

New form of jurisprudence creation in Mexico

On March 11, 2021, the decree reforming various articles of the Mexican Constitution was published in the Official Journal of the Federation, with the aim, among others, of establishing a new way of creating jurisprudence by the Supreme Court of Justice and other bodies of the Federal Judiciary.

A) PREAMBLE

Jurisprudence is a mechanism, through which the bodies of the Federal Judiciary (PJF) issue criteria on the interpretation, integration, and application of legal norms and principles that are mandatory for federal and local courts.

B) REFORM

- Jurisprudence.

As a result of this constitutional reform, on May 1, 2021, General Agreement 1/2021 came into force, which modified the structure of the PJF and the competence of the bodies that comprise it, in particular, with regards to the creation of jurisprudence.

For a better understanding of the issue, it is advisable to recall that before the aforementioned constitutional reform, jurisprudence was established by:

- Reiteration of criteria. This was established when the same criterion is upheld by five judgements that have not been interrupted by another contrary judgement.
- A Contradiction of Theses. This is established when elucidating discrepant criteria sustained between the Chambers of the Supreme Court of Justice of the Nation, between the Circuit Plenary, or between the Collegiate Circuit Courts, in matters within their jurisdiction.
- Interruption. This occurs when a contrary judgement is pronounced, therefore the case law is interrupted and ceases to be binding.
- Substitution. The jurisprudence is established by reiteration or contradiction by the Plenary, by the Chambers of the Supreme Court of Justice of the Nation, or by the Circuit Plenaries.

As of the date of the reform, the case law will be established as follows.

1. **By binding precedent.** It is established by the Supreme Court of Justice of the Nation, functioning in plenary or in chambers.
 - i) Plenary: The reasons that justify the decisions contained in the judgements issued by the Plenary constitute binding precedents for all jurisdictional authorities of the Federation and of the federative entities when they are adopted by a majority of eight votes.
 - ii) Chambers: The reasons that justify the decisions contained in the judgements issued by the chambers constitute binding precedents for all jurisdictional authorities of the Federation and of the federal entities when they are adopted by a majority of four votes. Questions of law or fact that are not necessary to justify the decision shall not be binding.
2. **By Reiteration.** It is established by the Collegiate Circuit Courts when they unanimously uphold the same criterion in five judgements not interrupted by another contrary judgement. Therefore, the jurisprudence by reiteration established by the Supreme Court of Justice disappears.
3. **By Contradiction of Criteria.** It is established when elucidating the discrepant criteria sustained between the Chambers of the Supreme Court of Justice of the Nation, between the regional plenary sessions, or between the Collegiate Circuit Courts in matters within their jurisdiction.

When resolving a contradiction of criteria, the corresponding body may accept one of the dissenting criteria, support a different one, declare it non-existent or without subject matter. In any case, the decision shall be determined by the majority.

Regional plenary sessions. The regional plenary sessions arise in substitution of the circuit plenary sessions as bodies, in which part of the exercise of the Judicial Power of the Federation is deposited.

They will have knowledge of and resolve matters within the delegated competence of the Supreme Court of Justice of the Nation, specifically in the resolution of contradictions of criteria generated by different circuits that make of that region of the regional plenary sessions, to establish binding criteria. Through them, the goal is to consolidate constitutional justice and thereby strengthen the Supreme Court's role as a constitutional tribunal.

These plenary sessions shall be composed of three ratified circuit magistrates, who shall serve for three years and can be appointed for another three-year term.

4. **By Interruption.** Courts are not obligated to follow their own case law, however, in order for them to depart from it, they must provide sufficient arguments to justify the change of criterion. In that case, the case law will be interrupted and will cease to be binding.



