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Mexican Justice towards the 21st Century: The Federal Council of the Judicature: Formation, Branches, and Operation

Mario Melgar Adalid

MEXICAN JUSTICE TOWARDS THE 21ST CENTURY THE FEDERAL COUNCIL OF THE JUDICATURE; FORMATION, BRANCHES, AND OPERATION

MARIO MELGAR ADALID*

I. THE FORMATION OF THE COUNCIL OF THE FEDERAL JUDICATURE

It is unusual for Mexican presidential initiatives to be modified by the Mexican Legislative Chambers. However, the Senate modified the constitutional reform initiatives on the *Poder Judicial* [Judicial Power] as originally drafted in 1994. The initiative proposed the formation of the federal *Consejo de la Judicatura* [Council of the Federal Judicature, hereinafter "Council"]. The seven member Council is formed by two appointments from the *Poder Judicial de la Federación* [Judicial Power of the Federation, hereinafter "Judicial Power"], two appointments by the *Senado de la República* [Senate of the Republic, hereinafter "Senate"], and two appointments by the *Ejecutivo Federal* [Federal Executive]. The final council member is the chief justice of the *Corte* [Court], who is named by the President of the Republic.

This formation gave a suitable balance for the collaboration of powers in that it proposed three members from the Judicial Power, two appointed by the Legislative Power and two by the Executive Power. Although the number of Council members would remain at seven, the Chamber of Senators modified the formation of the council membership. The President of the Republic appoints one member, the Senate designates two members, one magistrate is appointed from the *tribunales colegiados de circuito* [multiple-judge circuit courts]. Additionally, one magistrate is appointed from the *tribunales unitarios de circuito* [one-judge circuit courts], and one district judge, is elected by ballot the President of the Council. The chief justice of the *Corte Suprema* [Supreme Court], whose title is President, also serves as the President of the Council. This new formation was adapted from Article 100 of the Constitution in 1995 and has been highly criticized.[1]

The amendment is advantageous in that it includes one counselor for each of the categories of federal judges. This gives the collegiate branch plurality and assures that the three highest judicial categories in the federal judiciary are present on the Council. The formation of the Council raises various questions of a theoretical and practical nature. One example is the role of one judge as head of both the Council and the Supreme Court. As head of both collegiate branches, he may be involved in the same jurisdictional matter. The Supreme Court verifies that the council members have been appointed according to the *Ley Orgánica del Poder Judicial de la Federación* [Organic Law of the Judicial Power of the Federation, hereinafter "Organic Law"]. It is difficult to reconcile how the roles of President of the Supreme Court and President of the Council coincide in the revision. The formation considers

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* Dr. Mario Melgar Aladid received his Doctor in Law degree from the Universidad Nacional Autonoma de Mexico (UNAM). He is a Professor in the Facultad de Derecho (Faculty of Law) of the Instituto de Investigaciones Jurídicas (Institute of Juridic Research) of the UNAM, counselor of the Federal Judicature.

1. *See Decreto mediante el cual se declaran reformados los artículos* 21, 55, 73, 76, 79, 89, 93-108, 110, 111, 116, 122 y 123 de la CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, [MEX. CONST.], Diario Oficial de la Federacíon, [D. O.], Dec. 31, 1994, at 2.

the juridic nature of the branch, given that persons appointed by powers other than the judicial power participate. This begs the question of where the Council fits within the principle of division of powers consecrated in the Constitution. The Council is designed by Article 100 of the Constitution to form part of the Judicial Power.

The Council is formed through appointments from each of the three powers of government. Once appointed, the connection between the two counselors appointed by the Senate and the Legislative Chamber is juridically broken. Similarly, all ties between appointees of the Federal Executive, the Legislative Chamber, multiple-judge circuit courts, single-judge circuit courts, and district courts are also severed. The President of the Supreme Court who acts as President of the Council is the intersecting point between the two branches.

