

**Opinion from the Justice, Health and Legislative Studies joint commission, on the Cannabis Law.**

1) The opinion begins analyzing the 14 previous cannabis law initiatives that were taken into consideration for the elaboration of the new law, the initiatives taken into consideration were presented by (i) Olga Sánchez Cordero, (ii) Mario Delgado Carrillo, (iii) Marlon Berlanga Sánchez, (iv) Angelica de la Peña Gómez, (v) Senators of the parliamentary group *Movimiento Ciudadano* (vi) Miguel Ángel Osorio Chong and Manuel Añorve Baños, (vii) Cora Cecilia Pinedo Alonso, (viii) Raúl Paz Alonso, (ix) Jesús Zambrano Grijalva and Guadalupe Hernández Alcalá, (x) Miguel Ángel Mancera Espinosa (his initiative it's a combination between Sanchez Cordero's proposal and some United States laws, like California and Colorado. (xi) Juan Manuel Fócil Pérez, (xii) Gerardo Novelo Osuna, (xiii) José Narro Céspedes, (xiv) Miguel Añorve Baños. In addition, it takes into consideration the initiatives presented by deputy Mario Delgado Carrillo. However, beyond the summary they do not discuss why they added or eliminated points and the motives to do so.

2) The International Drug Policy is taken into consideration, in which Mexico has signed three conventions: the Single Convention of 1961 on Narcotic Drugs, which has a Amending Protocol, signed in Geneva, on 25 March 1972, 1971 Convention on Psychotropic Substances and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Single Convention on Narcotic Drugs is of paramount importance since it abrogated all previously concluded treaties and brought together its provisions in a single treaty. In 1972, its powers were expanded through an Amending Protocol. Subsequently, the national context that has questioned the Institutions has reconsidered the prohibitionist system that was adopted due to the conventions, together with the "War on Drugs" promoted by Richard Nixon in 1971.

The effect of Cannabis on public health is also taken into account, which it is not considered as one of the serious public health problems in Mexico, as is the high rate of death from diabetes, cancer, kidney and heart disease. The committees argue that "It does not go unnoticed by these assessment bodies that there are other substances that cause addictions and despite causing serious harm to health, are not treated with the same rigor as psychoactive cannabis<sup>1</sup>."

Additionally, there's an extensive analysis made to the "War on Drugs" promoted by Felipe Calderón and

followed by Enrique Peña Nieto, of which it is estimated that organized crime related homicides constitute (approximately) 50% of the deaths. Some other estimates of organized crime-related homicides range from 20% to 50% in 2016.

According to the 2018 World Drug Report, cannabis was most consumed drug in 2016: 192 million people used it at least once in the last year.

3) **Paradigm shift.** Because global and regional change is taking place in the way drugs are addressed through the laws of countries such as Colombia, Uruguay, Canada and various American states, among others. This opens the possibility of a change in national and international drug policies not only as whims and issues of national sovereignty, but rather a change in the approach and rights of the population, in Mexico under the argument of free personality development. That is why we see a confrontation in this paradigm shift between the protection of the health and well-being of humanity that treaties seek to protect and the reality of a country that suffers the most severe consequences of the prohibition.

4) **Regulation justification** Coupled with the violence and criminalization of consumers arising from prohibitionist policy that does not address the underlying problem or problematic consumption of substances and that encourages an illegal trade that strengthens organized crime.

On the other hand, First Chamber of the Supreme Court of Justice of the Nation (*Primera Sala de la Suprema Corte de Justicia de la Nación*) in ruling the *Amparos* in *Revisión* 237/2014, 1115/2017, 623/2017, 547/2018 and 548/2018 ruled five times on the unconstitutionality of the articles 235 last paragraph, 237, 245 fraction I, 247 last paragraph and 248 of the General Health Law for estimating them as violators of the fundamental right to free development of personality, and therefore issued agreement concerning the procedure of The General Declaration of Unconstitutionality (*Declaratoria General de Inconstitucionalidad*) 1/2018. This, on the grounds that the regulatory portions establishing the prohibition are disproportionate.

That is why the obligation was imposed on the Congress of the Union (*Congreso de la Unión*) to comply with the General Declaration of Unconstitutionality (*Declaración General de Inconstitucionalidad*) 1/2018 concerning the

unconstitutionality of articles 235 last paragraph, 237, 245 fraction I, 247 last paragraph and 248 of the General Health Law for deserving violations of the fundamental right to free development of personality and involving the modification or repeal of the declared rule.

