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Carlos Navarro

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Supreme Court Ruling Could Open Door for Legalization of Marijuana in Mexico

by *Carlos Navarro*

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In early November, a panel of Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) issued a ruling that could pave the way for full legalization of marijuana in Mexico. The decision applies only to a single case and is not a blanket legalization of pot, but experts suggest that this case could represent a step in that direction.

The ruling handed down by the SCJN's Primera Sala upholds the rights of four individuals and their organization, the Sociedad Mexicana de Autoconsumo Responsable y Tolerante (SMART), to consume and transport marijuana for personal use.

The Primera Sala, which handles civil and criminal cases that come before the court, comprises five justices: Arturo Zaldívar Lelo de Larrea, Olga Sánchez Cordero, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo, and Alfredo Gutiérrez Ortiz Mena. All but Pardo Rebolledo voted in favor of the measure.

The justices warned, however, that the matter applies only to SMART and does not constitute a blanket legalization of marijuana. "No one has said at all that marijuana is harmless. It is a drug and, as such, it causes damage," said Justice Zaldívar, who wrote the majority opinion. "What is being resolved here is that total prohibition is a disproportionate measure."

Zaldívar also pointed out that the ruling would forbid smoking marijuana in front of others without their consent. However, the court did not clarify whether public consumption, even by the few people covered by the case, could still be regulated under public-nuisance codes in the same manner as alcohol. Mexico's legal code forbids public consumption of alcohol.

Some uncertainties remain on how the court decision will be applied. "We have to see what the limits will be," said Health Secretary Mercedes Juan López, referring to maximum allowed quantities and where or how consumption would be allowed.

Pardo Rebolledo said he voted against the measure on the premise of legal consistency. He reasoned that if commercialization of marijuana remained illegal then who would provide seeds or plants to the four individuals from SMART who filed the suit.

The four members of SMART—Josefina Ricaño, Armando Santacruz, José Pablo Girault, and Juan Francisco Torres Landa—have also been involved with the anti-crime group Mexicanos Unidos contra la Delincuencia (MUCD).

The MUCD says that the drug-interdiction campaign launched during former President Felipe Calderón's administration and continued during the government of President Enrique Peña Nieto has done little to reduce crime in Mexico. The group believes that a different approach is required, including legalizing some drugs like marijuana, which could reduce profits for the cartels.

"We have been trying to struggle against illegality, and the results were almost negligible," said Torres Landa. "Five or six years ago, we asked why. The answer, as the Americans say, was in the money."

Some observers agree with this premise. "The problem of drug trafficking is rooted in economics," columnist José Gil Olmos wrote in the weekly news magazine *Proceso*. "We have to start with this premise to have a clear discussion on the legalization of marijuana, and later of other drugs."

Olmos said there are no accurate numbers on how much money the international trade of drugs generates, but calculations from the UN Office on Drugs and Crime (UNODC) suggest this is a US \$300 billion business annually. The US Drug Enforcement Administration (DEA) has an even higher number of US\$500 billion.

"Some estimates suggest that Mexico generates about US\$1 billion from the drug trade annually, and this amount is increasing when considering the other aspects of illegal trade that the large criminal organizations control," said Olmos. "The question is where the money goes. It is evident that the Mexican drug lords like El Chapo Guzmán barely get a pinch of these stratospheric earnings. What is more certain is that these revenues end up in the international financial system and the world's largest banks."

"This is a global debate, which the UN will take up in 2016, as prohibitions have not put a stop to consumption and have tended to generate violence and encouraged money laundering and the financing of other crimes for criminal organizations," columnist Rosario Guerra wrote in the daily business newspaper *El Financiero*.

Could legalization reduce drug violence?

Still, very few experts believe that legalizing marijuana would significantly reduce drug violence or weaken the cartels. Although the increasing production of higher-quality marijuana in the US has tended to reduce demand for Mexican imports, the Sinaloa cartel and other drug-trafficking organizations remain the largest source of pot circulating north of the border.

SMART contends that, if Mexicans are allowed to grow and consume their own marijuana, casual users will not have to commit a crime to obtain the drug. Based on this reasoning, the group applied for a permit to cultivate, distribute, and consume marijuana for recreational purposes. When authorities refused to grant the permit, the group brought the matter to the courts. The matter eventually reached the SCJN, which ruled in favor of the plaintiffs, directing the Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS) to grant the requested permit to SMART.

Some experts believe legalization could address other problems, including prison overcrowding in Mexico. "There is an enormous institutional and social cost to enforcing the laws against marijuana," said Catalina Pérez Correa González, a law professor at the Centro de Investigación y Docencia Económicas (CIDE) in Mexico City. Pérez Correa has conducted several surveys of state and federal prisons, and the results indicate that 60% of the inmates sentenced for drug crimes were convicted in cases involving marijuana. "How many resources are being used up to reduce these low-impact crimes?" asked the CIDE researcher.

"According to several polls, the consumption of marijuana has increased among young people," said Guerra. "The decision of the SCJN justices responds to this reality, which many in our country have not yet recognized."

