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Mexico

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Mexico

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Mexico

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2018 has been a year of transition for Mexico. The results of the presidential elections brought a renewed air of optimism among Mexicans, who above all else demanded a departure from the traditional politics of the dominant parties. Nevertheless, the entering administration's new dynamics are yet to be tested, and stability has fluctuated as voices of concern have started to rise, questioning mainly the legitimacy of the so-called "popular consultations" and an apparent tendency towards centralization. Mexico has also been in the international spotlight as the renegotiation of the former North American Free Trade Agreement finally concluded and a new agreement, the United States-Mexico-Canada Agreement (or "USMCA"), was born. Moreover, a few victories in the field of human rights, particularly in regard to conscientious objection and religious freedom, contrast with the passing of "migrant caravans" through Mexico's territory and the humanitarian crisis currently at hand in the Northern Triangle of Central America.

I. Human Rights

A. THE "MIGRANT CARAVAN'S" PASS THROUGH MEXICO¹

Unemployment and insecurity are certainly some of the factors that can lead a person to look for better living conditions outside his or her country of birth. Currently, a persistent influx of people are crossing the Mexico-United States border either as asylum-seekers or illegally. This year, two large groups of migrants heading to the United States from Honduras, El Salvador, and Guatemala—countries that are jointly known as the "Northern Triangle of Central America"—have gained notoriety.² The first

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2. See GOV'TS OF EL SAL., GUAT., AND HOND., TRIÁNGULO NORTE: CONSTRUYENDO CONFIANZA, CREANDO OPORTUNIDADES [NORTHERN TRIANGLE: BUILDING TRUST, CREATING OPPORTUNITIES] (Nov. 20, 2018), https://www.un.int/honduras/sites/www.un.int/files/Honduras/1-acciones_estrategicas_del_plan_de_la_alianza_para_la_prosperidad_del_triangulo_norte_folleto_07abril20151.pdf.

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of these groups, the so-called “Migrant Via Crucis,”³ entered Mexico in March 2018 with approximately 1,000 members, while the second group, composed of approximately 3,000 people and known as the “Migrant Caravan,” entered in October 19, 2018, through the Mexico-Guatemala border city Ciudad Hidalgo in the southern state of Chiapas. Members of both groups are mostly Hondurans and include women, children, and elders seeking an escape from the organized crime that has turned the Triangle into “one of the most dangerous sub-regions in the world.”⁴

The migrants’ fears are not unfounded. San Salvador, El Salvador’s capital city, is the seventeenth most dangerous city in the world, with a rate of 59.06 homicides per 1,000 inhabitants. Guatemala City, Guatemala, is in twenty-fourth place, with 53.49 murders per 1,000 inhabitants. San Pedro Sula, Honduras, is in twenty-sixth place, with 51.18 homicides per 1,000 inhabitants, while Distrito Central, Honduras, is in thirty-fifth place, with forty-eight murders per 1,000 inhabitants.⁵

Considering such figures, it is easy to understand why for many Central American asylum-seekers reaching the United States of America is a matter of life or death, and the presence of death is certainly common while crossing the territory of Mexico—this route is considered “one of the most dangerous in the world.”⁶ Consequently, one of the aims of the caravans is to highlight the humanitarian crisis existing in the countries of the Triangle, hoping to attract international attention and support.

Accordingly, Mexico must comply with several national regulations, particularly with article 11 of its Constitution, which provides the following: “In cases of political persecution, any person has the right to seek political asylum, which will be provided for humanitarian reasons.”⁷ Mexico must also comply with its international obligations regarding asylum and refuge, such as the obligations assumed under the Convention Relating to the Status

3. “Migrant Via Crucis” translates as “The Way of the Cross”—a clear reference to the events leading to Jesus Christ’s crucifixion and death from the moment of His arrest.

4. See AMNESTY INT’L, *¿HOGAR DULCE HOGAR? EL PAPEL DE HONDURAS, GUATEMALA Y EL SALVADOR EN LA CRECIENTE CRISIS DE REFUGIADOS [HOME SWEET HOME? THE ROLE OF HONDURAS, GUATEMALA AND EL SALVADOR IN THE GROWING REFUGEE CRISIS]* (Nov. 19, 2018), <https://www.amnesty.org/download/Documents/AMR0148652016SPANISH.pdf>.