- 5) The regulation is not synonymous with an absolute release of the use of the plant and its derivatives or the market that provides them, but of the legalization of certain acts that imply their use exclusively for certain purposes, with parameters of control and intervention of the State, with rules and standards on the production and supply chain.
- 6) The law contains five titles and 73 articles, while the draft Decree contains 13 Transitory articles. It is of public order, social interest and general observance throughout the national territory in federal matters.
  - The goal of the law is to regulate the use of cannabis under the approach of public health, human rights and sustainable development, combat the consequences of the problematic use of psychoactive cannabis and reduce the criminal incidence linked to drug trafficking, promoting peace, security and individual and community well-being. The Law contemplates the following acts: a) store; b) use; c) commercialize ; d) consume; e) harvest; f) cultivate; g) distribute; h) pack; i) label; j) export; k) smoke l) import; m) investigate n) sponsor; ñ) plant; o) carry or possess; p) prepare; q) produce; r) promote; s) advertise; t) sow; u) transform v) transport; w) supply; x) sell, and y) acquire under any title. Acts covered by the preceding subparagraph may not be subject to criminal prosecution, the Public Prosecutor's Office (*Ministerio Público*) may not bring criminal proceedings against persons carrying out any of the activities covered by the Law.
  - The determination of guidelines for health control of cannabis use.
  - The determination of testing and traceability mechanisms by the State.
  - Promote information, education and prevention on the consequences and harmful effects linked to the use of psychoactive cannabis and its derivatives; The determination of security measures; The determination of sanctions; Establish mechanisms for strengthening public policies to optimize the treatment, rehabilitation and social reintegration of people with problematic use of psychoactive cannabis.
- 7) The Law establishes that through the Mexican Institute of Cannabis the State will be responsible for the control and regulation of the acts.
- 8) In the absence of express provisions, the General Health Law, Federal Law on Administrative Procedure ("*Ley Federal de Procedimiento Administrativo*"), will be applied in addition (within its jurisdiction).
- 9) The guiding axes of cannabis regulation will be promotion, respect and protection of human rights, promotion of peace and social security, protection of vulnerable groups, self-determination of the elderly, sustainable development, reduction of corruption and violence, fair tax collection and regulation of the cannabis market, among others.
- 10) The principles of decent treatment, accessibility, gratuitousness, non-discrimination, access to information and protection of personal data should be followed in public policies or any activity relating to the right to health related to cannabis.
- 11) In the case of traceability, laboratories accredited by the competent authority in which the analyses and tests for each product shall be assigned. It is important to mention that the situation of producers and their characteristics is considered, but it does not make clear when it can be exempted or whether they will bear the costs on behalf of the State.
- 12) Through the Mexican Institute of Cannabis, the State shall encourage compliance with the provisions of the Law related to sustainable development by issuing sustainability certifications; preference in granting authorizations and licensing and credit management through development banking.
- 13) In relation to Article 11 of the law, it is worth mentioning that it was the subject of praise in Illinois, although it was adapted to the Mexican regulatory framework because it proclaims that the State through the State Secretaries (*Secretarías de Estado*) will advise, and provide the necessary facilities to individuals, indigenous people and community members, as well as groups of micro and small holder farmers to provide them with access to information with requirements necessary to access the programs benefits, plans, and mechanisms for law compliance. The groups mentioned above will take precedence in licensing and authorization.
- 14) The purposes permitted by the Cannabis Use Law and its derivatives are:
  - Adult use, which includes personal use, sharing (in consumer associations or "clubs") and commercial use.
  - Research

