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HUMAN RIGHTS IN MEXICO MORE THAN A DECADE AFTER ITS IMPLEMENTATION

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Abstract: More than a decade after the constitutional reform referring to the first article, which supervises and recognizes compliance with Human Rights, it turns out that such recognition of rights is in a state of vulnerability. There is a socio-legal, ontological and epistemological imbalance of human rights to which the state has not paid sufficient attention. The terms State and Law must be kept together for the proper functioning of modern societies. From its conception, the State was regulated by law, but the State also exists by and for the individuals that make it up. Knowing that its motivation is the guarantee of an effective life in society, both for the institutions, bodies and individuals that are part of it. More than ten years of protection of rights have brought very significant changes in all areas of social life. Its meaning is not only verbal, but it has a deep and direct impact on people's lives. Today, the authorities cannot ignore the constitutional framework that limits their individual freedom of movement and the courts cannot apply the law without take into account the rights involved in the case, without interpretive tools and adjudicative methods that make the principle of personality a reality, it is no longer possible to talk about public policies without talking about human rights.

Keywords: Human Rights, Constitutional Reform, Rule of Law.

INTRODUCTION

In Mexico, guided by the reforms in France, by the then recent North American Independence and mainly, "By living in a state without rights", a reform would begin that would culminate in the Constitution of 1824. It sought to guarantee the freedom of the citizens, the possession of property and promoting the well-being of citizens, since these rights were denied to the Mexican population for centuries.

A provisional congress was convened on November 5, 1823, fulfilling its mission of reconciling the political tendencies that existed, despite the fact that the debates lasted until January of the following year. However, it was not until the Constitutive Act of the Mexican Federation that the bases for the Federal Constitution were established.

On October 4, 1824, the first president of the Republic - General Guadalupe Victoria - would swear before the Federal Constitution of the United Mexican States. A day later, the solemn Congress would close its activities, thus abolishing the constitution of Cádiz of 1812, although it was used as a model for the new constitution. The constitution also drew on systems such as the American and colonialist ones, leaving as a result the very peculiar system with which Mexico is governed today.

From the Constitution of 1924 we can highlight its first articles that established: The scope of the national territory, the state limits, a religion as the only one for the nation (over time we would move to a secular state) and the division of supreme power, being without This is undoubtedly the most important change for the nation, since power had been monopolized by a monarch. Power now belonged to the people, and it was decided that the division must consist of three new powers: The executive, the legislative and the judicial.

This constitution would be updated on December 29, 1836, which would begin a series of changes, updates and modifications that would keep it adapting to modern times to this day, having not only the Rights of the Mexican citizen as a priority, but also that of everyone who sets foot on Mexican territory. The last update was made on February 5, 1917, being the current constitution

THE POWERS THAT GOVERN THE MEXICAN SYSTEM

The Executive branch is a body in which the administration of the Mexican state is deposited and trusted. It is headed by the Constitutional President, who is elected every six years through direct elections and who since 1910 has been prohibited from re-electing the position.

The Legislative branch is in charge of issuing laws, which serve to regulate the correct operation, as well as the internal structure of the Mexican Republic. It is made up of two chambers: the Chamber of Deputies and the Chamber of Senators.

The first consists of 500 members made up of 300 elected by popular vote, and 200 elected by the principle of proportional representation. Likewise, the second chamber is made up of 128 Senators, two being elected according to the principle of relative majority voting, while one more is assigned to the first minority.

Last but not least, the Judiciary is responsible for monitoring the correct application and compliance with the laws and the constitution. No other law can precede or contradict this supreme law. This power is made up of the Supreme Court of Justice of the Nation, the Electoral Court and the Collegiate and Unitary Circuit Courts, and the District Courts.

It is important to note that the administration cannot act on its own, but must be protected by the law, which is a legitimate expression of the will of the people it represents.

ELEMENTS AND GUIDING PRINCIPLES

The rule of law can be defined as a fundamental element in government, by which all individuals, as well as institutions, whether public or private, as well as the state itself; They submit to the laws that have been publicly approved. The rule of law must be fulfilled with equality and independence, emphasizing that the law can even be above the state itself.

The rule of law is made up of individuals, agencies and public and private entities; which are subject to the rule of law, and must be complied with equally for the simple fact of being people regardless of their nationality, race or sex. This is contemplated in the first article of the constitution, which recognizes human rights.

The rule of law can be interpreted as the rules produced by a representative body, which are applied equally among the individuals and institutions that make up the state. These laws must be legitimate, and therefore, they must be legitimized.

