

THE CONSTITUTIONAL REFORM OF MANDATORY PRECEDENTS AND THE CONSEQUENCES OF THEIR NON-COMPLIANCE BY FEDERAL JUDGES.

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At present, we are facing a diverse form of integration of Mexican jurisprudence, this, as a result of the implementation of the Eleventh Epoch of the Judicial Weekly of the Federation, therefore, this article aims to address whether or not there is responsibility on the part of Federal Judges as a social claim for not complying with the determinations issued by their hierarchical superiors in confrontation with judicial independence.

Now, the judicial reform that concerns us, was published in the Official Gazette of the Federation on the eleventh of March of two thousand and twenty-one, and from the first of May following, began the Eleventh Epoch of the Judicial Weekly of the Federation, in which, the way of constituting a precedent that is mandatory following the system of hierarchies for a certain territory is restructured, or, where appropriate, the entire country, which is why it is considered to constitute a transcendent change, in order to move to the system of jurisprudence by reiteration of criteria to precedents, which refers to the US system.

Historically, the function of jurisprudence has laid the foundations for the conduct of judicial bodies, that is, they are guiding criteria that resolve certain circumstances, which although they have already been discussed in advance of the case that is resolved or that in a similar way may constitute an idea of the way in which the new case should be adjudicated; However, in a generic way, at least five previous cases had to be specified so that the theses issued reached the rank of jurisprudence and therefore, their obligatory nature was constrained, which could occur in a short or indeterminate period of time.

According to Minister President Arturo Zaldívar, it constitutes the most important constitutional reform of the last quarter of a century, specifically with respect to the jurisprudential system, since it implies a structural change and that seeks significant effectiveness to urge self-criticism, in what interests it states:

"Modification to the system of jurisprudence, to strengthen the precedents of the Supreme Court of Justice of the Nation. In order that the constitutional doctrine that frames the work of the rest of the jurisdictional bodies of the country."

That assertion is supported by the fact that the case-law was limited to the creation of theses by contradiction or by repetition; The reform proposes that the Supreme Court, when analyzing an issue and the vote is qualified, be understood to have generated a mandatory precedent, which is why the

population can demand its observance immediately and the criteria be used by anyone who goes to trial without the need to join five criteria in that regard, which makes its creation more flexible and therefore its application.

For this reason, it is understood that a criterion that becomes mandatory comes into force once it is published in the Judicial Weekly of the Federation.

I. Bodies entitled to create jurisprudence.

According to the Amparo Law, the bodies currently legitimated are the collegiate circuit courts, the regional plenary sessions and the Supreme Court of Justice, by themselves and functioning in Chambers, and, with regard to the subject that concerns us, the jurisprudence by obligatory precedents is supported by articles 222 and 223 of the aforementioned Law. where it is instructed that those sentences issued by the Plenary of the Supreme Court of Justice of the Nation will constitute binding when they are taken by a majority of eight votes, and for the Chambers by a majority of four votes, which covers all the jurisdictional authorities of the Federation and the federative entities. Which, of course, covers Federal Judges, of any circuit and speciality, however, there are occasions in which these criteria are not carried out, interposing judicial independence.

II. Legal framework of judicial independence.

In a brief way, we can mention that judicial independence constitutes those guarantees and conditions that allow the judiciary to exercise its functions in a legitimate, impartial, transparent and effective manner, in order to avoid vices or unnecessary dependence on the other powers of the State.

Some instruments that encompass judicial independence at the international and local levels are the Inter-American Democratic Charter, which, in its article 3, establishes that:

"Essential elements of representative democracy are, inter alia, respect for human rights and fundamental freedoms; access to and exercise of power subject to the rule of law; the holding of periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; the plural regime of political parties and organizations; and the separation and independence of public powers."

In this order, the international principles on the independence and responsibility of judges, lawyers and prosecutors, indicate that for a trial to be fair, the judge or court of the case must be independent³, likewise, the Basic Principles of the United Nations, concerning the independence of the judiciary establish that this will be guaranteed by the state and established in the constitution, to be respected by all government institutions.