5. SEGURIDAD, JUSTICIA Y PAZ, *METODOLOGÍA DEL RANKING (2017) DE LAS 50 CIUDADES MÁS VIOLENTAS DEL MUNDO [METHODOLOGY OF THE RANKING (2017) OF THE 50 MOST VIOLENT CITIES IN THE WORLD]* (Mar. 5, 2018), <http://www.seguridadjusticiapaz.org.mx/biblioteca/prensa/download/6-prensa/242-las-50-ciudades-mas-violentas-del-mundo-2017-metodologia>.

6. See AMNESTY INT’L, *VÍCTIMAS INVISIBLES: MIGRANTES EN MOVIMIENTO EN MÉXICO [INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO]* (Nov. 17, 2018), <https://www.acnur.org/fileadmin/Documentos/archivo/7756.pdf?view=1..org/fileadmin/Documentos/archivo/7756.pdf?view=1>.

7. Constitución Política de los Estados Unidos Mexicanos, CP, art. 11, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 27-08-2018 (Mex.).

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of Refugees,⁸ the Convention on the Status of Aliens,⁹ and the Protocol Relating to the Status of Refugees,¹⁰ among others.¹¹

From January to August 2018, Mexico received 14,544 refuge requests, mainly from Central Americans. Specifically, 6,523 of the requests were from Hondurans, 3,063 from Salvadorans, and 684 from Guatemalans. Of all such requests, 1,005 were considered founded on the grounds of widespread violence in the requestors' country of origin, and 325 on the presence of human rights violations.¹²

B. CONSCIENTIOUS OBJECTION IN MEXICAN HEALTHCARE¹³

On May 11, 2018, an executive decree was published in the Official Gazette of the Federation, by which Mexico's General Healthcare Act (Ley General de Salud) was amended to include article 10 *bis* in its text, effectively introducing the regulation of conscientious objection in the field of Mexican healthcare. The new article reads as follows:

Article 10 Bis. – Health professionals that are part of the National Healthcare System may exercise conscientious objection and excuse themselves from providing the services hereby regulated.

Conscientious objection may not be invoked in cases of medical emergency or where the life of a patient is at threat, under penalty of law for professional misconduct. The exercise of conscientious objection shall not be cause for any sort of labor discrimination.¹⁴

Conscientious objection was previously defined by the Federal Senate's Decree Draft Opinion of March 21, 2018, as "holding one's own conscience to be more imperative than compliance with a certain law, according to

8. Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

9. Convention on the Status of Aliens, Feb. 20, 1928, 46 Stat. 2753, 132 L.N.T.S. 301.

10. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

11. See *Tratados internacionales de los que el Estado Mexicano es parte en los que se reconocen derechos humanos* [International Treaties of Which the Mexican State is a Party in Which Human Rights are Recognized], SUPREMA CORTE DE JUSTICIA DE LA NACIÓN (2012), formato HTML, <http://www2.scjn.gob.mx/red/constitucion/TL.html> (Mex.).

12. *Boletín Estadístico de Solicitantes de refugio en México* [Statistical Bulletin of Refugee Applicants in Mexico], SECRETARÍA DE GOBERNACIÓN, formato HTML, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/CuadrosCOMAR?Anual=2018&Secc=1 (last visited Apr. 5, 2019).

13. The author, Ana Paula Madrigal Garza, is a law student from Universidad Panamericana, campus Guadalajara. She currently holds an intern position in the field of administrative and tax law at Ramos & Hermosillo Abogados.

14. Decreto por el que se adiciona un artículo 10 Bis a la Ley General de Salud, Diario Oficial de la Federación [DOF] 11-05-2018 (Mex.).

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which an objector, as part of a belief system, may not be compelled to perform certain services in favor of society as required by law.”¹⁵

Recognizing conscientious objection has been an arduous task throughout the years, due mainly to its controversial nature and to the thin line between respect for authority and potential abuse of law. Nevertheless, regulating conscientious objection is a necessity of utmost relevance, as it implies the protection of the fundamental right of freedom of thought, conscience, and religion.

