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Is Attempt to Oust Mexico City Mayor a Constitutional or Political Matter?

by LADB Staff
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The power struggle between the center-left Partido de la Revolucion Democratica (PRD) and President Vicente Fox's administration has taken some bizarre twists and turns, with embattled Mexico City Mayor Andres Manuel Lopez Obrador now facing a possible impeachment on charges of violating the Mexican Constitution.

The request to oust Lopez Obrador was initiated by the Procuraduria General de la Republica (PGR), which on May 17 asked the Congress to strip the mayor of his immunity from prosecution so he could face charges for abuse of authority. A special congressional committee was expected to decide by late May if they thought the PGR request had enough merit to proceed. Even if Congress decides to go through with the removal process, this would not occur until September at the earliest, legislative sources told the Spanish news service EFE.

Legal battle related to land dispute

The PGR's move to seek the ouster of Lopez Obrador stems from a complaint presented by federal Judge Alvaro Tovilla Leon against the mayor, whom he accused of ignoring a court order to halt construction of a road in the Santa Fe neighborhood in southern Mexico City in 2001. The road, which was being built primarily to increase access to a private hospital, was originally planned in 2000 during the administration of former mayor Rosario Robles Berlanga.

At that time, the city government gained a right of way by expropriating 15 hectares of a development known as El Encino from the private company Promotora Internacional Santa Fe. Promotora Internacional challenged the expropriation as illegal, in a petition filed before the court during the transition period between the Robles and Lopez Obrador administrations. Judge Tovilla granted the injunction three months into Lopez Obrador's term in office.

Despite the court order, the new mayor decided to proceed with construction. This prompted the judge to issue a ruling in the summer of 2001 charging the Lopez Obrador administration with violating the injunction. Construction was eventually stopped on the land, but prosecutors said it took 11 months for the city to obey the injunction. "Federal prosecutors are fulfilling their responsibilities in applying the law in its strictest terms," said deputy attorney general Carlos Javier Vega. "And now it is up to the legislative powers to determine whether there is reason for the legal proceedings to continue."

Lopez Obrador contends he never signed any order to disobey the injunction to stop construction. But Vega said that was not the point, explaining that the charges were brought against the mayor for failing to ensure that the court order was carried out. "It is a crime of omission," Vega said. The prosecutor noted that the mayor's own aides had testified that the mayor was responsible for the decision to disregard the court order.
Legal scholars say mayor did violate Constitution

Many respected legal scholars said Tovilla's request was correct from a strictly legal standpoint. Constitutional expert Jose Elias Romero Apis said the federal penal code clearly specifies that any individual who ignores a court order is guilty of committing a crime. "This is why the district court and the appropriate authorities were obligated to bring the issue to the PGR," said Romero Apis, president of the Academia Nacional and a former federal legislator. Ignacio Burgoa Orihuela, one of Mexico's foremost authorities on constitutional issues, agreed that Lopez Obrador's decision to ignore the court order was a serious legal matter.

"Ignoring a court order represents abuse of authority, which can result in a jail sentence of eight years," said Burgoa, an emeritus law professor at the Universidad Nacional Autonoma de Mexico (UNAM). The mayor's supporters did not necessarily argue with the legal merits of the case, but questioned the timing of the move against Lopez Obrador. Federico Sodi, a professor at Escuela Libre de Derecho in Mexico City, said the government's legal challenge appears politically motivated because the original ruling dates back to 2001, and the PGR only took action now. Mayor says decision is rooted in politics Lopez Obrador and his supporters say the PGR move is just the latest chapter in a conspiracy by the Fox administration to undermine the mayor's popularity ahead of the 2006 presidential election.

The Mexico City mayor has declined to officially declare his candidacy, but his statements all indicate an intention to seek his party's nomination. The mayor remains a slight favorite for the presidential election, even though a series of scandals involving his administration have eroded some of that popularity. These include a bribery charge against a city legislator and questionable expenditures by the Mexico City treasurer Gustavo Ponce in Las Vegas, Nevada (see SourceMex, 2004-03-10). "After failing to damage the mayor with a corruption scandal, they now use this case for the same end," said Marti Batres, a top aide to Lopez Obrador.

The Mexico City mayor caught everyone by surprise when he announced that he would hold a referendum later this year to ask voters in Mexico City two questions, one of which is whether he should remain in office and the other whether he should run for president. "The people will decide what I do," Lopez Obrador told reporters. The referendum is a low-risk proposition for Lopez Obrador, however, since he is much more popular in Mexico City than in most other parts of the country. Additionally, similar referendums held by the Lopez Obrador administration have drawn a very small turnout, and most participants have been supporters of the mayor.

Burgoa and Romero Apis said the Congress could put an end to Lopez Obrador's political aspirations if in the end it decides to oust the mayor from office. Mayor hints of corruption in judicial branch Still, the latest dispute with the PGR has prompted Lopez Obrador to accuse the Fox government of using the courts to serve the political aims of the administration and the center-right Partido Accion Nacional (PAN). "It is not the violation of the law that concerns them," said Lopez Obrador. "Their aim is only to stop us." Lopez Obrador, who hinted that some judges might have conspired with the Fox government, called for greater controls of the judicial branch. "I am not advocating that the judicial branch submit itself to the executive branch," said the Mexico City
mayor. "But I believe that we must create an effective organ that will control and supervise the work of judges, magistrates, and even [Supreme Court] justices."