In its present form, the judicial connection of the Council is severed when appointments are made. The counselors are not representatives of the power that appoints them, nor do they form part of the appointing power. For instance, counselors appointed by the Legislative Chamber are not Senators. They are not members of any secretary of the government, nor are they subordinates of the President. Yet the political link between the counselor and the power that appointed him is not necessarily broken. The origins of this are contained within the Organic Law. For example, in the formation of committees by the Council, the Organic Law establishes that there will always be a "minority" of counselors from the Judicial Power. The Organic Law indicates that the committees shall be formed by three members, one from those originating from the Judicial Power, and the other two from among those appointed by the Executive Power and the Senate.[2] According to the proposal of the Executive, the Council would form committees at its own discretion without rules of composition. The Senate provided that the committees are formed by three members, "one of them from among those originating from the Judicial Power and the other two from among those appointed by the Executive Power and the Senate."[3]

The proposal of the Senate was inappropriate. It conferred a certain weight on the origin of the counselors, which is contrary to the constitutional rule allowing the Council to form part of the Judicial Power. Further, the proposal established that the committees shall consist of three members. This is unsuitable in many situations including the monitoring the formation of committees. One interpretation of the paragraph added by the Senate allows for a counselor from the judicial power on each commission and two counselors from each of the other powers. If it were established that there must be counselors appointed by the Executive and Legislative powers, the counselor originating from the Executive Power would have to participate in every committee. This is nearly impossible.

José Ovalle Favela criticizes the formation of the Federal Council of the *Judicatura*.[4] Specifically, he disagrees with the balloting procedure which deals with officers who do not owe their appointment to the suffrage of the other magistrates

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2. Ley Orgánica del Poder Judicial de la Federación, [L.O.P.F.J.], Art. 77, D. O. *supra* note 2, at 4, (MEX. CONST. Art. 100, as amended).

3. Ovalle Favela, José, *Garantías Constitucionales del Proceso* (Constitutional Guarantees of the Process), Mexico, McGraw Hill, 1996, p. 299.

4. *Id.*

and judges, as occurs in Italy. The courts themselves do not prepare groups of three candidates [*ternas*] for use in selecting officers. Instead, each officer owes his appointment to chance and luck of being voted by ballot. Favela also criticizes the number of appointees by the Judicial Power. Comparatively, in Italy, two thirds of the appointees of the Superior Council of the Magistrates must correspond to said Power.

Another concern of Mexican proceduralists is the lack of fixed requirements for members appointed by the Executive and Senate. In both Italy and Spain, requirements exist regarding professional experience in practice and research or teaching. In the Mexican equation, ambiguous formulae are used.

II. THE PRESIDENCY OF THE COUNCIL

The nature and structure of the Council, headed by a President who is *primus inter pares*, is suitable for the delicate task of governing and administrating the Judicial Power. This consists of the naming, attachment and eventual removal of judges and magistrates, disciplinary decisions, and regulatory quasi-legislative work through general accords. The pertinence of consensus, respectful and free dissension is possible through the mechanism of *collegium*.

The President of the Council has a central role in its operations. In this sense, the Organic Law fixes his attributes as representative of the Council. He is the director of debates. He proposes to the full-meeting the naming of officers who execute the decisions of the Council, the executive secretaries, and the holders of office of the auxiliary branches. It is the responsibility of the President to monitor the workings thereof.[5] The resolutions and accords of the full-meeting are signed by the President. Licenses are granted under the terms of the law. The President has the deciding vote in the case of a tie. The fact that he is both the chief justice of the Supreme Court and President of the Council gives the Council the force necessary to achieve interaction between both branches.

The hierarchical ascendance of the person presiding over the counselors coming from the Judicial Power is inevitable. The chief justice does not hold power equivalent to that of the President despite all of the powers granted by the Organic Law, internal regulations, and general accords. However, the counselors are not subordinates of the President of the Council. The position of the President of the Council is linked to the independence of the counselors and of the Council itself, whose existence allows the independence of judges and magistrates. At the end of their term, these counselors return to their judicial offices, repeating the hierarchical dependency upon the President of the Council.

