

JUDICIAL REFORM: WHAT DOES THE DISMISSAL OF UNCONSTITUTIONALITY ACTIONS IMPLY?

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Executive Summary:

- The reform decree that amends and repeals various provisions of the Political Constitution of the United Mexican States to significantly modify the organization and operation of the Federal Judiciary was published on September 15, 2024.
- The ruling issued by the Supreme Court of Justice of the Nation (SCJN) regarding the unconstitutionality actions filed against this reform has raised questions about its legal and practical implications. In this regard, we consider that, even though the reform was not declared unconstitutional, its constitutionality was not explicitly affirmed either.

At the outset, it is essential to note that, in cases of unconstitutionality actions, the SCJN requires a qualified majority of 8 votes to invalidate a norm. If such a majority is not achieved, as was the case with the unconstitutionality actions filed against the constitutional reform of the Federal Judiciary, these actions are deemed "dismissed." This means that the provisions remain valid for general application but do not necessarily receive a definitive pronouncement on their constitutionality.

The reform proposed by the Federal Executive, which was published on September 15, 2024, in the Federal Official Gazette, amends several provisions of the Political Constitution of the United Mexican States, including, among others: *(i)* the composition of the Supreme Court of Justice of the Nation, *(ii)* the process for appointing Justices of the Supreme Court, Circuit Court Judges, and District Judges by establishing a popular election process for these positions, and *(iii)* setting a maximum period of six months for the resolution of matters, counted from the date they are brought to the judicial body's attention.

In this regard, it is important to mention that the dismissal of these unconstitutionality actions does not preclude future challenges, as the provisions may be questioned again through other constitutional control mechanisms, such as amparo lawsuits or constitutional controversies. Thus, despite recent restrictions, the amparo lawsuit could be used to challenge the reform in specific cases, especially when violations of fundamental rights or legislative procedures are alleged.

This aligns with the SCJN's established precedents, which recognize that constitutional reforms can be analyzed under parameters of constitutional regularity, such as the pro persona principle and human rights.

Additionally, while constitutional controversies have traditionally been limited to disputes between branches of government, the SCJN has developed criteria that could allow challenges against provisions that violate essential principles, such as the functional division of powers or the federal pact.

Furthermore, the recent constitutional supremacy reform, effective as of November 1, 2024, introduces a significant element to this analysis. This reform prohibits challenging constitutional amendments through unconstitutionality actions, constitutional controversies, and amparo lawsuits. While the provision aims to strengthen the supremacy of constitutional reforms, its impact on the legal framework could be problematic, as it significantly restricts the available constitutional control mechanisms to question potential violations of legislative procedures or the content of these reforms. This could lead to a more rigid interpretation of the Constitution, potentially affecting the principle of progressivity and effective access to constitutional justice.

Given the above, we believe that the SCJN's ruling does not represent a definitive conclusion to the discussions surrounding the judicial reform. Other constitutional control mechanisms and new actions by affected parties could lead to a more detailed analysis in the future regarding irregularities in the reform's approval process and the constitutionality of its content.

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