Even though Mexico’s legal system had already regulated conscientious objection implicitly in specific articles of the Federal Constitution¹⁶ and in various forms of legislation, the introduction of an explicit regulation was the result of several factors. One of the most important factors was international pressure, as Mexico was significantly behind in this matter compared to other countries. For example, forty-seven states and the District of Columbia of the United States of America have already enacted legislation regulating conscientious objection in abortion-related issues.¹⁷ Moreover, in France, conscientious objection to performing abortions is guaranteed by law no. 79-1204 of December 31, 1979—amending article L162-8 of the French Code of Public Health—as an absolute and unlimited right.¹⁸ Lastly, in Germany, the 5th Criminal-Law Reform Act of 1974 states in its article 2 that “[n]o one is required to participate in [the] termination of pregnancy,” but this rule “does not apply if participation is necessary in order to avert an otherwise unavoidable risk of death or serious health damage.”¹⁹

The right to conscientious objection, now regulated by article 10 *bis* of Mexico’s General Healthcare Act—although with clear limitations—is a noteworthy advancement for Mexico. By recognizing this right, Mexico is closer to becoming a nation that respects, guarantees, and promotes human rights. The reform generated and will keep generating vast consequences for Mexico’s internal and external sovereignty. In the case of its internal sovereignty, the spirit of these laws may expand into other fields, such as mandatory military service and the practice of traditional indigenous customs.

15. Dictamen de las Comisiones Unidas de Salud; de Derechos Humanos; y de Estudios Legislativos, con proyecto de decreto que adiciona un artículo 10 Bis a la Ley General de Salud, en materia de objeción de conciencia, Diario de los Debates, 22 de marzo de 2018 (Mex.), formato PDF, http://www.diputados.gob.mx/sedia/biblio/prog_leg/Prog_leg_LXIII/237_DOF_11may18.pdf.

16. See Constitución Política de los Estados Unidos Mexicanos, CP, arts. 1, 5, 24, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.).

17. Claire Marshall, *The Spread of Conscience Clause Legislation*, 39 HUM. RTS. 15 (2013).

18. Loi 79-1204 du 31 décembre 1979 relative à l’interruption volontaire de la grossesse [Law 79-1204 of December 31, 1979 on the Voluntary Interruption of a Pregnancy], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], January 1, 1980, p. 3 (amending Code de la Santé Publique [Code of Public Health] art. L162-8).

19. Fünftes Gesetz zur Reform des Strafrechts [5. StrRG] [Fifth Law on the Reform of the Criminal Law], June 18, 1974, BUNDESGESETZBLATT I [BGBL I] at 1297, art. 2 (Ger.).

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C. A CASE FOR RELIGIOUS FREEDOM²⁰

On August 15, 2018, the first chamber of Mexico's Supreme Court of Justice upheld the decision that "the medical decisions of parents about their children, although initially protected by a clear field of autonomy . . . can not be sustained if they put at risk the health of the child;" the State "is justified to intervene" in these instances.²¹ The decision resulted from a delicate case in which the parents of Clara, a six-year-old Rarámuri²² girl, refused on religious grounds to allow a blood transfusion to be performed on their daughter to treat her leukemia because they were both practicing Jehovah's Witnesses.

On April 19, 2017, because of Clara's parents' refusal, the Morelos Judicial District Office of the Deputy Attorney for the Auxiliary Protection of Children and Teenagers (Subprocuraduría de Protección Auxiliar de Niñas, Niños y Adolescentes del Distrito Judicial Morelos) initiated an administrative procedure and assumed provisional guardianship of the child to allow the blood transfusion that would save her life. Clara's mother appealed this decision through an indirect *amparo*, arguing that she was unlawfully denied her right to make a decision regarding her daughter's health. She further argued that the District Office disregarded her religious beliefs before there was certainty as to the effectiveness of an alternative treatment and before a second medical opinion could be offered.

On June 30, 2017, Chihuahua's Eighth District Court agreed with Clara's mother, finding that there were insufficient grounds to allow the Office of the Deputy Attorney to gain provisional guardianship, and held that a blood transfusion must only be performed as a last resort measure of proven urgency. The case was then taken to the Supreme Court for review under file number 1049/2017.²³

In the review, the Office of the Deputy Attorney argued that its actions were not arbitrary but were influenced by the urgency of the situation; the Office asserted that an alternative treatment could not have been efficiently

20. The author, Eduardo Sánchez Madrigal, is a Law School graduate from Universidad Panamericana, Campus Guadalajara and an LL.M. in U.S. Law graduate from the University of St. Thomas School of Law.