The election of the chief justice of the Supreme Court results in the appointment of the President of the Council. The President of the Council carries out the duty of heading and representing the Judicial Power. The modification of the 1917 Constitution increased the term of the annual chief justice term to four years. This has given greater stability and permanence to the work programs of both the Supreme Court and the Council. The new rule is complemented with no re-election of the

5. L.O.P.J.F., *supra* note 3 art. 85, D.O. Dec. 31, 1994 at 5 (MEX. CONST. As amended).

chief justice for the immediately subsequent period, paralleling the rule for the members of the *Congreso de la Unión* [Congress of the Union].

The presidency of the Council falls on the person appointed by the ministers of the Supreme Court as their President. The duration of his office in the Council is four years. Other counselors serve five-year terms. The language contained in the original 1917 Constitution regarding the annual terms of the chief justice was not modified until the 1994 reform.

Some writers have considered the re-election of the chief justice of the Court as efficacious,[6] while others find it inadequate from the supposition that the appointment of the chief judges of the courts, including that of the Supreme Court, is made by the President of the Republic or the governors.[7] The new system avoids uncertainty in the federal fields. The appointment is made more difficult because the term of the President of the Republic and that of the President of the Supreme Court do not coincide. The non re-election of the chief justice of the Supreme Court, and consequently the President of the Council is reminiscent of the same principle that headed the revolutionary movement from the beginning of the century. After more than eighty-five years, it seems that the principle could be revised, especially if it deals with a court that requires an image of continuity. It may be noted that re-election has proven its efficiency in fundamental institutions of the country such as with the Universidad Nacional Autónoma de México. The university legislation allows only one re-election of the dean or academic directors a period of four years.

The Constitution canceled the possibility of immediate re-election of the chief justice of the Supreme Court, by establishing in Article 97 that every four years the full-meeting shall elect from among its members the Chief Justice of the Supreme Court, who may not be re-elected for the immediately posterior period.[8] The principle does not prohibit re-election after passage of an intervening term, as is provided for deputies and senators in Article 59 of the Constitution.

There are no rules in the Constitution or in the Organic Law regarding the causes for removal of the chief justice. Therefore, the rules which govern the members of the Court are applied in such a way that the full-meeting cannot remove its chief justice, except under special circumstances applicable to other high political officers as provided in the Fourth Title of the Constitution. One difficulty of the dual role as President (and therefore, chief justice) of the Supreme Court and President of the Council is the representative role of both branches in matters where his powers intersect. According to the reform, the decisions of the Council are final and unappealable, except those that refer to the removal of magistrates and judges. These may be reviewed and revised only by the Supreme Court to verify that they are in accordance with the law.

This power of the Supreme Court was not contained in the presidential initiative, but was added by the Senate in the legislative procedure. This creates certainty in the appointments of the Council and submits them to the revision of the Court.

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6. Barajas Montes de Oca, Santiago, *"Comentarios al articulo 97"* (Comments on Article 97), *Derechos del pueblo mexicano, México a través de sus constituciones* (Rights of the Mexican people, Mexico through its Constitutions), Mexico, *LV Legislatura* (LV Legislature), Cámara de Diputados del H. Congreso de la Unión (Chamber of Deputies of the Right Honorable Congress of the Union), 1994, t.X, p.61.

7. Arteaga Nava, Elisur, *Derecho Constitucional* (Constitutional Law), tomo I (Volume I), op.cit., p.435.

8. *See* MEX. CONST. Art. 97, D. O., Dec. 31, 1994.

