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LADB Staff

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Congress Overwhelmingly Approves Legislation To Overhaul Judicial System

by LADB Staff
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The Mexican Congress has voted overwhelmingly to overhaul the country's criminal justice system to increase protection for individual rights of citizens, but some human rights advocates say the changes still leave the door open for impunity for law-enforcement officers and the government. The legislation, approved in the Chamber of Deputies in late February and in the Senate in early March, creates a more transparent and speedy trial process and introduces the concept of presumption of innocence for defendants. The initiative also gives police greater latitude to investigate crimes. The measure must now be ratified by 16 of Mexico's 31 state legislatures because it involves reforms to 10 articles of the Mexican Constitution.

Initiative would replace written verdicts with oral trials

The centerpiece of the legislation, approved by an overwhelming 462-6 vote in the Chamber of Deputies and 75-25 in the Senate, is the creation of public oral trials similar to those used in the US. This means that defendants would now face their accusers in court in public trials. This replaces the existing system, under which judges base their verdicts entirely on written reports and transcripts of testimony that witnesses give to prosecutors and defense attorneys. Another major change is that defendants would be considered innocent until proven guilty. Under the current system, the accused are held behind bars for long periods after a prosecutor has decided they are guilty, waiting for a judge to determine if the evidence supports that decision. The changes do not introduce jury trials, a concept that some advocates promoted. Thus, a judge would still deliver the final verdict.

Legal experts say the changes profoundly transform the Mexican court system. "It's a major historical change in the way in which both prosecutions and trials will take place," said John M. Ackerman, a law professor at Universidad Nacional Autonoma de Mexico (UNAM). "The switch to open trials would mark a sea change in Mexican jurisprudence," said The New York Times. "Not only will lawyers and judges have to get used to doing things in public, but for the first time the media and the public would have a full view of the evidence." Supporters say an important change is that the courts will now have to explain their verdicts. Columnist Leo Zuckermann, writing in the Mexico City daily newspaper Excelsior, noted that, under the current system, judges hand down their verdicts "with a mountain of paper" that is cumbersome and often hard to read. "The judges are absent, many of the sessions are conducted in secret, and the proof is not questioned," said Zuckermann. "There is no continuity in the process, which could cause a trial to last an eternity. And, when the verdict is finally handed down, too often it ratifies what prosecutors presented, based on evidence that was often obtained in an illicit manner." The reform also creates a new class of judges to rule more quickly on warrant requests and provides a firmer legal footing for house arrest, which prosecutors often use to buy time to build a case against organized crime suspects.
The approval of the legislation is a major victory for President Felipe Calderon, who made judicial reform one of the priorities of his administration. "Changing from an inquisitorial system, like the one Mexico has today, to an adversarial system based on oral trials, as is used in the American justice system, will provide much greater transparency, much more agility in the administration of justice," the president said at a meeting of the American Chamber of Commerce in Mexico City. Still, some legal experts warned that old habits die hard and that law-enforcement officers, judges, prosecutors and lawyers would need extensive training to move to open trials.

The package of amendments envisions phasing in the open trials over eight years. "This will depend a great deal on training people," said Gerardo Laveaga, director of the Instituto Nacional de Ciencias Penales (INACIPE). "The goal is for very few cases to go to trial, but those that do will be done in an adversarial, accusatorial trial. They will be transparent." The legislation had some detractors in the Senate, with 25 members of the center-left parties, the Partido de la Revolucion Democratica (PRD), Partido del Trabajo (PT), and Partido Convergencia Democratica (PCD) casting a nay vote. These legislators dismissed the oral trials as a smoke screen to transfer power to law-enforcement authorities. "They talk about oral trials," said PRD Sen. Pablo Gomez. "This is not a change. This is judicial technicality that makes little sense. For common crimes it could be good and the states are doing it, but it is not a change. What is it then? It is nothing more than a laundry list from inept and corrupt authorities."

Congress removes warrantless searches from legislation

The initiative is an updated version of a bill approved by both legislative chambers in late 2007. But that measure had to be modified because of major concerns about some of its provisions. The biggest change was removing a controversial measure that would have given law-enforcement officers the ability to enter homes without first obtaining warrants. The warrantless searches would have been allowed only in emergencies and in cases of hot pursuit of criminal suspects. Prosecutors pushed hard for the warrantless searches to remain in the legislation, arguing that they were essential in cases where urgent action was required. For example, they cited situations where authorities had located kidnappers and needed to take immediate action to free victims before they suffered any harm. But the warrantless searches came under wide criticism from human-rights advocates and the media. "It is more important to respect the fundamental rights of a citizen who is not a suspect than to chase after a presumed criminal," the Mexico City daily newspaper El Universal said in an editorial. Fearing that the provision on warrantless searches could derail the entire initiative, legislators agreed to strip it from the final version. "We believe that this legislation is a national necessity that cannot be postponed any longer," said Sen. Ulises Ramirez of the governing Partido Accion Nacional (PAN).

Despite removing the controversial measure, the initiative was approved with another provision that created some concerns. This provision gives law-enforcement officers the right to monitor phone calls and to review private records. Monitoring phone calls can only occur, however, if one of the parties agrees. "Measures such as this one are not justifiable even when authorities are using the excuse that they are fighting crime," said Jose Luis Soberanes, president of the Comision Nacional de Derechos Humanos (CNDH). "Both actions, public safety and the respect for human rights, should not be separated from one another."