21. Sentencia dictada respecto al amparo en Revisión 1049/2017, la Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN], (Mex.), formato PDF, https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-06/AR-1049-2017-180606.pdf. See also Press Release, Supreme Court of Justice of the Nation, The State Should Say the Measures Necessary to Protect the Health of a Minor, even when Their Parents Refuse Treatment (Aug. 15, 2018) (Mex.), formato HTML, <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=4743>.

22. The Rarámuri or Tarahumara are a group of indigenous people who mainly inhabit the Chihuahua state region and are renowned for their long-distance running traditions. As one of the indigenous nations recognized by Mexico's Federal Constitution, they are subject to special considerations and affirmative action policies.

23. The review was originally heard by the Seventeenth Circuit's Second Collegiate Court of Civil and Labor Matters, but it was remitted to the Supreme Court on the grounds of lack of competency.

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applied without compromising the minor's life. Clara's mother offered a threefold argument against the treatment: she described the risks associated with blood transfusions, pointed out the existence of alternative treatments, and asserted that the nature of blood transfusions is in direct contradiction to her religious beliefs.²⁴ Elaborating on this last point, Clara's mother explained that blood transfusions represent an imposition from an inherently biased health system that favors majoritarian opinions over the rights of the Jehovah's Witness community to be treated with respect and dignity.²⁵ The Supreme Court had to weigh the right of parents to autonomously make decisions about their children's education and health against the State's interest in defending every child's constitutionally protected right to health.²⁶ Noting this conflict in its considerations of the sentence, the Court wrote the following:

The case of Jehovah's Witnesses in need of medical attention implies a notable challenge for clinical services and authorities. Being used to the availability of blood transfusions to immediately stabilize the loss of vital components, health professionals face in such cases a firm refusal based on faith and protected by the autonomy of individuals. The challenge becomes especially complex when the stakes involve a minor's future, since her parents are called to decide on her behalf, despite the State's duty to protect her rights.²⁷

In its decision, the Supreme Court ruled that a parent's right to decide on behalf of his or her child is limited by the child's right to life. In other words, according to the Court, the exercise of religious freedom may not include practices that jeopardize a child's health or put the child's life at risk, such as refusing a treatment considered by the medical community to be the most effective against a lethal condition.²⁸ Not surprisingly, the case has been controversial, and voices of concern have risen throughout the judicial process.²⁹ Particularly, critics of the decision and defendants of religious freedom have questioned the Supreme Court's aptness to rule on scientific matters and the Court's indifference towards considering alternative treatment methods. These critics have also noted the consequences that a forceful blood transfusion may carry for Clara's family's role within her community.

24. Sentencia dictada respecto al amparo en Revisión 1049/2017, la Primera Sala de la SCJN, Página 13 (Mex.).

25. *Id.* at 14.

26. Constitución Política de los Estados Unidos Mexicanos, CP, art. 4, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 27-08-2018 (Mex.).

27. Sentencia dictada respecto al amparo en Revisión 1049/2017, la Primera Sala de la SCJN, Página 18 (Mex.).

28. *Id.* at 38.

29. Daniel Quintanilla Castro, *Testigos de Jehová, ciencia e infancia ante la Suprema Corte*, NEXOS (Aug. 1, 2018), <https://eljuegodelacorte.nexos.com.mx/?p=8761>.

II. Legislative Innovation

A. NAFTA RENEGOTIATED: THE UNITED STATES-MEXICO-CANADA AGREEMENT³⁰

In the late hours of September 30, 2018, Canada, Mexico, and the United States concluded their negotiations for the modernization of the North American Free Trade Agreement (“NAFTA”), of which the three countries have been parties since 1994. The renegotiation was the result of the Trump administration’s trade policy goal to renegotiate NAFTA with terms more favorable to the U.S.; the renegotiation lasted for more than twelve months and required flexibility from the three state parties.