However, it also creates the problem of participating in the revision proceedings for the chief justice. This is illogical because he cannot revise an act in which he previously participated. If he opts for one of the two branches, he shall have to be excused in the revision or in the appointment, which may cause uncertainty. Should he decide not to participate in the appointments, attachments or removals, he would not be fulfilling his responsibilities. In reality, however, this is a theoretical observation. The same thing happens when an appeal is filed in *amparo*[9] proceedings under revision. The chief justice of the Supreme Court may have issued the judgment that has been appealed to the full Court, and is even empowered to vote against what he had previously resolved. Nothing has ever happened and it should be expected that the same thing will occur in the case of the Council.[10]

It should be mentioned that the chief justice as a single individual, receives undeniable advantages in terms of compensation that overcome the inconveniences. The chief justice of the Supreme Court and President of the Council is an unbeatable link for the points of confluence of both branches. This is best demonstrated when considering matters in which the Supreme Court is empowered to name a district judge or circuit magistrate to investigate facts which constitute a serious infringement of an individual guarantee. Also, addressing certain administrative questions dealing with the formation of the budget which must be done annually for the financial requirements of both branches.

There also exists the need for the diverse administrative policies of the two branches to maintain unity and homogeneity. Diverse policies must be maintained for decisions made on matters of judicial career, salaries of the administrative employees, and management of financial and material resources. The concentration of authority in the chief justice of the Supreme Court will allow the Judicial Power as a whole to consolidate acquisitions, insurance contracts, leasing agreements and other questions of an administrative nature.

In other law systems there are instances where both branches are entrusted to one single person, and others where the chief justiceships are separated. Certainly the two offices require a great capacity with regard to organization and judicial, administrative and political knowledge.

The Organic Law fixes the rules of substitution for the President of the Council.[11] In dealing with absences that do not require permission, the chief justice of the Council shall be temporarily replaced by the minister who follows in order of appointment. If the absence is for a period greater than six months and requires permission, the judges shall name a substitute judge in both branches. If the absence is greater than that of the term, the judges shall name a new chief justice in order to complete the period without the interim chief justices being prevented from participating in the appointment.[12] The full-meeting hears and accepts the resignation

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9. In Mexico, the legal concept of amparo involves legal protection of rights specified in the Law of Amparo by procedural remedies. It has been described as having "five diverse functions: (1) protection of individual guarantees; (2) testing allegedly unconstitutional laws; (3) contesting judicial decisions; (4) petitioning against official administrative acts and resolutions; and (5) protection of farmers subject to the agrarian reform laws." J. Fix Zamudio, *A Brief Introduction to the Mexican Writ of Amparo*, 9 CALIF. W. INT'L L. J. 309, 316 (1979).

10. *See Ley de Amparo Reglamentaria*, de Arts. 103 y 107 de MEX. CONST., Art. 103, D.O. 10 de enero de 1936.

11. L.O.P.J.F., *supra* note 3, Art. 13.

12. *Id.*

of its chief justice and of the President of the Council. The above establishes a general rule that the full Supreme Court has reserved the power to appoint or substitute the head of both collegial branches.[13]

III. THE WORKINGS OF THE FULL-MEETING

The full-meeting is the component of the Council that holds the most important responsibilities. It expresses the assembly of the counselors for the deliberation and resolution of matters that the committees or the President specifically set forth. Its rules of operation are derived in part from the Organic Law, the general accords, and its internal regulations. These provisions make it self-governing. The council shall operate in full-meeting or by means of commissions. The rulings of these branches require formalities regarding their effects on the counselors themselves or third parties.

All the members form the full-meeting, but the presence of five is sufficient for its operation.[14] The composition, as determined by the Senate, modifies the presidential initiative. It adds a counselor from the Judicial Power and removes one from the Executive Power. This leads to a supposition contrary to the reform ideal of having a plural Council. The full-meeting is formed when the Council can validly operate with five members, four of the counselors coming from the Judicial Power and one, appointed by the Senate or by the Executive. The possibility remains that one of the counselors appointed by the Legislative or Executive Powers would not be present in the decisions adopted on such an occasion. Hence, there would not be the plurality intended by the judicial reform.

The sessions of the full-meeting are private due to the nature of their function. The Senate, which introduced the privacy rule argued correctly that the exercising of its attributes requires its decisions not be influenced by the presence of third parties, or of the general public. Therefore it is convenient that the counselors have the greatest possible freedom of communication and analysis and discussion on the topics of their competence.

