

## Recreative use of Cannabis, ¿What is the situation in Mexico?

*Cannabis legalization for its recreative use is a topic debate that develops daily. Globally and on the national field, there has been significant steps taken. Countries like Canada, Uruguay, Chile, and certain states of the United States (California, Colorado, Massachusetts, Nevada, Oregon and Washington), allows Cannabis recreational use.*

*In the national field, Mexico, with the entrance of Andrés Manuel López Obrador's government, has taken important steps related with the legalization of Cannabis. Bill initiatives have been presented to the Mexican Senate by the Secretary of Interior, Olga Sánchez Cordero. As well as, jurisprudence emitted by the Supreme Court of the Nation.*

*In consequence of the previous mentioned, the debates regarding this topic have arisen, distinguished personalities, such as the ex-president of Mexico, Ernesto Zedillo Ponce de León, and Mexican businessman Ricardo Salinas Pliego, have established their posture regarding Cannabis legalization, demanding that AMLO's government legalizes, with the main and only purpose of terminating narcotraffic activities emanating from it.*

*The purpose of the present Newsletter is to update and inform the status of the regulation and legalization of Cannabis recreational use in Mexico, as well as the possible scenarios that may take place during the present year. Backgrounds from different countries will be analyzed as well, making focus on those that have legalized Cannabis recreational use. ¿With the entrance of the new government, will Mexico finally legalize Cannabis for its recreative use?*

### **I. Backgrounds: countries that have legalized Cannabis recreational use.**

Uruguay is the first Latin American country that has legalized Cannabis for recreational use, and the first country in the world handing over the State the production, distribution and sale of the drug. On 07 January 2014, during the government of the president José Mujica Cordano, was published the Law No. 19.172, known as the Law that regulates *Marihuana and its derivatives; Control and Regulation of the Import, Production, Acquisition, Storage, Commercialization and Distribution*.

The Law expresses its purposes through three principal objectives: (i) minimizing violence associated to the sale of Cannabis through black market; (ii) promote public health through prevention and education campaigns; and (iii) eliminating the legal paradox that allowed possession but forbids access to Cannabis by the consumers. The Bill also provides three methods to access Cannabis: (i) domestic farming; (ii) membership clubs; and (iii) commercial sales.

Furthermore, on 08 November 2016, *Proposition 64* (the "Proposition") was approved in the state of California, through which, the recreational use of Cannabis was legalized, in the state, for those 21 years and older. Considered as a historical change, the legalization of the drug allows its consumption, cultivation and commerce, turning an illegal activity into a regulated industry with an estimated annual projection of 7,000 million dollars.

The main purposes of the Proposition, are to impose a statewide tax over consumption and sales. The 15% tax

over retail market, also applies to the cultivation of the drug by ounce of flower or by ounce of leaves.

Andrew Cuomo, New York Governor, presented a bill initiative by which, recreational use of Cannabis would be legal in the State. The bill presented by Cuomo, has the sole intention to minimize the impact on criminalization, that affect communities of color, allowing counties and cities decide if they participate in the program.

Cuomo's initiative, if approved, will impose 2 taxes: (i) tariff on the cultivation of cannabis; and (ii) tariff on retail and wholesale. These taxes will be used to invest in the development of start-up enterprises, and for the treatment of individuals that are affected with addictions to drugs.

On 17 October 2018, the *Cannabis Act* came into force in Canada. This Act regulates Cannabis recreational use, making Canada the second country worldwide to regulate the drug for the mentioned use.

Moreover, in June, Illinois became the 11th state to legalize marihuana for recreational use and allow the sale of Cannabis. Adults 21 and older can legally hold up to a 30-day supply of Cannabis (one ounce), and tourists can legally hold 15 grams. Cannabis sales will generate annually, approximately \$500 million dollars to the State.

In September 2018, South Africa's top court authorized the consumption and grow of Cannabis in private places: "It will not be a criminal offense

for an adult person to consume or possess Cannabis for personal consumption if it's in private" argued Deputy Chief Justice Raymond Zondo. South Africa's ban of the personal and private use of marijuana was an infringement on the country's "constitutional right to privacy". However, its use in public spaces is strictly prohibited and it is not legal to sell it for profit to third parties. The court has given parliament 24 months to adopt the ruling. The government still must decide how much weed a person may use in private and the age restriction for use.