The three countries chose a new name for the modernized NAFTA agreement: “The United States-Mexico-Canada Agreement” (“USMCA”), although many continue to refer to it as NAFTA. Unlike NAFTA, which included twenty-two chapters, the USMCA contains thirty-four chapters, among which the following novelties may be found:

- (i) Recognition of the United Mexican State’s Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons (Chapter 8);
- (ii) Temporary Entry for Business Persons (Chapter 16);
- (iii) Digital Trade (Chapter 19);
- (iv) Competition Policy (Chapter 21);
- (v) Labor (Chapter 23);
- (vi) Environment (Chapter 24),
- (vii) Small and Medium-Sized Enterprises (Chapter 25);
- (viii) Competitiveness (Chapter 26);
- (ix) Anticorruption (Chapter 27); and
- (x) Macroeconomic Policies and Exchange Rate Matters (Chapter 33).³¹

Undoubtedly, the automotive sector will receive the most significant impact from the USMCA—at least for Mexico—due to changes to several provisions in the rules of origin, which include, among others, (1) a transition period of five years so that the regional value content is increased from the current level of 62.5 percent to 75 percent;³² and (2) an obligation providing that between 40 percent and 45 percent of the value of vehicles must come from companies who pay their employees a salary of at least \$16.00 (U.S.) per hour.³³ The regulation of “side letters” is also an

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31. See United States-Mexico-Canada Agreement, Nov. 30, 2018 [hereinafter USMCA], formato HTML, <https://www.gob.mx/tlcan/acciones-y-programas/resultados-de-la-modernizacion-del-acuerdo-comercial-entre-mexico-estados-unidos-y-canada?state=published> (last visited Apr. 5, 2019).

32. *Id.* ch. 4, app., art. 2.

33. *Id.* ch. 4, app., art. 4.

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important aspect of this chapter because these rules provide for a quota of vehicles and auto parts to be exempted from the application of national-security restriction measures by the U.S. (the so-called Section 232 measures).

Notwithstanding, throughout the hundreds of pages of the draft agreement that are yet to be analyzed and approved by the three countries' legislative branches, there are several provisions which deserve special consideration:

- Regarding rules of origin, it is foreseen that no formal certificate of origin has to exist, and tariff preferential treatment may be requested by any other means, including commercial documents. Also, the tariff preference due to the origin of the merchandise may be requested and certified by the importers.³⁴ Further, origin verification visits will continue to be permitted, proceeding to verify the origin of imported merchandise, including visits that may be conducted on the importers.³⁵
- With respect to trade remedies (safeguards, antidumping, and countervailing duties), the agreement preserves NAFTA's provisions on safeguard measures, which provide exemptions to imports originating in Mexico and Canada when certain conditions are met at the moment of the imposition of global safeguards. The agreement also seeks to ensure cooperation from the three parties to prevent circumvention of the safeguards, antidumping, and countervailing duties by sharing information among them regarding imports, exports, and the transit of merchandise.
- The USMCA also provides that, if any of the parties engages in negotiations for a free-trade agreement with a country that is considered a non-market economy, the other parties may terminate the agreement with that party.³⁶ Such provisions are an apparent measure to discourage commercial relationships with China and Venezuela.
- Finally, the Agreement establishes that its initial duration is sixteen years. No later than the sixth anniversary of the agreement, the parties shall review the operation of the agreement and determine if it is their desire to extend the agreement for an additional sixteen years as of the conclusion of the review, in which case the agreement will be reviewed again no later than the sixth anniversary of such extension.³⁷

34. *Id.* ch. 5, art. 5.2.

35. *Id.* ch. 5, art. 5.9.

36. *Id.* ch. 32, art. 32.10.

37. *Id.* ch. 34, art. 34.7.

B. A NEW OPPORTUNITY IN THE QUEST FOR GROWTH: LEGAL
FRAMEWORK OF SMEs UNDER USMCA³⁸

The United States, Canada, and Mexico have had a peculiar relationship long before their territories were formally established as independent countries. While legally and economically challenging, the North America region was more integrated than ever upon the signing of the original free-trade agreement (“NAFTA”) in 1993. But a quarter-century later, the renegotiated free-trade agreement (“USMCA”) is widely regarded as an incomplete deal by analysts.³⁹

One of the innovations brought by the renegotiated agreement is the inclusion of chapter 25, a section that regulates small and medium-sized enterprises (or “SMEs”) “to increase trade and investment opportunities” among the parties.⁴⁰ New rules of origin in the agreement should encourage local vendors to improve salaries and develop cutting-edge technologies, which could reorient the supply chain back to North America.⁴¹

Private International Law should, therefore, focus on regulating SMEs adequately, recognizing the key role they play in today’s North American economy. One of chapter 25’s greatest weaknesses is that it is clearly oriented towards creating a legal basis to subsidize small businesses with scarce exponential growth and a lack of labor formality,⁴² instead of well-structured companies and formal labor markets with better probabilities of thriving in a transnational setting.⁴³ It is likewise relevant to note that the dispute settlement mechanisms of chapter 31 are not applicable to matters related to SMEs⁴⁴—a condition that prevents small and medium companies from engaging in more sophisticated and efficient methods of solving their disagreements.

