

JUNE 11, 2024



**CONSTITUTIONAL REFORMS TO THE
JUDICIARY BRANCH**

The result of the June 2, 2024 Mexican election is a landslide victory of Morena and associated parties led by President Andrés Manuel Lopez Obrador (AMLO). Most likely, such parties will have the majority in Congress required to pass constitutional amendments, which will be confirmed upon the final vote count in August. The newly elected Congress will be installed on September 1 and Claudia Sheinbaum will take the office as newly elected president on October 1.

On February 5, 2024, President López Obrador submitted a package of constitutional reform initiatives, including a profound and radical reform to the judiciary branch. Following please find a description of the main elements of such initiative (the “Initiative”), which may be passed by Congress as soon as September 2024.

I. Selection of Justices, Magistrates and Judges by popular vote

The Initiative proposes that the appointment of Justices of the Supreme Court of Justice (SCJN), Circuit Court Magistrates, Federal District Judges and members of a new Judicial Discipline Tribunal, is made through the election by direct and secret vote of the citizenry.

Supreme Court of Justice

Furthermore, the Initiative introduces several significant changes to the structure, composition, and functioning of the SCJN, such as reducing the number of Justices from 11 to 9, and their tenure from 15 to 12 years. The SCJN would no longer have two chambers and could only function as full court of the 9 justices.

All deliberation sessions of the SCJN would have to be public, thus eliminating the exception that allows closed door sessions when public interest prevails.

Circuit Court Magistrates and Federal District Judges

From a structural perspective, the composition of Circuit Courts and District Courts will remain the same, the only difference being that their tenure will now be limited to 9 years, with the possibility of being reelected for multiple terms.

The election process

The election of the members of the Judiciary would be held concurrently with the election of members of Congress and the president, i.e. on the first Sunday of June every three years.

The Executive, Legislative, and Judicial branches will each propose the candidates. The Executive branch, represented by the President, will nominate up to ten candidates in case of election of the justices of the SCJN, and up to two candidates in case of district judges and circuit magistrates. The Legislative branch would nominate up to five candidates per Chamber (Senate and House) in case of election of the justices of the SCJN, and one candidate in case of district judges and circuit magistrates, in each case by a qualified vote of two-thirds of its present members. The Judiciary, through the SCJN, by a majority vote of six justices would nominate ten candidates for the election of the SCJN justices, and up to two candidates in case of district judges and circuit magistrates.

The period to prepare such nominations of candidates by the three branches of government, as described above would run from September 1 through December 31, provided that the Senate would have to verify that the candidates so nominated have the qualifications and integrity to serve in the judiciary. The Senate must then remit the proposed list of candidates to the electoral regulator, by December 31st of the year before the election takes place, at the latest.

The Initiative provides that those branches that do not submit their list of nominations within the aforementioned 90-day period, for whatever reason, including the failure to reach the necessary majorities for the nominations, will lose their right to submit and propose candidates for the relevant election process.

Candidates, once published by the electoral regulator, would have the right to access radio and television equally and to participate in debate forums organized by the electoral regulator. However, public or private financing of their campaigns would be prohibited, as would the hiring of media spaces for promotion. Political parties would also be prohibited from engaging in proselytizing acts for or against any candidate.

The election process would be organized by the electoral regulator in same fashion as it is currently done of for the election of the president. Any challenges would be resolved, and the declaration of the final results would be made by the Electoral Tribunal of the Federal Judiciary. The members of the Judiciary so elected would take their positions on September 1 of the year in which the election took place.

The transition process

The Initiative states that the SCJN Justices, Circuit Court Magistrates and District Judges who are in office at the time of the Initiatives entry into force shall conclude their terms on the same date that the elected officials take office.

The initiative establishes the process for conducting an extraordinary election before the statutory mechanism described above applies. For such purposes, the Senate will have a 30-calendar day period computed from the enforcement of the reform, to issue the announcement for integrating the list of candidates to participate in the election. The three different branches will propose their candidates and the Senate will review their eligibility. Once reviewed, the Senate will remit the list to the electoral regulator, who shall organize and announce the extraordinary electoral process to be held no later than a year following the entry into force of the initiative.

The Justices of the SCJN that are elected in the extraordinary elections to be held in 2025 will remain in office for 8, 11 and 14 years, thus concluding their terms on the last day of August 2033, 2036 and 2039, clarifying that the Justices that obtain more votes will hold office for the longer periods.

The term for elected Circuit Court Magistrates and District Judges, would conclude on the last day of August 2030. Magistrates and Judges that currently hold those positions will be eligible candidates in the extraordinary election.

II. Reform to the Federal Judiciary Council

The Initiative proposes to reform several articles of the Constitution related to the powers and duties of the Federal Judiciary Council currently controlled by the SCJN. Such Council would be replaced by two independent bodies: the Judicial Administration Body and the Judicial Discipline Tribunal.