Turkey seeks to reactivate their economy, by becoming the industrial center of Cannabis, due to their strategic geographical situation between the Asian and the European markets.

## II. What is currently happening in México: ¿is legalization on its way?

On 15 February 2019, the First Chamber of the Supreme Court of the Nation (the "SCJN") issued a jurisprudence by which the chamber declares unconstitutional the prohibition of Cannabis recreational use. The decision comes after the five *amparo* proceedings to issue jurisprudence where granted against five articles of the *Ley General de Salud* (General Health Act), which prohibited Cannabis recreational use, as well as its direct seeding, harvest, preparation, possession, and its transportation, violating the right to free development of personality.

Currently, Mexican judges can grant or deny the *amparo* proceedings submitted by individuals for the auto-consumption of Cannabis that are requested through the Federal Commission of Protection against Sanitary Risks (the "Cofepris"), as it's forbidden by the *Ley General de Salud*. The *amparos*, previously mentioned, authorize the cultivation and personal consumption, but it doesn't allow its commercialization and consumption in public spaces.

With the decision of the First Chamber of the SCJN, the general declaration emitted by the Plenary of the SCJN is still pending, for which eight votes out of eleven are needed. After the general declaration is emitted, the Congress of the Union, would have a 90 days deadline to reform or derogate the articles of the *Ley General de Salud*, and if not, the general effects caused by these will be invalidated.

## III. Law reforms and bill projects in discussion.

On 29 April 2017, the Congress of the Unión, approved the reforms to the *Ley General de Salud* and to the *Código Penal Federal*. However, this reforms only allow

medicinal use of Cannabis, forbidding and penalizing its recreational use.

The now ex-senator of the Republic and actual Secretary of Interior, Olga Sánchez Cordero, submits a bill initiative to the Senate, with a project of decree by which the "*Ley General para la Regulación y Control de Cannabis*" (General Act that Regulates and Controls Cannabis) for its application in Mexico. In the initiative's explanatory statements, the Secretary of Interior, referred to "The War Report Armed Conflicts 2017", from the Genève Academy, which is a highly recognized institution in the field of legal investigations and political studies of armed conflicts in international law. The report confirms that Mexico is in war with at least two cartels related with drug trafficking, meaning that in Mexico it's taking place one of the 10 most violent non-international armed conflicts in the world.

Mexico's prohibitionist politics against Cannabis, has contributed to: (i) rising violence in every corner of the country and; (ii) the criminalization of vulnerable sectors of the society caused by the activities related with the drug.

The initiatives main purpose is to establish the general guidelines to regulate Cannabis at all of its processes such as seeding, cultivation, harvesting, production, labelling, promotion, publicity, endorsement, transportation, distribution, sale and commercialization. Additionally, the initiative, has the purpose to disengage illegal activities through the imposition of sanctions.

The biggest challenge the initiative faces, is to balance the focus on public health and the commerce interest. The public health seeks to minimize risks and damages related with the consumption of the drug, meanwhile the interest in commerce seeks to promote the use of Cannabis to obtain better profits of it.

## III. Possible scenarios towards 2019.

Cannabis legalization for its recreational use is, as previous mentioned, had never been so close, that is why Mexican enterprises are getting ready to enter the market of Cannabis.

At the end of the year 2018, the Cofepris granted approximately 60 permits that allow the production of raw materials, foods, drinks, food supplements, cosmetics and pharmaceuticals based from Cannabis, specially from its component known as CBD (Cannabidiol) which is used more for medicinal

reliefs. CBD is the component that comes from marihuana's plant but doesn't contain the psychotropic agent THC (Tetrahydrocannabinol).

Through the National Development Plan, presented on April 30 2019, President Andrés Manuel López Obrador proposed to reformulate the fight against drugs, arguing that the prohibitionist strategy is already unsustainable. Although the initiative is still under discussion, the legalization of marihuana must have the approval of the United Nations and the United States of America.

México City, June 13, 2019.

Given the case that additional information is required or doubts about the present document arise, please feel free to contact any of the following members of PFA Abogados team, who will gladly assist with any doubt you may have.

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