

The right of association and the Law for the regulation of Cannabis

1. The Opinion of the United Commissions of Justice, Health and Legislative Studies, second with the opinion of the Public Safety Commission, which issues the Law for the Regulation of Cannabis (the “Law”) provides for the possibility of establishing civil associations in order for their associates to be able to perform personal use for cultural or recreational purposes of psychoactive cannabis and its derivatives.

2. The aforementioned associations must be constituted in accordance with the provisions of the Civil Code for the Federal Entity in which they intend to perform acts permitted by law and additionally consider the following requirements:

- A. To be constituted with a minimum of 2 and a maximum of 20 persons.
- B. All associates must be of legal age and to be able to expressly give their consent.
- C. They must be constituted as non-profit and to have as the sole corporate purpose the satisfaction of the individual needs of their associates for personal, cultural and recreational purposes of psychoactive cannabis and its derivatives.
- D. The association name must include a word or phrase that allows identifying their corporate purpose.
- E. It is forbidden to include in the association name any reference that may promote the consumption of psychoactive cannabis.

3. Associations shall be allowed to:

- A. Sow.
- B. Plant.
- C. Cultivate.
- D. Harvest.
- E. Seize.
- F. Prepare.
- G. Consume.

Likewise, they will be able to sow or plant up to the equivalent amount of 4 psychoactive cannabis plants per associated person per year and harvest, seize and prepare their product.

4. The following requirements must be met to become an associate:

I. To be of legal age and to be able to expressly give their free and informed consent. The persons in charge of the public notaries which formalize the constitution of the relevant Civil Association, shall ensure compliance with such requirements, under penalty of incurring liability;

II. They must not belong to any other Association; and

III. Comply with the Law and other applicable legal provisions.

5. Associations are prohibited from:

I. Perform any other act and use of psychoactive cannabis and its derivatives for purposes that are not expressly permitted by their permission in virtue of the Law;

II. Perform any of the acts referred to in point three, in order to provide psychoactive cannabis or its derivatives to persons who are not legally recognized as associates;

III. Perform any of the acts referred to in point three, in larger quantities than those permitted;

IV. Carry out any of the acts referred to in point three with respect to other substances considered psychoactive within their facilities;

V. Sell or consume alcoholic beverages at their registered office or the facilities corresponding thereto;

VI. Promote, advertise or sponsor the association or its facilities, psychoactive cannabis, its derivatives or products; and

VII. Other acts prohibited by the Law and other applicable legal provisions.

6. Now, once the requirements are listed, they can be analyzed in light of constitutional provisions, international treaties and other applicable regulations in order to achieve an inclusive interpretation and the scope of their application in case the draft of the Law is approved in those terms.

- a) The Political Constitution of the United Mexican States, provides in its article 9, that:

“The right to associate or assemble peacefully with any lawful purpose cannot be restricted; but only the citizens of the Republic may do so to participate in the political affairs of the country. No armed meeting has the right to deliberate. No assembly or meeting, whose purpose is to make a petition or present a protest for some act before an authority, shall be considered illegal and may be dissolved, if no insults have been made against it, nor any violence or threats have been used to intimidate it or force it to resolve in a desirable manner.”

- b) The American Convention on Human Rights and the International Covenant on Civil and Political Rights,

The Convention states in its article 16 the right to freedom of association, “All persons have the right to associate freely for ideological, political, economic, labor, social, cultural, sporting or other purposes.”

Likewise, it states that the aforementioned right of association can only be restricted by legal provision whenever such

restriction is necessary in the interest of national security, security or protection of public health or morals or the rights and freedoms of others. Same restrictions recognized by the International Covenant on Civil and Political Rights in its article 22.

With the aforementioned precepts, and in accordance with the constitutional hierarchy and that of the International Treaties, the legislators of the United Commissions of Justice, Health and Legislative Studies did not consider the contradiction arising from the Draft of the Law when stating the following:

"Article 20. The following requirements must be met to become an associate:

1. [...]
2. They must not belong to any other Association."

Such provision does not make reference that the prohibition applies to another Association constituted under the terms of the same Law or the same chapter, in case it were to justify the control that must be carried out by the Mexican Institute for the Regulation and Control of Cannabis, and to try to prevent users or consumers from having access to larger quantities of cannabis for planting and harvesting than that allowed by the Law per person, but in compliance with article 18 of the same Law, the "Associations" are those Civil Associations constituted in the terms of the common laws, reason why it is restrictive to "any" Association. Likewise, neither the explanatory memorandum of the Draft of the Law nor the body of the legal system under study justify that the restriction is necessary in the interest of national security, security or protection of public health or morals or the rights and freedoms of others.