Public perceptions remain an obstacle to changes in the legal status of marijuana. An opinion survey conducted in October by the polling organization Parametría found that 79% of Mexicans opposed legalizing marijuana and another 19% supported the idea. The poll had a margin of error of four percentage points.

"In contrast to the US, where 50% of respondents to a Gallup poll supported legalization in that country, the majority of Mexicans are firmly against the decriminalization of marijuana," representatives of Parametría wrote in a piece published on the Web site Seguridad, Justicia y Paz.

The differences might not be surprising, as a relatively small number of Mexicans are believed to be regular users of marijuana. "One 2011 drug use survey estimated that just 2% of Mexicans had smoked marijuana in the past year," said The New York Times. "Although that figure is probably low, it is a smaller percentage than the 7.5% of people in the United States who said in a 2013 survey that they had used marijuana in the previous month."

Parametría said the results of its survey might also indicate a lack of information in Mexico about marijuana. Therefore, said the polling organization, there is a need to open a public discussion on the advantages and disadvantages that legalizing marijuana could bring to the country.

SCJN a ruling 'a step in the right direction'

Some advocates believe that the SCJN decision provides the impetus for Congress to take the next step, matching efforts in Uruguay ([NotiSur, Aug. 3, 2012](#), and [Feb 1. 2013](#)) and the US states of Washington, Colorado, Alaska, and Oregon. A measure to legalize marijuana in Ohio was turned down by voters this year.

"[The Congress] is noting this case and using it in their favor to present a law that will be in agreement and will protect people's rights," said Moy Schwartzman, one of the lawyers for SMART. "In Mexico, this is a political theme. But the ruling gives importance to human rights, in this case liberty."

Other observers applauded the court's decision as a step in the right direction. "The SCJN again issued a ruling to uphold human rights, recognizing individual rights ahead of the state's efforts to impose morality on the citizens," Guerra wrote in *El Financiero*. "The challenge now is for the legislative branch to approve a law promptly and in a very complete manner."

"This is a great day for those of us who believe that prohibition has failed as a public policy to fight the consumption and addiction to drugs. This was a great day for those of us who believe that the problem is solved with policies that focus on education and public health," columnist Leo Zuckermann wrote in the daily newspaper *Excélsior*. "

There have been previous efforts to relax restrictions on marijuana in Mexico, including decriminalizing possession of small amounts of drugs ([SourceMex, Aug. 26, 2009](#)). Other proposals have emerged in Congress to relax restrictions on marijuana even more ([SourceMex, Sept. 4, 2013](#), and [March 5, 2014](#)), but no new legislation has been approved.

There have been other individual cases where the use of marijuana has been approved in Mexico. In August 2015, Federal District Court Judge Martín Santos Pérez granted the parents of an eight-year-old girl permission to import a marijuana-based medication to treat her epilepsy.

Gay-marriage issue sets a precedent

Even though the SCJN decision covers a single case, five other petitions are pending before the court. If the justices rule in a similar manner in those other cases, the decision could establish the precedents needed for Congress to feel comfortable making changes to the law, experts say.

The process is similar to the sequence of legal actions that led to the court's recent ruling that Mexican laws prohibiting same-sex marriage are unconstitutional ([SourceMex, June 24, 2015](#))

The SCJN decision was met with a less-than-enthusiastic response from Peña Nieto, who has so far been skeptical about the merits of liberalizing drug laws. The president responded to the ruling by saying on Twitter it would "open a debate on the best regulation to inhibit drug consumption."

"This does not mean that you can freely commercialize, consume, and legalize the consumption of marijuana," Peña Nieto, who is sometimes known by his initials EPN, explained later in a public comment. The president also promised that government raids on illegal marijuana plantations would continue at their current pace.

"Even though EPN offered assurances that the consumption of marijuana will not be approved during his presidency, the president's position took a back seat to the high court," Guerra noted in *El Financiero*. "He will have to change his perspective and adopt a more flexible stance in order to develop a much-needed system of regulation."

Interior Secretary Miguel Ángel Osorio Chong appeared to adopt a more flexible position than his boss. In a meeting with members of the Global Commission on Drug Policy (GCPD), including former Colombian President César Gaviria and ex-Swiss President Ruth Dreifuss, the interior secretary said Mexico was willing to debate and analyze the matter "with full openness, seriousness, and responsibility."

The GCPD comprises 22 world leaders and intellectuals, including Gaviria, Dreifuss, former Mexican President Ernesto Zedillo, and ex-UN Secretary-General Kofi Annan. The goal of the commission is to "bring to the international level an informed, science-based discussion about humane and effective ways to reduce the harm caused by drugs to people and societies."

"There is a growing perception that the 'war on drugs' approach has failed," the GCPD said on its Web site. "Eradication of production and criminalization of consumption did not reduce drug traffic and drug use. In many countries the harm caused by drug prohibition in terms of corruption, violence, and violation of human rights largely exceeds the harm caused by drugs."

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