

## 2022 – 1 Strategic Administrative Litigation

### Mexican Supreme Court discusses constitutionality of the Energy Industry Law

On April 7th, 2022, the Mexican Supreme Court discussed a ruling draft that proposed to declare the constitutionality of the Amendments to the Energy Industry Law published on the Federal Official Gazette on March 9th, 2021.

The draft discussed by the Supreme Court, was meant to rule a constitutional claim filed by Senators, arguing mainly that such Amendments restricted the access to the electric market for private power generators, affecting anti-trust principles enshrined in the Mexican Constitution, and creating conditions that favor the state-owned power company (Electricity Federal Commission – CFE), as well as affecting human rights to a healthy environment.

Take into consideration that these kind of constitutional control procedures require of a qualified majority of 8 votes from the Justices, out of 11, in order to declare the unconstitutionality of a law with general effects. The latter, in contrast with rulings of amparo claims, in which they only need a simple majority.

In this regard, on April 7th, 2022, only 7 Justices argued that the amendments to the Law are unconstitutional, and 4 Justices voted in favor of the ruling draft that declares the validity of the reform. In such terms, the constitutional challenge filed by the Senators was dismissed, since the 8 votes were not obtained.

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It is important to consider that among the argumentations disclosed by the 7 Justices against the amendments to the Law, such Justices agree that some portions of the amendments are valid.

It is our consideration that said ruling of the Supreme Court will not trigger any direct adverse legal effect on the amparo claims filed by individuals or legal entities affected by the Amendments to the Energy Industry Law. Such assumption is based on the fact that 7 Justices have already disclosed that they consider unconstitutional the majority of the Amendments to the Energy Industry Law.

Therefore, if these 7 Justices maintain their positions, when the amparo claims are referred to the Supreme Court, a majority of Justices could rule the amendments are unconstitutional. Nevertheless, we recommend addressing each case particularly.

Be advised that also the Antitrust Commission and the State of Colima, filed constitutional controversies, which would be ruled in the following days by the Supreme Court; however, a similar outcome, to the one ruled on April 7th, would be expected for such procedures.

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Mexico City

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