

3-7-2018

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Recommended Citation

Navarro, Carlos. "Supreme Court Considers Challenges to Public Safety Law." (2018). <https://digitalrepository.unm.edu/sourcemex/6417>

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Supreme Court Considers Challenges to Public Safety Law

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Category/Department: Mexico

Published: 2018-03-07

The Mexican Supreme Court (Suprema Corte de Justicia de la Nación, SCJN) has accepted a number of challenges to the public safety law (Ley de Seguridad Interior, LSI) that Congress approved and President Enrique Peña Nieto signed into law late last year ([SourceMex, Dec. 6, 2017](#)). The controversial measure has drawn significant opposition from civil society because it ratifies the use of the armed forces for law-enforcement duties, which has raised concerns about the potential for human rights violations ([SourceMex, Jan. 10, 2018](#)).

President Enrique Peña Nieto and other administration officials, including National Defense Secretary Gen. Salvador Cienfuegos, have said they would respect the decision of the high court. However, Cienfuegos urged the court to “consider the matter carefully and without pressure.”

The court is not in a hurry to make a decision and has spent the past few weeks evaluating the dozens of challenges to the law that have been brought before it.

“Their decision will have an impact, not only on the interpretation of the Constitution in our country, but on the security strategy that will be applied in the coming decades, the effect on human lives, and the institutional management of violence,” the columnist Maite Azuela wrote in the daily newspaper Milenio.

A letter from the non-governmental organization Seguridad sin Guerra (Public Safety without War) to the high court noted that the law that Congress approved ascribes to the military a task—law enforcement—that under the Constitution is the sole domain of civilians. Furthermore, the letter says, the law lacks clear principles on what constitutes the legitimate use of force, allows the government to hide information from the public, and lacks mechanisms of control and accountability.

“We are confident that the top judicial authorities in the country will take into account these arguments as part of the deliberations,” Azuela wrote. “And we hope that they do not submit to pressures and veiled threats [from supporters of the law] when they consider their verdict. The arguments [against the law] should, in turn, be essential to enrich their deliberations for the sake of peace and security for all Mexicans.”

The high court, meantime, considered the challenges according to the letter of the law. Several challenges presented by state-level human rights organizations were thrown out on the grounds that only local and state government entities were entitled to challenge the law under Article 105 of the Constitution. Among the challenges thrown out were the ones presented by human rights organizations in Jalisco (Comisión Estatal de Derechos Humanos Jalisco) and Oaxaca (Defensoría de los Derechos Humanos del Pueblo de Oaxaca).

“There is no provision in Article 105 of the Constitution that allows a state human rights commission to present a constitutional challenge against any of the branches of the federal government,” said SCJN Minister Jorge Mario Pardo Rebolledo, who was given the task of determining which challenges the court would accept.

Challenges from local governments

While the constitutional challenges presented by the state human rights commissions were rejected, the high court accepted legal motions presented by a number of local and state entities. These challenges were presented by the municipalities of Nezahualcóyotl, Ocuilan, and Cocotitlán in México state; Oxtutzcab, Tepakan, and Hoctun in Yucatán state; and Ahuacatlán, San Pedro Cholula, and Tepeyahualco in Puebla state; and Parral in Chihuahua state.

Additionally, the high court accepted a challenge presented by Gov. Javier Corral Jurado of Chihuahua state. The governor's challenge objected specifically to the possibility that the mandate for the federal military to conduct law-enforcement duties would infringe on the right of the state security forces to do their job. According to Corral, the law stipulates that the federal government would have the right to send members of the Army, Marines, and Federal Police to the state without a request from the state government for assistance.

The wording of Article 105, however, does not preclude national human rights organizations from filing complaints. Because of that, Pardo Rebolledo accepted challenges from the national human rights commission (Comisión Nacional de Derechos Humanos, CNDH) and from the national institute that defends free-speech and transparency (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, INAI).

In accepting the challenges from state and local governments and the two national organizations, Pardo Rebolledo directed the federal Chamber of Deputies, the Senate, and the executive branch to prepare a written response within 30 days.

The CNDH warned in its filing that several provisions in the public safety law violate the recognized rights and basic liberties of Mexicans, including legal certainty, the principle of legality, and freedom of expression, association, and movement, among others.

"The ombudsman warns that the public safety law would allow something that Mexicans have rejected since 19th century, which is that civilian entities would become subservient to military authorities," said Pedro Salazar, a researcher at an institute for legal research (Instituto de Investigaciones Jurídicas) based at the Universidad Nacional Autónoma de México, UNAM.

"If this is true, the decision before the ministers is more than a technical matter. What is in play is the nature of our political system and its compatibility within the paradigm of our constitutional state governed by rights and justice," Salazar said. "That is the bottom line."

The timing of the decision by the SCJN is not known, but Salazar pointed that this is an election year, and the targets of the appeals might no longer be in office when the ministers hand down their rulings.

"Let us suppose that the judicial decisions—which will be public and hopefully include testimony from civil society and national and international academics—are handed down after the [July 1] federal elections," said Salazar. "In that scenario, we would know who won the presidential election, but its validation could be in the hands of a different court that deals with elections [Tribunal Electoral del Poder Judicial de la Federación, TEPJF]. In that case, whatever is decided by the SCJN could potentially influence the decision of the electoral magistrates."

In another scenario, Salazar raises the possibility that the court makes the decision after the election of a new president and a new Congress are ratified, but the decision comes before the conclusion of Peña Nieto's mandate, and he could make one final appointment to the high court before he leaves. Minister José Ramón Cossío Díaz, who was appointed by former President Vicente Fox (2000-2006) in 2003, completes his 15-year term this year. "A new minister would have a voice in this complicated matter," Salazar said.

Input from the IAHCR

Mexico's public safety law also had an audience outside of the country. Members of several Mexican human rights organizations succeeded in bringing the issue to the Inter-American Commission on Human Rights (IACHR), which had its initial hearing on the matter at its headquarters in Washington, D.C., on March 2.

Coming together as the Federación Mexicana de Organismos Públicos de Derechos Humanos (FMOPDH), the human rights groups that presented the petition includes Seguridad sin Guerra, the Centro de Derechos Humanos Miguel Agustín Pro Juárez, the Centro Nacional de Comunicación Social, the Instituto Mexicano de Derechos Humanos y Democracia, México Unido contra la Delincuencia, and the Comisión de Derechos Humanos del Distrito Federal (CDHDF), among others.

The IACHR readily accepted the petition presented by the human rights groups regarding their concerns about the threats to fundamental rights presented by the public safety law. The commissioners agreed to help put together a list of international standards on this issue that will be presented to the SCJN to consider during its deliberations.

"The defenders of human rights presented revealing statistics about consequences of the war against drugs [launched in 2006 during the administration of former President Felipe Calderón (2006-2012)], which put the armed forces at the center of the fight against organized crime," said the online news site proceso.com.mx, which publishes the weekly newspaper Proceso. "This would confirm that the militarization of public safety, which is proposed under the LSI, is not the solution to end violence in our country."

Commissioners Esmeralda Arosamena, Luis Ernesto Vargas, and Flávia Piovesan, as well as Edison Lanza, the OAS rapporteur on freedom of expression, agreed to support a proposal by the petitioners to bring the matter to the Inter-American Court of Human Rights, which is based in San José, Costa Rica.

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