148/2017, that I've mentioned before, the Supreme Court, at the request of Mexico's Attorney General, declared the unconstitutionality of a norm that penalized women ("and all people with the capacity to gestate", marking again it's very progressive approach to such issues) who voluntarily decide to interrupt their pregnancy within a period close to conception. This decision is very important because it was issued through an Action on the Grounds of Constitutionality and, therefore, could reflect the importance of the binding nature of the precedents of the Supreme court, in light of the judicial reform of 2021<sup>7</sup>.

### III. Conclusions

This paper provides valuable insight on the functioning and fundamental jurisprudence of a Supreme Court, which is also a constitutional jurisdiction, from a lesser known judicial system in Romania and which appears to be one of the most progressive on the American continent and in the world.

Although the vision it provides is inevitably one-sided, as this collection of case-law has been drawn-up and published under the authority of the Court itself, and regardless if we choose or not to follow it's ultra-progressive approach on same matters, it is nevertheless a priceless tool for a comparative study of the measure in which the doctrine of North American supreme courts mirrors our own vision of fundamental rights.

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<sup>7</sup> Introductory Note by Chief Justice Arturo Zedillo, p. XX.