- Physician, pharmacist and palliatives;
  - Industrial
- 15) Adults (over 18) are not allowed to smoke cannabis if a minor or any person unable to give their **free and informed** consent is present and if there are other adults who do not consent to it. Sale within national territory is allowed if the establishments are authorized and comply with licenses issued by the Mexican Cannabis Institute. Persons under the age of 18 or any other person unable to express their consent will not have access to cannabis for recreational use, if a person provides cannabis to a minor it will incur in a corruption of minor's crime.
- 16) Adult use of cannabis contemplates that they can cultivate, sow, plant, grow, harvest, smoke, carry and consume the plant. It is limited to four psychoactive cannabis plants. In the case of housing may not exceed six plants per house.
- 17) Consumption organizations: The civil organizations that meet the requirements of civil law (*Código Civil*), without preponderantly economic purposes for recreational purposes. Organizations are allowed the same acts as those of personal use. This article is like cannabis organizations in some regions of Spain. They shall be constituted with a minimum of 2 and up to 20 associated persons. They are prohibited from performing any other act and use of psychoactive cannabis and its derivatives for purposes not expressly permitted by their license, exceeding the permitted limits, selling or consuming alcoholic beverages within their home, any type of advertising, among others.
- 18) Marketing and commercialization for recreational purposes: The subjects entitled to market it must be over 18, legally constituted collective legal persons of a commercial nature who have the corresponding license. Those who market, distribute or sell must offer information services regarding the uses, compounds, properties, effects and risks of psychoactive cannabis, keep in a visible place the license granted by the Mexican Institute of Cannabis.
- 19) Packaging and labelling: Packaging must be generic and standardized, ensuring in any case that does not contain any colors or eye-catching elements that may promote a brand, product or its consumption containing only the elements necessary to transmit the essential information to the consumer, recyclable, biodegradable, may not contain striking colors. Likewise, it will be airtight, resealable and child-proof, among others. It must not contain testimonies, explicit or subliminal images that evoke any emotion or way of life or sensation that involves associating them with cannabis use, it will contain the labeling with THC and CBD levels.
- 20) Research purposes: natural and legal persons, as well as research centers and cloisters are allowed the acts ethically necessary for research purposes of cannabis and its derivatives.
- 21) Medical, pharmaceutical and palliative purposes: The health of people requiring the use of cannabis for medical or palliative purposes is given privilege; therefore, they are exempt from any administrative procedure that limits the full exercise of their right. The import and export of cannabis-derived products shall be permitted in accordance with the General Health Law and its regulations, if persons are authorized and licensed and subject to health controls imposed by the General Law on Health and the Law to Regulate Cannabis.
- 22) Cannabis products for industrial uses may be marketed, exported and imported in compliance with the Law to Regulate Cannabis, health regulations and other regulatory and commercial provisions contained in International Treaties should be followed in this matter.
- 23) Licenses: There will be five types of licenses:
1. Cultivation: Includes the acquisition of seed or seedling, planting, cultivation, harvesting and preparation of cannabis;
  2. Transformation: Includes the preparation, transformation, manufacture and production of cannabis.
  3. Marketing: Includes the distribution and sale to the public of cannabis, its derivatives and products; (limited to three licenses per entity to each holder)
  4. Export and import. It includes distribution and sale outside the national territory in the terms of applicable laws, international treaties and other regulations, which shall specify the destination or origin of the cannabis product, respectively.
  5. Research: Includes the acquisition of seed or seedling, planting, cultivation, harvesting, preparation and processing of cannabis and its derivatives, exclusively in quantities and in terms of the research protocol approved by the authority.
    - Licenses shall include auxiliary transport and storage activities.
    - Licenses are mutually exclusive, which means that the Institute will only be able to assign one type of license per holder.
    - "Vertical integration" is prohibited by establishing a mechanism that prohibits partners, subsidiaries, shareholders, blood

relatives up to fourth grade, spouse and anyone who holds another relationship with who holds a license, from obtaining a License. Although the rule is well-intentioned, it may be stated that it may be assumed that family members do not maintain a relationship and engage in the same industry, so it would be necessary to prove that they are not looking for vertical integration, but that it is pursuing different interests.

- The Institute shall establish the number of licenses of a single type to grant to a single person.

24) In cases where the Institute does not resolve the application for licenses within the time limit provided for in the regulations of this Law, it shall never be understood that such license has been granted.

25) In order to apply for commercial licenses, the following requirements must be met:

- They must be a mercantile corporation and be registered in the Federal Taxpayer Register (*Registro Federal de Contribuyentes*), as well as obtain a positive opinion of the fulfillment of tax obligations issued in this regard by the Tax Administration Service (*Servicio de Administración Tributaria*). In the case of legal persons, equal requirements will be required;
- If they are natural persons, they must be of legal age (over 18).
- In the case of mercantile corporation persons, they must be constituted in accordance with the formalities legally required by the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*). Acts related to the Law will not be allowed to be irregular societies. In the case of commercial legal persons, they must have their registered office within the Mexican territory and must have only as a social object, those directly related to the authorized acts of the Law.