Therefore, we find ourselves facing an evident violation of the constitutional article nine and article sixteen of the Convention, by restricting freedom of Association. Likewise, the Associations constitute a socio-political phenomenon whose primary implication is to assert certain interests in any democratic process. Consequently, it is expected that the legislators (public power) refrain from the activities of the associations and that the Government only exercises its imperium in case they exceed the purposes for which they were created, limiting themselves to protecting the constitutional law, while adopting the measures that are necessary for that purpose.

On the other hand, the legislative method adopted by the aforementioned commissions seems intentional as they do not want to harmonize the Law for the regulation of Cannabis with related laws, treaties and/or conventions. Thus, there would be no need to superimpose one standard over another, but to integrate them with the existing standards.

The National Supreme Court of Justice analyzed in the Thesis: P./J. 28/95 the scope of the constitutional article nine:

The freedom of association enshrined in constitution article 9 is the right seized by persons, both individuals and legal entities, to create a new legal entity with its own personality and distinct from that of its associates. Such right is violated by article 5 of the Law of the Chambers of Commerce and Industry, by imposing on merchants and industrialists whose capital declared before the Ministry of Finance and Public Credit is equal or larger than two thousand five hundred MXN, the obligation to register before the respective Chamber within the month following the beginning of their activities or within the month of January of each year, being warned that otherwise they will be sanctioned with a fine which will be doubled in case of recurrence and will not release them from compliance with that obligation. Now, since the freedom of association set forth in Constitutional article 9 is a right of those governed, the area of protection derived from the constitutional guarantee in question can operate in three possible directions: 1. right to associate by constituting an organization or joining an existing one; 2. right to remain in the association or to resign from it; and 3. right to not associate. Therefore, the authority may not prohibit the individual from associating; it may not restrict their right to remain in an association or to renounce one, nor may it force them to associate. Consequently, article 5 of the Law of the Chambers of Commerce and Industry by imposing the obligation on merchants and industrialists to join the relevant Chamber, violates the freedom of association set forth by constitution article 9.

"The prohibition to belong to an association by prior membership in another alliance is in violation of this human right, since it is equivalent to establishing conditions that oblige one to remain in an alliance, to distinguish between members belonging to certain alliances and causes that only certain alliances or persons can effectively enjoy the right of association."¹

On the other hand, article 2670 of the Federal Civil Code defines associations as follows: In the event several individuals convene to reunite in a way that is not entirely transitory, performing a common purpose that is not forbidden by law and that has not an economical character predominance, they constitute an association.

The *lex specialis* principle implies that, between general and specialized regulation, the specialized one must be applied, only in normative assumptions wherein a contradiction between a general and specialized regulation is verified, in the assumptions provided for in such regulation. It is evident that the legislators seek to impose certain additional requirements to guarantee the proper compliance with the Law. However, in case the Law is approved with this wording, it would result in the deformation of legal institutions since they impose vague and implausible requirements that harm the function and purpose of these institutions.

¹García Gárate Iván. (2013). *Constitutional Article 9. Right of association and assembly*. Law Research Institute, p.1213.

The Federal Civil Code does not impose a determined number of associates for the constitution of a society since any citizen has the freedom to associate without any limitation other than those established by law in order to secure health, safety, and national security, among others. However, no paragraph of the explanatory memorandum or the Law mentions the reason why it is limited to 20 persons. Likewise, the rule is vague as to whether Associations can admit more than 20 members or only need 20 for their constitution. However, by express provision of article 2672 of the Federal Civil Code and its equivalent provisions for other Federal Entities, associations are allowed to admit or exclude members with the only limitation that the reason for their exclusion is provided for in their Articles of Incorporation.

We hope that the above information is useful to you, and we are at your service to discuss any of the points addressed herein and to clarify any doubts in this regard.

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This is the first note of a series of four, that introduces inconsistencies presented in the legal opinion on the regulation of cannabis, and offers some arguments allowing a better understanding of the specific regulation of legal entities, as well as the requirements they must meet once the law is published and becomes in force.