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39. Kevin Carmichael, *USMCA: A Trade Deal that Does No Harm, but Breaks No Ground*, FIN. POST (Oct. 1, 2018), <https://business.financialpost.com/news/economy/usmca-a-trade-deal-that-does-no-harm-but-breaks-no-ground>.

40. USMCA, *supra* note 31, ch. 25, art. 25.2.

41. Guy Taylor and David Sands, *Mexico, Canada Trade Deal Gives Trump China Leverage*, WASH. TIMES (Oct. 1, 2018), <https://www.washingtontimes.com/news/2018/oct/1/mexico-canada-trade-deal-gives-trump-china-leverag/>.

42. As of 2014, about 60 percent of Mexico’s labor market is informal. INT’L LABOR ORG., *INFORMAL EMPLOYMENT IN MEXICO: CURRENT SITUATION, POLICIES AND CHALLENGES I* (2014).

43. Santiago Levy, *Esfuerzos mal recompensados: La elusiva búsqueda de la prosperidad en México*, BANCO INTERAMERICANO DE DESARROLLO (2018), <https://imco.org.mx/wp-content/uploads/2018/08/Esfuerzos-Mal-Recompensados-Mexico-Evalua-IMCO.pdf>.

44. See USMCA, *supra* note 31, ch. 25, art. 25.7.

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To survive, SMEs must adapt to emerging technologies such as the blockchain and artificial intelligence. In that sense, one of the virtues of the USMCA's text is its improved regulation on local industry matters, which strengthens its capacities by compelling the state-parties to tailor their public policies in a manner that is favorable to the protection and encouragement of the entrepreneurial activity of their citizens, while introducing them to a global network of professionals, creating assistance and export centers, paying particular attention to vulnerable sectors, and establishing a multinational committee aimed at regulating such aspects.⁴⁵

There appears to be an inclination in the international legal community towards promoting the creation of true value-added SMEs as the most appropriate instrument to improve work and market conditions. In fact, USMCA's chapter 25 classifies SMEs as mandatory recipients of public policies with preferential treatment for investment in the fields of intellectual property, agriculture, environment, and digital trade,⁴⁶ all of which can amount to considerable benefits for the national economies of the three parties if the policies are appropriately complied with.

Although USMCA's state-parties certainly possess different business models, in today's globalized world it is easier to identify common ground among them. Being part of the largest trade network in the globe is an exceptional opportunity for the three governments to cooperate and benefit.

C. MEXICO'S INDUSTRIAL PROPERTY ACT REFORM⁴⁷

On May 18, 2018, the "[d]ecree by which various provisions of [Mexico's] Property Law ["LPI" by its acronym in Spanish] are amended, added and repealed," was published in the Official Gazette of the Federation (*Diario Oficial de la Federación*).⁴⁸ In accordance with the first transitory article of the decree, the reform entered into force on August 10, 2018, and was motivated by the necessity to harmonize Mexico's legislation on the matter with the compromises⁴⁹ adopted in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"), which was recently ratified by the Senate.⁵⁰ Some of the added or reformed provisions were already regulated

45. Dainzú Patiño, *PYMEs Globales, un deseo del USMCA*, EXPANSIÓN (Oct. 3, 2018), <https://expansion.mx/economia/2018/10/03/el-usmca-busca-que-las-ymes-sean-globales>.

46. See USMCA, *supra* note 31, ch. 25, arts. 25.2, 25.6.

47. This section is authored by Ana Sofía Villa Hernández, a law school graduate from Universidad Panamericana, Campus Guadalajara. She currently works as in-house counsel at Puerta de Hierro Hospital.

48. Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley de la Propiedad Industrial, Diario Oficial de la Federación [DOF] 18-05-2018 (Mex.).

