Executive note on the draft resolution proposed to the Plenary Court by processing Minister Juan Luis González Alcántara Carrancá to respond to the actions of unconstitutionality filed by various national political parties, a local political party and the parliamentary minority of a federal entity.

This action of unconstitutionality challenges the so-called "Judicial Reform", published on September 15, 2024 in the Official Gazette of the Federation, which seeks to renew the Federal and state judicial powers and provide them with democratic legitimacy. Among its measures, the popular election of judges, the creation of a stronger system of administration and discipline of the judicial powers, and other measures related to austerity, remunerations and the scope of the various means of constitutional control stand out.

According to the Constitution, national political parties have standing to challenge general rules on electoral matters, whose scope of validity is the entire national territory. The challenged Decree complies with this characterization: it contains general rules, which regulate the electoral processes through which the judges of the whole country will be elected. Therefore, the PRI, the PAN and the MC have standing to file an action of unconstitutionality.

The Mexican Supreme Court of Justice is empowered to resolve actions in which the constitutionality of general rules is challenged. The challenged Decree contains general rules. Therefore, the Court is empowered to hear the action in which the unconstitutionality of the challenged Decree is raised.

Normally, in an action of unconstitutionality, the general rules challenged are studied taking as a point of reference, or control parameter, the provisions of the Constitution itself and, by virtue of Article 1, the human rights contained in the international treaties signed by the State. However, in this case, there is a peculiarity: the challenged general norms are also part of the Constitution.

Why analyze the constitutionality of an unconstitutional reform? Our Constitution, in force since 1917, is the product of a federal pact that various territories entered into as a result of the Mexican Revolution. The people of Mexico, not the electoral people, but the people of Mexico themselves chose a specific form of government. In our Constitution, this pact was thus embodied:

> **Article 40.** It is the will of the Mexican people to constitute a representative, democratic, secular and federal Republic, composed of free and sovereign States in all matters concerning their internal regime,

and by the City of Mexico, united in a federation established according to the principles of this fundamental law.

Thus, under the protection of our Constitution, a representative, democratic, secular and federal Republic must be maintained; and the Court, as defender of the Constitution, must review even constitutional reforms that contravene this pact.

How to analyze the constitutionality of a constitutional reform? The parameter or point of reference is that the challenged reform does not affect the republican, representative, democratic, secular and federal form. Since it is a constitutional reform that, in order to be approved, required two thirds of the Congress of the Union and the approval of more than half of the state legislatures, this Court must adopt a principle of **maximum deference** to that body and limit itself to studying and, if necessary, invalidating that which definitely contravenes the republican, representative, democratic, secular or federal form.

ANALYSIS OF FORMAL DEFECTS

Now, with the foregoing in mind, we analyze, first, the arguments of the plaintiffs that would imply, if true, invalidating the challenged Decree in its entirety. It is concluded that these claims are not correct.

Electoral closure. On the one hand, there is an impediment to legislate when the electoral period begins in less than 90 days. In this case, it was legislated how the elective processes of judges would take place on September 15, 2024, and the process began one day later. However, the foreseen impediment: 1) was explicitly excluded by the reforming body; and 2) its non-compliance, based on a principle of maximum deference, does not entail the undermining of our democratic Republic. In other words, if the reforming body deemed it necessary to exempt the electoral ban -by virtue of the eighth transitory article of the challenged Decree-, it is because it had reasons to do so and considered that it could be sufficiently exhaustive and clear in a shorter time.

Lack of competence to change the Constitution. Although there are material limits to the possibility of reforming the Federal Constitution, the truth is that these are drawn from a joint reading of the same and are justified considering the legal and political history of our country. In this aspect, it could not be proclaimed, in general and in an absolute way, the lack of competence of the reforming body to regulate any matter, since the analysis, in any case,

must deal with how the modifications are made and whether they overthrow the principles set forth in Article 40 of the Constitution.

Existence of legislative flaws during the legislative process. Legislative procedures of any kind must ensure compliance with three essential elements, i.e., the participation of all political forces on an equal footing, the correct application of the voting rules and the publicity of the procedure. In the case of amendments to the Federal Constitution, the rules set forth in Article 135 must be followed. In this case, there are no potentially invalidating violations during the legislative procedure, since there was no act that directly compromised parliamentary deliberation, and the constitutionally established procedure was respected. Furthermore, in the specific case, it was not necessary to consult indigenous, Afro-Mexican or disabled persons, since it is a measure that does not affect them differently from the rest of the population.

ANALYSIS OF SUBSTANTIVE DEFECTS

Topic 1 analyzes the regime applicable to district judges and magistrates of the Federal Judicial Branch. In turn, this topic is divided into four subsections, which are explained below.