The mayor's proposal has gained support in the Mexico City legislative assembly (Asamblea Legislativa del Distrito Federal, ALDF), where PRD leader Carlos Reyes Gamiz has proposed creating a special commission to investigate the "real motives" behind the court ruling on El Encino.

Lopez Obrador's statements hinting at corruption in the judicial branch elicited a measured response from the nation's highest court (Suprema Corte de Justicia de la Nacion, SCJN), which took out full-page newspaper advertisements to defend Tovilla's ruling. The advertisements, comprising three columns of text, described the complicated developments of the case. In the advertisement, the court also said it "rejects baseless imputations of dishonesty," an apparent reference to comments by Lopez Obrador and his aides questioning the impartiality of the judicial system.

Former SCJN justice Juventino Castro y Castro sided with Lopez Obrador in criticizing Tovilla's ruling, which he called a "terrible procedural move." Castro, who retired at the end of 2003, said the case should have gone to the SCJN instead of the PGR. "This decision gives the party making the judgment the capacity to say, 'Let's remove the head of government,' even though he was elected by the people."

Fox rejected Lopez Obrador's assertion that his administration had influenced the decision of the court. "Today, the president doesn't tell the judges and magistrates what to do," Fox said. "And they don't wait to hear from us to do their job."

But some analysts say the mere perception that the PGR move is politically motivated is sufficient to cause political damage to the Fox government and the PAN. "(Attorney General Rafael) Macedo de la Concha may be able to win this one in the court of justice, but the court of public opinion is a different matter," said George Grayson, a Mexico expert at the College of William & Mary who is writing a book about Lopez Obrador.

A public-opinion poll conducted by the private firm Consulta Mitofsky indicates major divisions among Mexicans regarding the disputes between Fox and Lopez Obrador. The poll was conducted among 1,000 participants nationwide in late April, a few weeks before the latest controversy erupted. Roughly 25.5% of participants said Lopez Obrador was in the right, while 24.5% said Fox was, 27.1% said neither was in the right, and 10.1% said both were. Survey participants were also divided regarding which of the two politicians is more truthful, with 32.4% saying that the mayor "is more sincere when he speaks," and 31.4% indicating that the president's word is more trustworthy.

The former governing Partido Revolucionario Institucional (PRI) has attempted to remain on the sidelines in the latest dispute between Lopez Obrador and the Fox government. "This is not our quarrel," PRI president Roberto Madrazo told reporters during a tour of Queretaro state. Other PRI members, however, have spoken out in favor of the court decision. "Whenever we fail to respect the resolutions of the judicial branch, whether they are sentences or suspensions, we are ignoring our own laws and sentencing Mexico to a dark future," said Sen. David Jimenez, who chairs the committee in the upper house that has oversight over the Federal District.
Court increases fines against PAN for campaign violations

The PAN is facing new legal repercussions from a recent court decision. On May 20, the federal electoral court (Tribunal Federal del Poder Judicial de la Federacion, TEPJF) upheld a prior decision against the PAN and also increased the amount of money the party would have to pay in fines for campaign violations. The PAN is accused of failing to disclose 91 million pesos (US$7.9 million) in political contributions, much of which allegedly came from overseas contributors through the party's political action committee Amigos de Fox.

In its earlier ruling in October 2003, the TEPJF required the PAN and its coalition partner, the Partido Verde Ecologista Mexicano (PVEM), to pay a fine of 545 million pesos (US$47.6 million). The PAN was originally liable for 360 million pesos (US$31.5 million) of the total, with 185 million pesos (US$16.2 million) to be paid by the PVEM (see SourceMex, 2003-10-15).

The TEPJF review of the decision was based on appeals by the PAN and the PVEM contesting the original fines as excessive. After reviewing the case, the seven electoral magistrates unanimously ruled that the PAN had intentionally, not accidentally, violated campaign laws. As a result, the court increased the amount of the fine for the PAN to 399 million pesos (US$34.9 million), but reduced the fine for the PVEM to 98 million pesos (US$8.6 million).

The PVEM, which has since broken with the PAN, said the new decision was simply a slap on the wrist to the center-right party. "The electoral tribunal saved the PAN and Fox and continued to punish the PVEM," said party president Jorge Emilio Gonzalez Martinez, who had argued that the PAN should have been liable for almost all the fine. Because of the fine, even with the reduced amount, the PVEM will effectively have no operating money in the next seven months, said Gonzalez.

Earlier this year, Gonzalez, who is also a federal senator, was caught on videotape offering to use his influence to facilitate a construction project in Cancun in exchange for a US$2 million bribe (see SourceMex, 2004-03-10). Gonzalez did not deny that he brought up the request for money but said he was just pretending to solicit a bribe to confirm the developer's bad intentions. He has accused the Fox government of using the videotape to try to destroy his party after it abandoned its alliance with the PAN in favor of an alliance with the PRI. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on May 27, reported at 11.43 pesos per US$1.00] (Sources: Reuters, 05/17/04, 05/20/04; Associated Press, 05/17/04, 05/19/04, 05/20/04; Spanish news service EFE, 05/17-21/04; Notimex, 05/17-20/04, 05/23-25/04; Unomasuno, 05/18-20/04, 05/24/04, 05/25/04; Agencia de noticias Proceso, 05/18-21/04, 05/24/04, 05/25/04; Milenio Diario, 05/25/04; La Cronica de Hoy, El Universal, La Jornada, The Herald-Mexico City, 05/18-21/04, 05/24-26/04; El Financiero, El Sol de Mexico, 05/18-21/04, 05/24/04, 05/26/04)