49. Most of the compromises adopted by the state-parties may be found in Chapter 18 of the CPTPP. See Comprehensive and Progressive Agreement for Trans-Pacific Partnership ch. 18, § C, Mar. 8, 2018, <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/toc-tdm.aspx?lang=eng>.

50. Rafael Amador, *Conoce las reformas a la Ley de la Propiedad Industrial*, CONSEJERO EMPRESARIAL (June 18, 2018), <https://coem.mx/reformas-propiedad-industrial/>.

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in other countries, and it became necessary to include them in Mexico's LPI as it continuously grows in complexity and sophistication.

Primarily, the LPI reform redefines the term "trademark" to mean "any sign recognizable by human senses and subject to representation in a manner that allows a clear and precise determination of the object of protection."⁵¹ Previously, the LPI limited the concept of "trademark" to any visible sign, excluding the possibility to register marks that are perceptible by other senses. The reformed LPI allows the registration of trade dresses, which includes "letters, numbers, combinations of colors, holographic signs, sounds, scents and picture elements such as size, design, color, form, label, packaging, decoration or any other element that, when combined, differentiates products or services in the market."⁵²

According to the published text of the reform, non-registrable trademarks are now, among others, elements, letters, colors, holograms of public domain, and those that lack the distinctive character given by continuous commercial use.⁵³

Before the reform, the LPI already regulated the registration of collective trademarks by associations or groups of producers, fabricants, or traders. But the reformed text added an express prohibition on licensing or transmitting collective trademarks to third parties and added new requirements to the registration process, such as the obligation to accompany every registration request with the corresponding rules of usage and the need for the protected products or services to possess qualities or characteristics that are common among them but different from those of third parties.⁵⁴

Moreover, inside the new scope of protection of the reformed LPI are certification trademarks, which distinguish products and services whose qualities and other characteristics have been certified by their owners, such as their components and the conditions under which they have been produced or lent, as well as their quality, processes, characteristics, and geographical origin. Only authorized individuals may use the term "registered certification trademark" ("marca de certificación registrada") along with a certification trademark; and, as in the case of collective trademarks, they may not be licensed. Further, usage rules must be filed along with the registration request.⁵⁵

Another relevant aspect of the reform is that the Mexican Institute of Industrial Property ("IMPI" by its acronym in Spanish) must notify the registration requester directly in case an opposition is filed by third parties.

51. Ley de la Propiedad Industrial [LPI] art. 88, Diario Oficial de la Federación [DOF] 18-05-2018, últimas reformas DOF 27-06-1991 (Mex.).

52. Tracy Delgadillo, *Reformas a la Ley de la Propiedad Industrial*, J.A. TRIVIÑO ABOGADOS (July 3, 2018), http://www.jatabogados.com/publications/articles/JATA_-_Reforma_a_Ley_de_la_Propiedad_Industrial.pdf.

53. LPI art. 89, DOF 18-05-2018, últimas reformas DOF 27-06-1991 (Mex.).

54. *Id.* art. 96.

55. *Id.* art. 98 bis 4.

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Previously, the IMPI published a list of opposed trademark registration requests in its Gazette. Similarly, the reformed LPI provides the possibility for the parties to submit any sort of evidence during the opposition process, except for non-written confessions and testimonies and “all those [kinds of evidence] that are contrary to accepted morality and law.”⁵⁶ The prohibition on registering descriptive trademarks continues in effect, which means, for example, that scent trademarks could not be registered for perfumes.⁵⁷

Undoubtedly, the reform to the LPI enriches the Mexican industrial property legal system with a regulation that provides greater tools for the protection of the rights of trademark owners and of third parties. Nevertheless, the reform is far from perfect, and the IMPI must still publish guidelines that clarify the new obligations for trademarks registered before the reform.

D. SOCIAL COMMUNICATION ACT: CONTROVERSY AND LEGISLATION⁵⁸

In February 2014, the “Decree by which the General Law of Social Communication is issued” was published in the Official Gazette of the Federation.⁵⁹

The third transitory article of the decree clearly establishes a legislative obligation on the federal Congress to provide for the enactment of regulations complying with the eighth paragraph of article 134 of the Constitution (regarding the application of public spending limitations to expenditure budgets in social communication matter). The deadline for the enactment was April 30, 2014, and Congress did not take any action to fulfill its obligations under the decree before or at any time since the deadline.

