

2021 – 4 Constitutional Administrative Litigation

Mexican Supreme Court of Justice declares unconstitutional the prohibition of cannabis for industrial use

On December 1st, the First Chamber of the Mexican Supreme Court of Justice granted an amparo by ruling the unconstitutionality of several provisions of the General Health Law and the Federal Penal Code that restricted, on an absolute basis, the use of cannabis in industrial processes.

By virtue of said resolution, the company that filed the amparo claim is now entitled to obtain authorization for the planting, growing, cultivation and harvest of cannabis which concentration is equal to or less than 1% of Tetrahydrocannabinol (THC), the main psychoactive element of marijuana. Such authorization would be subject to the monitoring, control and security conditions that the competent authority, in exercise of its powers, deems appropriate to protect public health and order.

This precedent is added to the legal framework for the regulation of cannabis in Mexico, and it is in line with other resolutions of the Mexican Supreme Court of Justice, given that last June 28th, 2021, when deciding the general declaration of unconstitutionality 1/2018, the Supreme Court eliminated the absolute prohibition on ludic or recreational consumption of said substance, derived from the fact that the Mexican Congress has not complied with the obligation to legislate on the matter.

It must be taken into account that on January 12th, 2021, the President of Mexico published in the Federal Official Gazette the Regulations of the General Health Law on Sanitary Control for the Production, Research and Medical Use of Cannabis and its Pharmacological Derivatives. Said Regulations were issued in compliance with a resolution of the Supreme Court of Justice, that ruled that the Federal Executive power had failed to create the regulatory provisions for the medical use of cannabis in accordance with the amendment to the General Health Law published on June 19th, 2017.



Finally, it should be considered that the bill of the Federal Law for the Regulation of Cannabis, which seeks to regulate adult or recreational use, as well as industrial use, is still pending approval in the Congress. Although the Senate had approved the proposal in November 2020, the Chamber of Deputies modified and returned it to the Senate.

In these terms, the Supreme Court of Justice has been constant in issuing judicial criteria tending to eliminate absolute prohibitions for the adult use of cannabis, as well as for industrial use, in addition to demanding its regulation regarding medical use. On the other hand, it should be noted that the Congress has not made any progress in the legislative part to regulate activities related to cannabis and in this way to provide legal certainty to economic agents interested in entering this market, already regulated in other countries.

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Mexico City

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