Judicial Administration Body

The administration of the Federal Judiciary will be the responsibility of a judicial administration body, endowed with technical and managerial independence. It would basically perform the functions currently performed by the Federal Judiciary Council.

The judicial administration body would be composed by five members who will serve a non-renewable term of six years:

- One appointed by the Federal Executive.
- One appointed by the Senate by qualified vote.
- Three appointed by the SCJN by a majority of six votes.

Judicial Discipline Tribunal

The new Judicial Discipline Tribunal would be composed by five members elected by direct vote of the national citizenry, with the same requirements and processes as those applicable for becoming a Justice of the SCJN and serve a non-renewable term of six years...

Such Tribunal would have the authority to:

- Investigate and sanction administrative responsibilities and conducts by judges contrary to the principles of excellence, professionalism, objectivity, impartiality and independence inherent to Justices, Magistrates, Judges and judicial personnel.
- Impose sanctions such as reprimands, suspension, financial penalties, removal, and disqualification, provided that a justice of the SCJN may only be removed through impeachment.
- File criminal complaints against any judicial officer and request impeachment against Justices.

Decisions and resolutions issued by the Tribunal would be final and unappealable.

Transitory Provisions

The initiative provides that the implementing legislation should be enacted within 180 calendar days from the entry into force of the reform decree.

III. Reforms addressing prompt and expedited justice

The proposed reforms to the Mexican judicial system aim to address the longstanding issues of inefficiency and delays in the administration of justice.

The proposal includes specific time frames for resolving disputes, particularly in tax matters, where Tribunals and District Courts must resolve cases within a maximum of six months from the date the Tribunal or Court receives the case. If this period is exceeded, the judicial body must immediately notify the Judicial Discipline Tribunal and justify the delay.

The Judicial Discipline Tribunal may investigate and sanction judges and magistrates who fail to meet the prescribed deadlines without justifiable reasons.

IV. General effects in injunctions and decisions

The Initiative provides that in no case can injunctions with general effects be granted with respect to constitutional controversies, actions to control constitutionality, and amparo lawsuits filed against general laws or regulations. In addition, the reform prohibits decisions in amparo lawsuits with general effects.

V. Final Comments

The SCJN and certain district judges have declared several laws enacted during the last five years as unconstitutional. In response thereto, AMLO has attacked the Judiciary as a corrupt organization at the service of minorities and elites and not at serving the people as it should. The Initiative was presented by AMLO on February 5 upon the assumption that Morena and associated parties would reach the majority in Congress required to amend the Constitution, which Morena did not have during the past legislative periods. As mentioned above, it is highly likely that the result of the June 2 elections will enable Morena and its associated parties to amend the Constitution.

The dramatic changes contemplated by the Initiative are justified based upon the hypothesis that judges elected by the direct vote of the people are better suited to comply with their duties as the judges appointed under the current rules. This overlooks the function of a judge, which is to apply the law and constitution; not to take decisions for the benefit of the people regardless of the legal mandates.

The Initiative is clearly an instrument to have the Judiciary controlled by the President, in addition to the control over the legislative branch by demanding that the legislators vote to approve all initiatives submitted by the President without any change.

Two provisions contained in the Initiative serve as instruments to obtain such control over the Judiciary.

Firstly, the provision of the Initiative that the approval of legislative bodies of the list of candidates they want to be submitted to the people's vote requires a vote within 90 days of two thirds of the representatives, has the effect that in most instances there will be no list approved by the legislators since the two third majority requirement is utmost difficult to reach as evidenced in the process of the designation of justices under current law which requires the Senate to pick one candidate out of two lists of three candidates each presented by the President. That majority is usually not met and then the President is authorized under the rules currently in effect to appoint the justice without the vote of the senators.

The same may happen with respect to the list to be agreed by the vote of six justices of the SCJN. As a result of the aforementioned overreaching voting requirements, only the list presented by the Executive branch, the President, will make it to the ballot of the election. Since almost nobody knows the candidates for judicial posts, in practice the votes will follow the order of the list of candidates presented at the ballot, which in practice will be the list submitted by the President.

Secondly, the creation of a Judicial Discipline Tribunal elected by popular vote based upon a list of candidates chosen by the President (see Firstly above), is a deadly attack on the independence of the judges, since the Initiative enables such Tribunal to sanction and remove judges not only in case of a clear violation of a legal provision by a judge but on criteria which are very broad and vague and allow a political control of the judges.

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Consequently, the independence of the Judiciary as an essential requirement to function as a governmental branch in charge of securing the constitutionality and legality of the acts of the executive and legislative branches would no longer exist. The Initiative violates basic principles of the rule of law and of the division of power.

Finally, it is important to note that following the enactment of the Initiative, Mexicans will be expected to cast votes for more than 1,500 judiciary positions.

Should you have any questions or require any further information, our team of professionals is available to assist you. We encourage you to reach out to your ordinary Ritch Mueller contacts to seek advice.