Nevertheless, the Council has determined through general accords, that some sessions should be public and solemn. For example, sessions concerning the rulings in competitive examinations for the appointment of district judges or circuit magistrates, or for the swearing of oaths are public.

The rulings of the Council should be taken by a majority of the counselors present and by a qualified majority of five votes, in accordance with Article 81 of the Organic Law. The counselors cannot abstain from voting, except when they are legally prevented from doing so or when they were not present in the discussion. In case of a tie, the President has the deciding vote.

The rulings must be recorded in minutes signed by both the President of the Council and the executive secretary. Further, interested parties must be personally notified. The Council can determine when its decisions are of general interest. They are then published in the *Diario Oficial de la Federación* [Official Daily of the Federation].

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13. L.O.P.J.F., *supra* note 3, Arts. 12 and 13.
14. L.O.P.J.F., *supra* note 3, Art. 12.

Finally, the full-meeting operates in two ordinary periods per year. During its recesses, it appoints the counselors who attend matters of utmost urgency.

IV. THE BALLOTING PROCEDURE[15]

The Constitution establishes an election procedure by ballot for the counselors appointed from the Judicial Power. This was done through a senatorial amendment introduced to the presidential initiative. The first ballot for the federal counselors was held by the last *Comisión de Gobierno y Administración* [Government and Administration Commission]. This ballot is disseminated among district judges, single-judge circuit court judges and multiple-judge circuit court magistrates. Candidates must hold the office of judge or magistrate and must meet the requirements fixed by the Constitution.

The May 1995 publication of the Organic Law established two additional requirements for participation in the ballot. First, candidates could not be penalized as a result of an administrative complaint. Second, candidates must be ratified in the office of district judge or circuit magistrate.

Professor Ignacio Burgoa criticized the transitory provisions for establishing the Council in interviews and in newspaper articles.[16] He said that these provisions violated several constitutional provisions. Burgoa argued that if the Magna Carta did not establish requirements for the balloting of judges and magistrates, neither should the law. He prophesied that the above will produce very serious effects on the composition and workings of the Council.

Since the Constitution did not indicate requirements for participation in the balloting, the first balloting was applied to judges and magistrates with that simple character. The Organic Law did not provide, nor could it state, anything to this regard. The Organic Law is an instrument that is used to continue the transformation of the justice system that set forth the constitutional reform of 1994. It was not possible for the Constitution to cover so many details. Therefore, the Organic Law fixed requirements to place the latter into effect. The constitutional text does not prohibit, but limits the universe of judges and magistrates who shall participate in the balloting.

Doctor Burgoa did not consider in his criticism the objective of the legal reform. This objective is to improve the integration of the Council and thereby avoiding the problem of judges being appointed to the office of counselor without the necessary experience which is appropriate, and strengthens the Council. The advantage of voting for judges with no penalties due to administrative complaints against them is unquestionable. This avoids obtaining judges who may lack qualifications, as had happened in a particular case. If the Constitution were to have contemplated all the

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15. "To ballot": 1. To place in papers or tickets with numbers or with names of persons or things in a bag, box or urn, to be drawn one or more by luck. 2. To introduce secret votes into a bag to then proceed to the drawing of lots". Diccionario de la Lengua Española [Spanish Language Dictionary], Real Academia Española. In Mexico the tickets with the names of the "ballottable" judges and magistrates are placed in transparent "fishbowls", in a public ceremony and in broad daylight.

16. Burgoa, Ignacio, *"El senado violó la Constitución al aprobar la nueva Ley Orgánica del Poder Judicial de la Federación"*(By passing the new Organic Law, the Senate violated the Constitution), Excélsior, 13th of May 1995, pp. 1, 14.

hypotheses, it would not have been necessary to produce laws, such as the one that organically governs the Judicial Power.

As a result, the new counselors were elected by the counselors appointed by the Senate, by the Executive Power, headed by the President of the Council. New counselors were also elected on the basis of an analysis of the files and after certification of having satisfied all the indicated requirements.