Similarly, the Council of Europe Recommendation on the Independence, Efficiency and Role of Judges establishes that the executive and legislative branches must ensure that judges are independent avoiding measures that could jeopardize it.

At the national level and as a reference that concerns us, we find the Code of Ethics of the Judicial Power of the Federation, which indicates that independence is the attitude of the judge in the face of social pressures, adhering to what the norm dictates without extraneous pressures to it; Also that the

judge must be objective, that is to say that his inner perceptions or way of thinking affect what he analyzes, since the recognition of any person is not sought for doing what he does, in the same way, it is known that the standards that are sought in the Judicial Power generally being a demanding job needs a great social commitment. However, it is not always the same for each judge, this is because judicial independence also refers to the fact that it is not obliged to perform its function in accordance with the criteria of the other judges of its circuit, that is, that, in a certain issue, a precautionary measure is granted, by court "A", and in court "B", is denied, unless there are sustained criteria in a certain sense, which is not always carried out by the issues that will be raised.

I. Judicial statistics

The fundamental reasons for ruling in a certain sense, can be influenced by various issues, for example, the date on which a request for amparo is processed, call it indirect, which, due to its proximity to the end of the month, and in order to generate expenditures effectively, a greater number of dismissals or dismissals are made, even because we are faced with certain kinds of matters that it is preferable that it is superiority who takes the last word. When the litigants resort to the remedy of complaint or review in their case.

We are facing the statistics of an organ against its counterparts, which is measured by the percentage of outputs against the entries of judicial files, this is the initial inventory against the final inventory is productivity.

This productivity in the case of the Federal Judiciary, is measured year after year with the accounts that are rendered to the organ of the council through a visitor, who is responsible for verifying that administratively the organ functions optimally, likewise, accounts are rendered of the matters matter by matter that are developed before each organ, that is, files for the District Courts, amparo, civil, criminal, commercial, so a determining factor turns out to be the current existence that each organ reports.

It is here where what is understood by egress becomes relevant, an example of which are the dismissals, in which without going to the merits there is a cause that makes the requested trial inadmissible, dismissals out of hearing when for some situation it is unfeasible to reach the dictation of the sentence due to the occurrence of some cause of inadmissibility and properly the matters that have a judgment of amparo whatever its meaning.

II. Administrative Responsibilities.

Now, what happens to those holders who deliberately fail to observe some mandatory criteria in order to generate more expenses?

According to the specific case and along with the corresponding judicial remedy, the parties involved or anyone who hears the fact may apply to file an administrative complaint with the Council of the Federal Judiciary, which is supported by article 91 of the Federal Law on Administrative Responsibilities, since this procedure may determine whether an official of the Judicial Power of the Federation, incurred in that matter, as

Likewise, the Council of the Federal Judiciary issues criteria in disciplinary matters, among which we find that the variation of a sustained criterion, does not generate responsibility, that is, having resolved ten sentences previously of a certain matter in a certain sense, does not generate responsibility for the judge, resolve any in the opposite direction.

In contrast to the above, it is considered that the owner who issues a judgment contrary to law has committed abuse, which may result in a ruling containing issues that are not in accordance with the law, since by acting so he harms the correct exercise of the public function and, therefore, You could incur liability, which is why you can be sanctioned.

However, administrative complaints aimed at specifically combating an issue related to the non-observance of jurisprudence, is not appropriate since the council cannot decide whether a matter was properly decided or not, only if the administrative manner in which the right is provided was disregarded, so that a liability for disregard for the provisions of jurisprudence arises once the notorious application to the case has been verified. concrete.

III. Conclusions.

With the foregoing, in accordance with the constitutional reform and the implementation of the mandatory criteria issued by the court, we can conclude that there are mechanisms created by the Judiciary itself to air the contraventions of the Amparo Law, being the most appropriate an administrative complaint for non-compliance, however, it must be demonstrated that this contravention was incurred in a malicious manner, Otherwise, the second most appropriate thing is to go before the superior body to promote the remedy that by law is appropriate and to wield the corresponding grievance.

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