On May 23, 2014, the NGO Campaña Global por la Libertad de Expresión A19 (“Article 19”)⁶⁰ filed an *amparo* lawsuit against the federal Congress, arguing that several human rights violations⁶¹ were caused by its inaction, including restrictions on freedom of speech and access to information. The *amparo* brought by Article 19 was dismissed on July 18, 2014, by the eleventh district court of administrative affairs of the Federal District (now Mexico City) on the grounds that (1) it was not the appropriate procedural device to appeal controversies arising from electoral

56. *Id.* art. 120 bis 1.

57. Amador, *supra* note 50.

58. This section is authored by Arciria I. Ireta Amador, a law school graduate from Universidad Panamericana, Campus Guadalajara.

59. Ley General de Comunicación Social [LGCS], Diario Oficial de la Federación [DOF] 11-05-2018 (Mex.).

60. Article 19 is a British non-governmental organization devoted to the defense and promotion of freedom of expression and freedom of information around the globe. Article 19 has regional offices worldwide, including Mexico. See generally *What We Do*, ARTICLE 19, <https://www.article19.org/> (last visited Apr. 5, 2019).

61. Particularly, Article 19 alleged violations of articles 1, 6, 7, 14, 16, 49, and 134 of Mexico’s Constitution, among various other international provisions adopted by Mexico.

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matters or violations to political rights; and (2) it was not the appropriate procedural device to appeal controversies arising from legislative omissions, as its interpretation would have general effects over the population and would, therefore, represent a direct contradiction to the principle of relativity in *amparo* rulings.⁶²

Article 19 filed a review appeal on November 3, 2014, arguing that, while the name of the decree suggests a “political and electoral reform,” the enactment of the regulations for the eighth paragraph of Article 134 of the Constitution is clearly not within such parameters, as social communication is not in any way linked to electoral actors, but rather to the protection of the human rights of freedom of expression and press. It also argued that the principle of relativity in *amparo* rulings is not contradicted, because upholding the *amparo* would not imply ordering the enactment of a new body of laws, but rather the fulfillment of Congress’ legislative obligations under the decree.

On August 5, 2015, the First Chamber of the Supreme Court took the appeal proceeding for judicial review under file number 1359/2015. On November 15, 2017, the Supreme Court overturned the district court’s decision and ruled in favor of Article 19, holding that “Article 19 proved to have a special interest in the defense and promotion of freedom of speech, and the legislative omission affects its capacity of accomplishing such purpose.”⁶³ It is relevant to notice the logical-juridical argument upon which the First Chamber of Mexico’s Supreme Court based its ruling. This reasoning establishes a clear precedent regarding the standing that a non-governmental organization may possess in an *amparo* trial and the procedural admissibility of an *amparo* suit against legislative omissions.

Through its decision, the Supreme Court broadens the scope of the checks and balances principle in Mexico, providing the judiciary with jurisdiction to hear from disputes arising from Congress’ inaction. In compliance with Supreme Court’s sentence, Mexico’s federal Congress enacted the *Ley General de Comunicación Social* (Social Communication General Act) and published its definitive text on May 11, 2018, which will enter into force on January 1, 2019.⁶⁴ Despite such apparent achievement, the new act has faced much criticism since the bill was passed by Congress on April 25 (only five days before the deadline imposed by the Supreme Court),⁶⁵ as it permits further excessive and unlimited spending in the

62. The principle of relativity states that the effects of every sentence issued in an *amparo* trial must only encompass the individual parties and must not issue general rules regarding the law or action that caused it.

63. Sentencia dictada respecto al amparo en Revisión 1359/2015, la Primera Sala de la SCJN, Página 38 (Mex.), formato PDF, https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2017-10/AR-1359-2015-171025.pdf.

64. LGCS, DOF 11-05-2018 (Mex.).

65. Sentencia dictada respecto al amparo en Revisión 1359/2015, la Primera Sala de la SCJN, Página 58 (Mex.).

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government's official publicity.⁶⁶ The upcoming year will certainly bring new challenges, but small victories such as that of Article 19 certainly provide hopefulness to advocates of civil liberties.

⁶⁶ *Por qué es cuestionada la Ley de Comunicación Social?*, EL FINANCIERO (Apr. 26, 2018), <http://www.elfinanciero.com.mx/elecciones-2018/por-que-es-cuestionada-la-ley-de-comunicacion-social>.

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