It is worth considering whether or not the balloting method is appropriate for the formation of the Council. The system of electing counselors originating from the judicial power is contrary to the purpose and the professionalism of the judicial service. If the counselors are responsible for important constitutional tasks such as appointing, attaching, promoting, removing, suspending or ratifying judges and magistrates, it does not seem congruent that three of the appointees of the Council exercise their office by chance.

It should also be taken into account that the other counselors are appointed by the Senate and by the Federal Executive Power. Therefore the appointment as a result of election of three judicial counselors is not balanced. Additionally, the President of the Council originates from an initial group of three nominees by the Federal Executive to the Senate, and is subject to a collegial selection process. Subsequently, he is appointed chief justice of the Supreme Court by an election of his peers, the other members of that Court.

The appointment by ballot could cause differences in the Council, seemingly difficult to resolve and conciliate. Although each counselor is independent and has the same vote, prerogatives, jurisdiction, responsibilities and salary, the origin is diverse and the election by chance is not very healthy for the political balance of the branch. Until this exists, and with the Supreme Court being recently formed, there is no other alternative except that of balloting. It will be necessary for the Legislative or Executive Power to revise this solution.

The following are some alternatives which could be considered for the appointment of the counselors originating from the Judicial Power:

A. Appointment by vote of his peers

The election of judges and magistrates for the office of counselor of the Council of Judicature, by voting amongst themselves could politicize the process, generate compromises between the elected counselor and his electors, as well as favor political consequences and division between the wining group and the losers. There is also the problem of self-monitor and exercise of the disciplinary function by one's equals. Due consideration must be given to the fact that these are judges and magistrates who have a solid professional formation, who possess intellectual and moral qualities and a good name. Reliable elections could be held in accordance with the democratizing processes of Mexican society. These same judges and magistrates, who decide on the freedom, and rights of the Mexicans according to federal justice, can decide who should be counselors.

B. By political branch

The responsibility of appointment of counselors to the Council by a political branch, such as the Senate, has advantages and disadvantages. The excessive presence could be the influence of the Senate who forms of the branches of the

Judicial Power. However, if the Senate makes appointments to the Supreme Court from the group of three nominated by the Federal Executive, in addition to appointing two members of the Council, it should appoint a judge or magistrate as a counselor from the group of three presented to it by either the Court or the Council.

C. Appointment by the Federal Executive

This could be effective because of the singular nature of the branch and the conditions under which the Mexican presidential system operates as the Federal Executive who is the promoter of judicial reform. His participation in the election process of counselors would be an intromission that would put at risk the principle of division of powers and therefore does not appear desirable.

D. By the Council of the Federal Judicature

The appointment by the branch of its own heads has the inconvenience of favoring endogamy, as it is the very branch itself that is reproducing. It offers the advantage of in-depth knowledge and information on the judges and magistrates, as well as their performance in the judicial career. It is natural that the first and second appointments of counselors originating from the Judicial Power would be subject to balloting, as no prior branch existed. Yet, it seems desirable to issue a more suitable method than just pulling names out of a "hat."

E. *Under the charge of the Supreme Court of Justice of the Nation*

This method is suitable because of the superior rank of the Supreme Court and abides by tradition. Yet, it is contrary to the purpose of the 1994 judicial reform because those reforms relieved the judges of tasks apart from those that are strictly jurisdictional.

Constitutional Article 100 provides that the Council shall operate in full-meeting [*pleno*] or in committees. This is irrespective of the questions related to the origin of the counselors and their effects on the formation of the commissions. The same could be permanent or temporal, as occurs in the collegiate branches. In general they are called special committees and are used to deal with a particular matter or group of matters of the same nature.