Now entering into the matter of the elements, there are two questions that must be clarified: What are these elements of the rule of law? And does Mexico comply with them?

The first of them, and one of the most important, is the constitution. Its purpose consists of establishing an order to guarantee the priorities of the state, thus achieving the benefits of reason at the Social, Political, Cultural, Economic and Human levels.

The second element is the separation of the state, which is guaranteed in the constitution. Its purpose is to guarantee the proper functioning of the state hierarchy, preventing the three powers from interfering with each other. This is done to avoid obstructions, intimidation and allow free control of these institutions. The idea of separation of powers is an achievement of the democratic system, as

it expresses the independence of individuals, who elect the rulers who present these powers.

The third and last element falls on the principle of legality, which applies when there is no adherence to the law on the part of the state. This principle is a rule that says “how” and “who” must apply the laws, therefore, it opposes acts that go against these laws. It focuses on competence, legality and conformity of the actions of the authorities. It requires the subjection of all legal bodies, which means that every act carried out by the authorities must be based on established laws.

On the other hand, there are guarantees of fundamental rights, whose main function is to legitimize the application of the essential attributes of human dignity. These attributes are:

In the case of legal certainty and the protection of trust, in addition to what has already been mentioned above, the protection of legal expectations is also relevant; Of course, when there are reasons to trust the expectations of a pre-existing legal situation. The purpose is to mitigate arbitrary acts by public powers on citizens and the violation of their rights or legal agreements previously drawn up.

When a state meets these elements, we can guarantee that all members of society, both individuals and the government, are subject to abide by the laws, processes and codes that have been publicly disclosed without exception and without overriding the laws. standards, guided by absolute respect for human rights.

THE LEGITIMACY OF POWER

For (Aron, 1968) “power was defined as: the ability of an individual to determine the behavior of others. In its most general sense, power is the ability to do, produce or destroy.

For its part (Hernández, 2009) defines legitimacy as:

The international recognition of a State, of its supreme and independent political power. But on the other hand, and more important, since it is the foundation of the previous one, legitimacy is the recognition by the population that the rulers of their State are the true holders of power and those who have the right to exercise it: to create and apply legal norms, having a monopoly of force, in accordance with those norms, over the population.

In prehistory, power was exercised by the wise. They were the oldest people who guided the nomadic tribes with their empirical knowledge. Eventually, power would pass to religious figures, beginning the ideal of power granted by a divine entity. With the association of power to the gods, monarchies would be created. In them it was assumed that the king was a descendant of the gods themselves.

If at first power was legitimized by experience and knowledge, later it was done by divine design, allowing the one who exercised power by command of a superior force to make the decisions. Many of them were not well trained, and others made these decisions thinking of themselves. Without caring about the opinions of the people and without considering the consequences that such actions could entail.

Over time, the monarchies would fall and a new system would be established, the democratic system. Democracy is the legitimation of the power of the people, all carried out through popular election. The population is the one who, by going out to vote, provides the decision-making capacity and recognizes the power of the rulers. Even if part

of the population is dissatisfied with whoever exercises power, as long as he continues to be recognized, he will remain in office. If there is a lack of knowledge on the part of the rulers, events such as wars of independence or revolutions commonly occur.

Legitimacy is a problem that people encounter in the constitutional and democratic state. From a legal perspective, law must be the instrument to achieve the rule of law.

Legitimacy being a fundamental right, Luigi Ferrajoli defines it as:

All those subjective rights that correspond universally to all human beings as endowed with the status of person, citizen or person with the capacity to act; subjective right being understood as any positive expectation (of benefits) or negative (of not suffering injuries) assigned to a subject by a legal norm; and by status the condition of a subject, also provided for by a positive legal norm, as a presupposition of his suitability to be the holder of legal situations and/or author of the acts that are the exercise of these.

Universal rights are therefore fundamental. They are contemplated within the political constitution of the United Mexican States. To mention a few: The rights of freedom, Equality, Legal security, Social rights, and the like. Human rights are recognized for any individual, for the simple fact of being people.

Previously, individual guarantees were mentioned, which were within the first 29 articles of the Political Constitution of the United Mexican States. What is known today as individual guarantees is far from the mechanisms by which the means of protection of fundamental rights mentioned in said articles are enforced. This is clear, if only the rights embodied in the constitution and the human rights indicated in international treaties to which the Mexican state is a party are covered. It must be noted that on June 10, 2011, the provision was reformed, remaining

as follows:

Article 1.- In the United Mexican States all people will enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or be suspended, except in the cases and under the conditions established by this Constitution.