26) In order to apply for commercial licenses, they must meet the following requirements:

- Have an investigative protocol authorized by the competent authority. If you are a natural person you must have Mexican nationality.
- As a mercantile corporation must be legally constituted with the formalities and requirements required by the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*).

27) Permissions. Persons over the age of 18 will be allowed the personal use or self-consumption of psychoactive cannabis for which they must prove that they obtained the permit, the lawful acquisition of their seeds and plants in the terms of the Law, no persons under the age of 18 or who are not in the possibility of granting their informed consent must be present at the person's home at the time of consumption. In cases where the Institute does not resolve the application for permits within the period provided for in the regulation, it shall be understood that such authorization has been granted.

28) Natural or legal persons whose object is exclusively the transformation of hemp, will not require a license and may apply for a permit from the Institute.

29) Mexican Institute of Cannabis. It will be a decentralized agency sector to the Ministry of the Interior (*Secretaría de Gobernación*). The Institute will enjoy technical autonomy and management. The Institute shall not be subordinate to any authority and shall take its decisions with full independence, except those in matters of health. The Chamber of Deputies (House of Representatives or *Cámara de Diputados*) will determine and allocate annually in the Federation's Egress Budget (*Presupuesto de Egresos de la Federación*).

Its purpose is to coordinate between State Secretaries, to cooperate with health authorities (Secretary of Health, Federal Commission for the Protection of Health Risks "*Comisión Federal para la Protección contra Riesgos Sanitarios or COFEPRIS*", among others) to define public policies for the health control of the cannabis and hemp, risk reduction, determining national cannabis policy and being responsible for the testing and traceability of seeds and plants.

- In use of its powers it will grant, renew and revoke licenses, draw up the guidelines, carry out the health checks and determine the limits on the permitted THC and CBD levels.
- The Institute will be integrated by: I. The Governing Board. II. The Directorate-General. III. Administrative units necessary for the assistance of the Board and the Directorate-General. The Institute will be represented by the person holding the Directorate General who will be appointed and removed by the President through the Governing Board.

30) Infringements and sanctions: Any seed, plant or planting of unregistered cannabis shall be deemed not to have authorization and will therefore be considered unlawful, therefore, they will be subject to insurance and confiscation, as the case may be, with the intervention of the authority(s), shall be made available to the Institute for the final destination. Any

activity related to cannabis that does not comply with the regulation is considered as an illicit act and must be sanctioned in accordance with the Law on the Regulation of Cannabis, criminal and/or civil laws, considering the case.

- 31) In the event of opposition to the implementation of the traceability system, inspection or verification visits shall apply the following sanctions: the first inspection visit, a notice of suspension of the relevant license and of the a fine ranging from two hundred and forty to one thousand two hundred times the Unit of Measurement and Update (*Unidad de Medida y Actualización*) that equals \$86.88 pesos multiplied by 240 to 1200 depending on the case.

In case of recidivism or recurrence of the conduct, the warning will be effective and, consequently, the suspension of the corresponding license and the application of a fine ranging from one thousand two hundred to six thousand times the Unit of Measurement and Updating will be decreed. A notice of final revocation for the suspended license will apply in the event of further opposition. If the refusal persists, the decreed warning will be effective and, consequently, the license granted will be permanently revoked and, in addition, the Public Prosecutor's Office will be noticed.

32) Prohibitions:

- Adult use may be carried out in private places if there are no minors or disabled persons or there are older persons who do not consent to it.
- It is forbidden to commercialize psychoactive cannabis and its derivatives for recreational purposes any product of the psychoactive cannabis that exceeds the percentage of levels of THC, CBD or the combination of both, authorized by the Institute and cannabis products psychoactive or its derivatives, mixed with other substances such as alcohol, nicotine, tobacco, caffeine or any other, considered or not as psychotropic, that increases, actually or potentially, the level of addiction or the effects of psychoactive cannabis and its derivatives.
- Advertise, promote or sponsor, directly or indirectly in any media of cannabis, excluding hemp products.
- The use of cannabis and its derivatives for cosmetic purposes.
- The use of any natural or synthetic or substance that may alter the chemical or physical properties of psychoactive cannabis or products made from it and pose a risk to human health, with the exception of its use for medical or pharmaceutical, palliative and research purposes.