In fact, the Organic Law establishes that the Council shall posses those permanent or transitory committees of variable composition which the full-meeting determines, but the administration, judicial career, disciplinary, and creation of new branches and attachment committees must exist.[17] The Council created the *Comisión de Vigilancia* [Monitoring Committee]. This committee has a permanent status and the same rank as the "legal" committee. Its creation stems from the powers conferred on the Council by the Constitution to monitor the operation of the Judicial Power except for the Supreme Court.[18]

The committees prepare the work of the full-meeting, but also have their own attributes and operating rules. The Council issues a general accord that governs the operation of its commissions. According to the Organic Law and the General Accord

17. L.O.P.J.F., *supra* note 3, Art. 77.
18. General Accord number 12/1995, D. O. November 9, 1995.

that governs the operation of the committees of the Council,[19] these committees are formed by three members appointed by the full-meeting by a qualified majority of five votes. This process follows the formula that one of the appointees shall originate from the counselors of the Judicial Power and the other two from among those appointed by the Executive and the Senate.

The chairmanship of the committees is determined by consensus of the counselors who form them annually, without the possibility of immediate re-election. The other operating rules follow those of the collegiate branches with regards to summons, status of the sessions, excuses and impediments, voting rules, faculties and duties of the chairmen of commissions and of the technical secretaries.

With the aim of possessing an instance prior to the full-meeting which allows collegiate work, a Council was created by means of a general accord, the branch called "*Comisiones Unidas*" [Joint Committees]. Its function is to coordinate the work of the different commissions and the matters whose decision surpasses the faculties of each permanent commission. There exists, for example, the need for some proposals from the Judicial Career Commission to be linked to that decided by the Attachment and Creation of New Branches Commissions. In this way, the meeting of commissions is allowed it to attend to the diversity and complexity of matters that should be judged by the full-meeting of the Council.

The General Accord on Joint Commissions expresses the convenience of having the projects prepared by the commissions, groups of counselors, or specific counselors so that the consideration of the full-meeting has a plural evaluation that can enrich and refine them. For this it fixed a few operating rules:

> A. The accord proposals and projects formulated by the commissions, which should be submitted to the full-meeting of the Council, shall be previously judged, in a joint commissions session for their assessment and technical analysis;
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> B. The sessions have a deliberately purposeful nature.
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> C. The joint commissions may agree on the proposals which present the following:
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> 1) major elements of judgment, in which case the exponent commission, group of counselors or counselor shall be asked to present the specific;[20]
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> 2) the adaptations are deemed pertinent, if the appointees of the commissions which formulated them declare their conformity thereto, or
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> 3) are in the terms in which they are formulated, if no consensus is reached for the incorporation of new elements.
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> D. The projects for regulations, regulatory accords, general accords or any resolution which the session of joint commissions decides to take to the full-meeting and which is recorded in writing, shall require for their analysis, except for accord to the contrary by the full-meeting, at least seven working days, and
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> E. Forty-eight hours before the verification of the joint commissions session, the commissions, counselors or auxiliary branches of the Council should send to the Secretary of the Full-Meeting and Judicial Career: all matters they that they wish dealt with, covering them with the necessary documents.

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19. General Accord number 8/1995, D. O. October 19,1995.

20. *"Vital, cambiar la selección de magistrados: Castro"* (Vital, to change the selection of magistrates: Castro), El Universal, 28th de deciembre de 1995, p. 19.

V. THE EXECUTIVE SECRETARIES OF THE BOARD

The Organic Law introduced an administrative figure in the formation of the Council: the executive secretaries. These are administrative positions having the duty of executing and following-up the resolutions of the Full-Meeting, and maintaining close relationships with the committees of the branch. The Council has created in addition to the secretaries contained in the Organic Law, the executive secretaries of new jurisdictional, attachment and monitoring branches; in order for each committee to have an executive secretary as interlocutor.

The Organic Law establishes requirements for the executive secretaries that correspond to their responsibilities. In this way, the Executive Secretary of the Full-Meeting and Judicial Career must have a professional title as Bachelor at Law, a minimum experience of five years and not have been sentenced for an intentional crime with a penalty depriving them of the freedom for more than one year. For the Executive Secretary of Administration the same requirements are demanded, although the professional title and experience do not necessarily have to be of a legal nature, but rather in accordance with their duties. It is understood that the other executive secretaries must possess the same requirements fixed by the law and "similar".