As a note, the rights that have the national aspect as their source are based on the constitution. And those that have the international aspect as their source are based on international treaties. Individual guarantees are the protection instrument that people have regardless of their source, all through public institutions.

In Mexico, the constitution states that for an international commitment to have the character of an international treaty, it must be signed by the President of the Republic and then ratified by the Senate. Mentioning some universal treaties based on the Universal Declaration of Human Rights that have been signed: The International Covenant on Economic, Social and Cultural Rights, The International Covenant on Civil and Political Rights, The Convention on the Rights of the Child, among others.

At the American regional level, based on the American Declaration on Human Rights signed in Bogotá, the American Convention on Human Rights (known as the Pact of San José) and the Additional Protocol to the American Convention on Human Rights have been established as a treaty. (known as the San Salvador protocol), relating to social rights. In our country, these regional instruments tend to be cited more.

Human rights are understood as the set of powers and prerogatives that people have for the simple fact of existing, of being people. They are not granted at a whim, but every human being is the holder of them regardless

of nationality, sex, marital status or any other particular trait.

Finally, mention will be made of one of the many cases where the ineffectiveness of the rule of law has been shown. In particular, this case is important for being the first to present precedent for causing reforms to the constitution. We will talk in broad strokes about the case, the sentence given and the impact it had on the regulation of the Mexican state.

Rosendo Radilla Pacheco Case (08/25/1974). Rosendo Radilla is a social leader from the municipality of Atoyac de Álvarez, Guerrero. He dedicated his life to the fight for the health and education of his people. He was illegally detained and then disappeared on August 25, 1974 by the military, during the period known in Mexico as the dirty war.

It was not until 1999 and due to the repression suffered by the state during the dirty war, that the Radillo family was able to present formal complaints to national authorities, but due to their repeated refusal to resolve the case, it ended up being taken to the Inter-American Human Rights System (SIDH).

The sentence determined reparation for damages to the family members, as well as a criminal investigation in the search for those responsible. The reparation was carried out as agreed, but regarding the investigation, it is regrettable to say that to date no person responsible has been brought to justice. At the same time, the feeling of impunity remains present in the reforms derived from this process of struggle.

Regarding the reforms, it was achieved that cases where civilians are involved are resolved in civil jurisdiction, and not in military jurisdiction. However, this reform does not consider whether the victim is an active military member, nor do it establish

sanctions for the hierarchical superiors of those responsible for forced disappearances.

In the words of the IACHR, the rights violated by the Mexican state were:

The State is responsible for the violation of the rights to personal liberty, personal integrity, recognition of legal personality and life, enshrined in articles 7.1, 5.1, 5.2, 3 and 4.1 of the American Convention on Human Rights, in relation to the obligation to respect and guarantee contained in article 1.1 of the same and with articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Rosendo Radilla Pacheco... The State is responsible for the violation of the right to personal integrity enshrined in articles 5.1 and 5.2 of the American Convention on Human Rights, in relation to article 1.1 thereof, to the detriment of Mrs. Tita and Andrea, and Mr. Rosendo, all with the last name Radilla Martínez ...The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in articles 8.1 and 25.1 of the American Convention on Human Rights, in relation to articles 1.1 and 2 thereof and articles I paragraphs a), b) and d), IX and XIX of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mrs. Tita and Andrea, and Mr. Rosendo, all of whom have the last name Radilla Martínez.

CONCLUSION

As it was seen previously in this article, rights have not always been guaranteed for everyone. Throughout history, humanity has little by little democratized access to rights. Mexico has not been the exception to this rule.

The country has gone from “living in a state without rights” to a fully functioning democracy, with all the problems that this entails. The detail is that Mexico has not been able to fully adapt to the needs that this entails. The function of the rule of law is, has been and always must be to protect the universal rights

of each individual. Unfortunately, that has not always been the case in Mexico's history.

There are plenty of examples, from the Mexican state's ignorance of rights as basic as life, as was the case of the aforementioned Rosendo Radilla Pacheco; such as the little or no action in other cases that unfortunately remain unpunished and that have only been replicated, as was the case of the "cotton mills of Juárez", which many Mexicans cite as a precedent for the phenomenon of feminicide

that to this day today it is still valid.

The state has the obligation not only to recognize the rights of citizens, but also to protect their integrity. If the above is not met, since it would be illusory to think that violence is a factor that can be completely eliminated, the state must and has the obligation to provide a satisfactory closure to these cases, which it has not done and on several occasions has done. demonstrated indifference in its compliance.

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