- Smoking or inhaling psychoactive cannabis and its derivatives is prohibited in any commercial establishment with public access and in any place where the use of tobacco is prohibited in accordance with the applicable provisions. It is also prohibited to smoke or inhale psychoactive cannabis and its derivatives at mass casualty points where minors can access, including, but not limited to shopping, malls, parks, amusement parks, stadiums and facilities sports, even if they are open.
- Violations of the provisions of the Act or its regulations not specifically provided for in the Act shall be subject to the following administrative sanctions: Warning; fine; product confiscation; temporary suspension of the license or permit, which may be partial or total; revocation of the license or permission; work in favor of the community, and arrest for up to thirty-six hours.

- 33) Transitional Articles: (i) The Decree shall be valid on the day following its publication in the Official Journal of the Federation (*Diario Oficial de la Federación*). (ii) The President shall, within a period not exceeding 180 calendar days, counted from the entry into force of this Decree, issue the adaptations corresponding to the regulatory provisions, including the rules Mexican officers (*Normas Oficiales Mexicanas*) (iii) The deadline for the establishment of the Institute was set to 1 January 2021; (iv) All procedures, administrative procedure acts, and other affairs related to this Decree initiated before the date on which this Decree enters into vigor shall be handled and ruled in accordance. (v) Similarly, it is mandated that one year after the entry into force of the Law to Regulate Cannabis, the Governing Board of the Institute will make a public call for a review of the constitutional and legal framework with the aim of formulating the necessary legal reforms. (vi) The Federal Executive shall issue the Internal Regulations of the Institute within ninety calendar days of its establishment. (vii) With the intention of compensating for the damage caused by the ban, during the five years following the publication and validation of the Decree, at least 40% of the cultivation licenses shall be granted to farmers and, after the fifth year, the percentage of licenses granted to peasants under no circumstances may be less than 5%. (viii) One year after the Institute takes office, it will proceed to the development of a National Plan for monitoring and improving the implementation of the Cannabis Regulation, which must be carried out with sustenance in the scientific evidence, in the information collected with indicators and mechanisms for measuring and evaluating implementation, with the aim of shaping or, where appropriate, redirecting the measures taken in the regulation of cannabis. (ix) The Institute shall coordinate the transition from the illegal

commerce towards its legality with the competent authorities, to obtain peace in national territory, to this end, it will establish the necessary mechanisms to provide batches of cannabis seeds and plants. (x) For the purposes of the transition of the irregular market to its legality, producers and those who cultivate for self-consumption shall register their seeds and plants before the Committee and/or the Institute within six months of the validation of this Decree. (xi) Once the Committee and/or the Institute are established, they must issue, within six months thereafter, the guidelines to implement the mechanisms and procedures for testing and traceability of cannabis. (xii) Concentrations of 1% percent of THC in Cannabis, will be taken as a base standard for the determination of Hemp, until the Institute updates that percentage, in case there is scientific evidence to justify it.(xiii) All provisions that contravene the principles, procedures and the rights recognized in this Decree are repealed.

- 34) The first paragraph of Article 234, the last paragraph of Article 235, the last paragraph of Article 247, the first and penultimate paragraphs of Article 474, the first paragraph of Article 475, Article 476, the first paragraph of Article 477 will be reformed paragraph of Article 479 and the addition of section VII to Article 235, a second paragraph to Article 235B, Section VII to Article 247 and a second paragraph to Article 478, with the second paragraph being added to the third paragraph, of the General Health Law.
- 35) It should be pointed out that while there is a law draft that would allow those sentenced for possession or consumption to regain their freedom by means of pardon, this should be the first act contemplated by the Law, otherwise it is evidenced the true reasons behind this law, and these are not welfare, pacification and the transition to the legal market. It is simply intended to legalize cannabis as an object of trade and tax collection, otherwise today we would be seeing that Congress would propose laws that really benefit Mexican youth, because there are more than 100 thousand young people who have an open process for health crimes and 60 thousand are due to the use or possession of cannabis and 15 thousand are due to the carrying of a smaller amount than what can be purchased with 200 pesos. It is therefore implausible that this information is contained in the proposal made by the Parliament Group of the Party of the Democratic Revolution and had no resonance in the current draft Law.

We hope that the above information will be useful, if you have any doubt related to this document, please do not hesitate to ask.

Mexico City, January 21, 2020.