- **Mandatory.**

The binding nature of case law shall be as follows:

1. The jurisprudence established by the Supreme Court of Justice of the Nation will be obligatory for all jurisdictional authorities of the Federation and of the States, except for the Supreme Court of Justice of the Nation itself, due to the fact that:
2. The case law of the Plenary shall be binding on its Chambers, but the case law of the Chambers shall not be binding on the Plenary. Chambers shall not be bound by the case-law of another chamber.
3. The jurisprudence to be established by the regional plenary sessions shall be binding on all jurisdictional authorities of the Federation and of the states of their región, except for the Supreme Court of Justice and the regional plenary sessions.
4. The jurisprudence established by the Collegiate Circuit Courts shall be binding for all jurisdictional authorities of the Federation and of the states of its Circuit, with the exception of the Supreme Court of Justice of the Nation, the regional plenary courts, and the Collegiate Circuit Courts.
- 5.

C) COURTS OF APPEAL

The Unitary Circuit Courts are replaced by Collegiate Courts of Appeal, composed of three judges to strengthen deliberation.

D) JUDICIAL GAZZETE OF THE FEDERATION

Within the General Agreement 1/2021 of the plenary of the Supreme Court of Justice of the Nation, the manner in which the theses will be published in the Judicial Weekly of the Federation was established, the most relevant aspects to point out are as follows:

- Heading which will identify the topic to be addressed in the thesis.
- Narrative of the most relevant facts which should be described concretely and briefly. Stating only the most necessary facts and those that gave rise to the adopted criterion by the court to decide the case.
- Legal standard reflecting the legal response adopted in resolving the legal issue.
- Clearly stated justifications for the arguments put forth by the court to support the legal criterion adopted in the judgement.



- Identification data consisting of the thesis number, the court that delivers it, and the votes that are cast at the time of adoption.
- In the case of jurisprudence issued by contradiction of criteria, in addition to the above points, it must contain the details of the contending theses, the issuing body, and the votes cast during the sessions in which it is resolved.

E) CONCLUSIONS

The constitutional reform of the judicial system of our country is important because it strengthens the role of the constitutional court of the Supreme Court of Justice of the Nation, through the establishment of mandatory criteria, consolidating constitutional justice.

Previously, with the repetition system, the protection of the litigant's rights was complicated by having to repeatedly re-litigate the same issue until a repetition was found, which, on many occasions, did not occur.

This is why the system of precedents, by making the criteria of the Supreme Court of Justice of the Nation mandatory, represents a tool in favour of citizens so that they may expeditiously obtain the protection of justice.

The delegation of powers deriving from the reform of our country's judicial system will facilitate the work of the Supreme Court of Justice of the Nation, in order to comply with the reform's purpose, by strengthening its role as a Constitutional Court. Thereby focusing it, consequently, on matters of greater relevance and transcendence for its purpose, the good of law and justice.

Finally, we consider that, although the reform is praiseworthy, it has important errors of substance, such as the selection criteria for the Supreme Court of Justice of the Nation to attract a case under the criterion that it "has an exceptional interest in constitutional or human rights matters", as provided in the recent amendment to Article 81 Fc. II of the Amparo Law. Such amendment, being ambiguous and imprecise, since it does not define under what criteria it will be determined when it constitutes an exceptional interest in constitutional and human rights matters, could become a discretionary and arbitrary power of the highest Mexican constitutional court.

In this regard, it is worth mentioning that in jurisdictions such as Spain, the Constitutional Court of Spain, although it provides for a similar figure such as "special constitutional transcendence", its legislation does specify the criteria for this to be met -which should have been provided for in the recent Mexican reform- considering that the origin of Mexican law is of Germanic-Romanic inspiration, which is common to that of Spain. However, the system incorporated in the judicial reform seems closer to the common law system, and could therefore become problematic since it does not have a case-by-case judicial system like the common law.



Alejandro Linares Caraballo
(alinares@ecija.com)

Adalberto Méndez López
(amendez@ecija.com)

José Mauro González Luna
(jgonzalez@ecija.com)

Jennifer Hamed Kassian
(jhamed@ecija.com)

Edwin Pineda Granados
(epineda@ecija.com)

ECIJA México, S.C.