The Organic Law avoided the creation of a general secretary, which does not appear to make much sense. It is convenient that secretaries perform the integrating function of the secretaryships and this could even be done by the Secretary of the Full-Meeting or by a general secretary. However, as the Organic Law created the Secretaryship of the Full-Meeting and the Judicial Career, the officer who of orders and executes the decisions of the full-meeting must also attend to those matters derived from the judicial career, which implies an excessive load. Additionally, the importance and magnitude of the judicial career makes us think of the need to separate the two functions for greater administrative rationality.

One of the central functions of both the Council, and of counselors created in the federal entities of the country, is the appropriate selection, appointment and permanence of judges and magistrates. The reform of justice starts when the figure of the judge reaches the levels claimed by society for their work and community commitment. As set forth by Carnelutti: "the judge is the central figure of law. A juridic ordinance can be thought of without laws, but not without judges".[21]

The selection and appointment of judges is a mater of greater importance, as naming judges means conferring on them the values which govern a society: honor, freedom, proprietorship. In short, justice is the supreme value of the community.

VI. CONCLUSION

The importance of the 1994 judicial reform lies in the creation of a wider and more general reform, a reform of Mexican justice. The severe crisis of Mexico is linked to the topic of justice in its most wide-reaching form. Society considers that

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21. *See* Francisco Carnelutti, *Teoria general del Derecho 77-80* (Carlos G. Posada trans.,) 1941, at 95.

corruption strangles their aspirations and the State has been incapable of resolving the prevailing injustice. More seriously, direct responsibility for the public moral crisis is attributed to governmental agents. This is undeserved for a group of public officers who have dedicated their lives and efforts to public service, whether in the jurisdictional, political or administrative arenas. Never has the saying "the innocent pay for the guilty" been more appropriate.

The most important part of the judicial reform has been the proposal of a system that would lead to the appointment of judges by means of objective methods and based on constitutional principles that favor excellence, impartiality, professionalism, objectivity, and independence. With good judges, the judicial vices that trouble our society could be eradicated: judicial delays, corruption, irregularities in the processes, and judicial inefficiency due to the non-execution of sentences. The Judicial Power could be reformed and still maintain the paradigmatic role it has had in our country with better systems of judicial organization and a suitable selection, appointment, and attachment of district judges and circuit magistrates.

The best guarantee for a society to reach a state of justice is the existence of autonomous jurisdictional branches whose officers are selected objectively and carefully. Each must be morally qualified, well-paid, and possess a judicial career or judicial career service which facilitates the promotions of the most able. This will revise the improper conduct of the inept, negligent or careless judges, while at the same time, stimulate work and dedication. A system of judicial education and formation which promotes dedication to study and extension of their culture, as well as their intellectual development will outline what the judges should be.

If the Council complies with the noble purposes that have resulted in its creation, involve persons affected by its decisions, and make each participate in its programs and proposals, it could be the detonator of a much wider reaching reform. Such a reform would reach all the jurisdictions of the country and avoid a privileged federal justice. It would avoid local chieftainships and intromission of the power enemies of our time: the corrupt political power, corrupting money and social injustice.

Nearly a century ago, Emilio Rabasa considered that the Judicial Power was not a real power, because the administration of justice is never dependent on the will of the nation. The author of *La Constitución y la Dictadura* [The Constitution and the Dictatorship], stated that in its decisions, neither the desire nor the well-being of the public are taken into account. The individual right is superior to common interest, as the courts do not resolve what they want in the name of the people.

In the Middle Ages it was the will of the feudal sire that prevailed. In the Modern Age, kings who personified the State ruled. In the 19th Century, the will of the parliaments prevailed while in the 20th century, Executives in the form of the president rule. It would be nice to wish for an era of justice for the coming century.