Subtheme 1 analyzes the transitory regime implemented in the challenged Decree, which has the purpose of massively dismissing the district and circuit judiciary of the Federal Judicial Branch who acceded to the position through the judicial career, as well as reducing the salary that some of them currently receive for the time remaining in the position, in order to make way for the election of those positions by popular vote. In this section we propose to invalidate this transitory regime for violating the judicial guarantees of irremovability of the position and irreducibility of their perceptions, in order to safeguard judicial autonomy and independence, which constitutes a core element of the democratic regime to guarantee the division of powers.

Subtheme 2 analyzes the constitutional provisions that regulate the access to the positions of district and circuit judges by popular vote. The constitutional provisions that regulate this system are invalidated because the minimum democratic conditions that allow for an authentic election do not exist, given that there is no certainty in the nomination of candidates and the system of massive lists does not allow the possibility of exercising the vote in a free and informed manner, nor of reflecting the electoral preferences for a specific jurisdictional body.

Subtheme 3 analyzes the transitory regime under which electoral magistrates are dismissed before the end of the term for which they were appointed. This

transitory regime is also invalidated by the violation of the principles of judicial independence and autonomy, which require that a procedure regulated by law and with guarantees of due process be followed before the dismissal of a judge.

Subtheme 4 analyzes the constitutional provisions that regulate access to the positions of electoral magistrates by popular vote. It is considered that this system does not violate the representative and democratic principles of our form of government inasmuch as they are not massive elections, which allows a free and informed vote, and profiles for the same jurisdictional body can be confronted. Additionally, it is considered that, within the great diversity of institutional arrangements that exist to integrate electoral authorities, this arrangement does not generate a situation of subordination or necessary dependence to any political group or power.

Topic 2 analyzes the regime applicable to the judicial branches of the federal entities, that is, the constitutional provisions that oblige the federal entities to establish a system of access to the positions of local judges by popular vote. The system is invalidated for the same reasons that the system for federal judges is invalidated, as far as cessation is concerned, and, in addition, because it violates the fundamental principle of federalism of our government form.

Topic 3 analyzes the constitutional provisions that regulate the new administrative, oversight and disciplinary bodies of the Federal Judiciary.

Subtheme 1 analyzes the rules relating to the composition and functions of the judicial administration body. It is considered that this regulatory system, in general, does not violate the independence and autonomy of the Judicial Branch and, consequently, the division of powers, because it does not generate subordination of this Branch with respect to the Executive or Legislative Branches. However, the power of this organ to hide the identity of the judges is invalidated, since it is considered to violate the human rights of individuals and, specifically, the guarantees of due process.

Subtheme 2 analyzes the constitutional provisions regarding the composition and functions of the court of judicial discipline and the proceedings it conducts. Regarding its disciplinary functions, certain provisions that grant ambiguous and excessively broad powers that may lead to the subjection of the judges are considered invalid. On the other hand, it is considered valid for judges to be subject to a performance evaluation as of their first year in office. Next, the disciplinary procedures of single instance, or "double" instance composed of

the same persons, are analyzed and invalidated due to the violation of the due process of the judges. Then, the validity of the Tribunal's functions related to the complaint and those related to the various liability regimes of the judges is recognized. Regarding the composition of the Disciplinary Tribunal, it is proposed to validate the system of access to the positions of such magistrates by means of popular vote, since it is not proven that it generates subordination of its members to an external Power.

Topic 4 addresses various approaches, analyzed in three subthemes.

Subtheme 1 groups together the questions related to the maximum ceiling on remunerations and the extinction of funds, trusts, mandates or similar contracts in the Judicial Branch. It is concluded that both measures are intended to rationalize public spending and do not entail, by themselves, an impairment of judicial independence. Specifically, they do not entail a violation of budgetary autonomy or management autonomy, at least not in the abstract.

Subtheme 2 analyzes the measures related to the amparo trial, constitutional controversies and unconstitutionality actions. In a first point, it is proposed to invalidate the limitations established to the suspensions and effects of the amparo proceedings in which general rules are challenged. However, it is proposed to recognize the validity of the clarifications made to the suspensive scope of unconstitutionality actions and constitutional controversies, since they are consistent with their constitutional nature and design.

Subtheme 3 analyzes the period for the issuance of judgments in criminal and tax jurisdictional proceedings. It is proposed that these are valid in view of the obligation to administer justice promptly and expeditiously, i.e., within a reasonable period of time.

Topic 5 explains the reasons why it is proposed to decline to analyze the regime applicable to ministers of the Supreme Court of Justice of the Nation. In principle, the High Court is not prevented from analyzing norms that affect the Judicial Branch, in general, or the Court, in particular; however, in order not to deepen the constitutional crisis that exists and to resume institutional normality, it is proposed not to analyze the regime that exclusively affects the High Court, as an exercise of self-restraint.