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High Court: Mexican Constitution Takes Priority Over International Treaties

by LADB Staff

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In a narrow decision that could have some repercussions for the North American Free Trade Agreement (NAFTA), the high court (Suprema Corte de Justicia de la Nacion, SCJN) has ruled that the Mexican Constitution carries more legal weight than any international treaty that Mexico has signed.

The court's 6-5 decision does not entirely negate the standing of international treaties, as the court also deemed that these agreements hold legal precedence over any Mexican law other than the Constitution.

The matter came before the court because of motions filed by a variety of private entities asking the SCJN to clarify whether national laws could supersede NAFTA. Among those seeking the clarification were companies like Almidones Mexicanos, Comercializadora Internacional de Productos Salinas, Comercializadora Elenita Internacional, Importaciones y Exportaciones La Paz, Corporativo Expander Internacional, Comercializadora de Carnicos San Francisco de Asis, Consorcio G. Grupo Dina, Bonafond, and Distribuidora Ventamex.

Treaties supersede other laws

Reactions to the high court's decision were mixed. Some legal scholars said the SCJN ruling could restrict Mexican citizens who believe that a high-court ruling does not adequately address their grievances. "[This decision] limits the possibilities for a citizen to invoke a treaty or an international accord that has more human rights protections than the Constitution," said Miguel Angel Erana, a specialist in constitutional rights at the Universidad Iberoamericana.

Others like Edgar Cortez, secretary-general of the Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos, applauded the court's decision to give supremacy to the Mexican Constitution over commercial treaties like the North American Free Trade Agreement (NAFTA). "Our one complaint in recent years was that international treaties like NAFTA seemed to have greater legal standing than the Mexican Constitution and our country's legitimate social interests," said Cortes.

There have been some instances in recent years where NAFTA has clashed with Mexican laws and regulatory actions. One high-profile case involved the dispute between US company Metalclad and authorities in the municipality of Guadalupe in the central state of San Luis Potosi. Metalclad, which was hired to construct a hazardous-materials storage site in that community, secured the necessary permits from the federal government but failed to obtain similar permissions from state and local authorities. Guadalupe authorities, backed by the San Luis Potosi government, blocked completion of the facility after the company had already spent a considerable sum in the process.

Metalclad resorted to a NAFTA dispute-resolution panel, which determined that state and local authorities had to compensate the company (see SourceMex, 2000-09-193 and 2001-05-19). Under the SCJN recent ruling, the NAFTA panel's decision would stand because it does not directly involve a matter related to the Mexican Constitution. San Luis Potosi state did bring the matter to the SCJN when the government reduced the state budget to help cover the costs of compensating Metalclad. The San Luis Potosi motion, however, did not carry the weight of a constitutional challenge (see SourceMex, 2002-05-22).

NAFTA agency agrees to hear complaint about mine

In a more recent case, a federal court blocked Minera San Xavier (MSX), a subsidiary of Canadian mining company Metallica Resources, from proceeding with an open-pit mine in Cerro de San Pedro in San Luis Potosi (see SourceMex, 2005-09-22). The company, which had invested millions of dollars in the project, threatened to seek a NAFTA dispute-resolution panel similar to the one created in the Metalclad case.

The request for a panel became unnecessary, at least for the time being, when former President Vicente Fox's administration ignored the court order and proceeded to approve some environmental permits for MSX. According to the Mexico City daily business newspaper *El Economista*, the open-pit mine at Cerro de San Pedro, which would involve extracting gold and silver, is one of several major mining projects planned for Mexico in the coming years.

Environmental organizations are fighting back, asking another federal tribunal to void the permit granted by the Secretaria del Medio Ambiente y Recursos Naturales (SEMARNAT) to MSX during the previous administration. Advocates are also resorting to NAFTA, bringing the matter before the Commission for Environmental Cooperation (CEC).

The organizations, including Greenpeace Mexico and Pro San Luis Ecologico, contend that SEMARNAT's decision to approve the permit was illegal. The CEC, created under the auspices of the NAFTA side agreement on the environment, announced in early 2007 that it would consider the case. It is uncertain how much bearing the SCJN ruling would have in this case. The CEC does not have enforcement capabilities, but does have a mandate to pressure NAFTA member governments to follow their own environmental laws. This "pressure" often comes in the form of fines or other sanctions. (Sources: *Reforma*, 08/26/06; *El Economista*, 12/12/06; *Agencia de noticias Proceso*, 01/31/07, 02/07/07, 02/13/07; *El Universal*, *Milenio Diario*, *El Financiero*, *Excelsior*, 02/14/07; *La Jornada*, 02/01/07, 02/09/07, 02/14/07, 02/15/07)

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