

PRELIMINARY STUDY

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Introduction

A reform decree was published in the Official Gazette of the Federation on September 15, 2017, modifying Articles 16, 17, and 73 of our Constitution. The general purpose of the reform was to introduce various procedural improvements into the Mexican legal system.

Thus, for example, the following sentence is added to the content of the first paragraph of constitutional article 16: "In trials and proceedings conducted in the form of a trial in which oral proceedings are established as a rule, it will be sufficient that they be recorded in any medium that provides certainty of their content and compliance with the provisions of this paragraph."

This new mandate of article 16 allows for an exception to the general rule that appears in the first part of the same first paragraph, in the sense that all acts of authority must be recorded in writing, with the objective of allowing the adequate development of such acts in the context of oral hearings that have been increasingly extended to more matters of our legal system in recent years.¹

The logic of procedural orality consists precisely in that not everything has to be recorded in writing, but that the parties and the judge can make oral interventions that are recorded through audio and video mechanisms. This record would be enough, as Article 16 of the Constitution tells us now, to satisfy the needs of legal certainty regarding procedural acts governed by orality. It seems to me to be a sensible and acceptable reform. The jurisprudence

¹ On the emergence and progressive implementation of the "procedural orality" model, see Carbonell, Miguel and Ochoa Reza, Enrique, What are oral trials and what are they for?, 11th edition, Mexico, Porrúa, UNAM, RENACE, 2017 (reprint); Carbonell, Miguel, Oral trials in Mexico, 6th edition, Mexico, Porrúa, UNAM, 2016; Pratt, Carla, Oral litigation, Mexico, Carbonell Center for Legal Studies, 2017, among others.

Prudence has understood that, for example, in the area of accusatory and oral criminal proceedings, the video recording of a hearing in which a writ of binding proceedings is issued complies with the requirements of article 16 regarding grounds and motivation (See thesis 2015127 in the IUS database of the Supreme Court of Justice of the Nation).

The same constitutional reform decree adds a new third paragraph to Article 17 of the Magna Carta, in the following terms: "Whenever equality between the parties, due process or other rights are not affected in trials or proceedings carried out in the form of a trial, the authorities must prioritize the resolution of the conflict over procedural formalities."

Finally, a section XXX is incorporated into article 73 of the constitution to empower the Congress of the Union: "XXX. To issue unique legislation on civil and family procedural matters." This provision is what allows for the unification of procedural regulations in civil and family matters, as was the case at the time with the legislation relating to criminal procedure (governed since 2014 by the National Code of Criminal Procedure, the issuance of which and its progressive entry into force had the effect of repealing the criminal procedure codes of the federal entities).

The three modifications mentioned above, and above all the issuance of a single code applicable to the entire country to regulate civil and family procedures, gives us a magnificent opportunity to update our regulations and our procedural doctrine, which had become quite outdated in recent decades.

Indeed, although there had been important changes to the rules and principles governing the processing of civil and family proceedings, these were uneven advances and were made without an adequate diagnosis of what needed to be improved and how to do so. In addition, doctrinal development in such matters was very scarce as a result of the existing regulatory dispersion, which did not help much either.

The issuance of the National Code of Civil and Family Procedures that was finally published in the Official Gazette of the Federation on June 7, 2023 should also serve as a powerful reminder that Mexican scientific procedural law has had very prominent exponents throughout history and that the full application of the new regulations in such relevant matters will require

of the emergence of new academic exponents. Let us remember that from the impetus given to procedural studies by the eminent jurist Niceto Alcalá Zamora y Castillo (a Spanish exile, who joined the UNAM in 1945 and began to train a brilliant school of disciples, until his return to Spain in 1975), many brilliant names began to emerge who brought the most modern procedural doctrines to Mexico.

Names such as Hector Fix Zamudio, Humberto Briseño Sierra, Fernando Flores Garcia, Gonzalo Armienta Calderon, Jose Becerra Bautista, Rafael de Pina, Jose Castillo Larrañaga, Ignacio Medina Lima, Cipriano Gomez Lara, Sergio Garcia Ramirez and Jose Ovalle Favela are some of the most prominent proceduralists, most of whom were trained under the scientific tutelage of Alcala Zamora.

This galaxy of notable jurists has been followed by equally distinguished names, among which Eduardo Ferrer MacGregor stands out, a researcher at the UNAM Research Institute and a brilliant judge at the Inter-American Court of Human Rights. Many other jurists have also made highly relevant contributions on different aspects of contemporary procedural law. It is time to continue this brilliant path. The National Code of Civil and Family Procedures is the best opportunity in decades to achieve this.

The advantages of legislative unification

Since this is a constitutional mandate (the normative basis of which has already been cited), there is no point in debating the convenience or inconvenience of having a single regulation, issued by the Congress of the Union and applicable to the entire country, on matters of civil and family procedure. This was decided by the constitutional reform power through the decree published in the Official Gazette of the Federation on September 15, 2017.

However, it may be worth highlighting that, since the issuance of the National Code, a series of opportunities have opened up that should be assessed and that our most illustrious proceduralists had already foreseen years ago.

For example, in an article that has been cited on countless occasions, Niceto Alcalá-Zamora y Castillo had pointed out since 1960 that achieving procedural unification in civil and criminal matters would have the advantage of allowing a uniform forensic and jurisdictional practice, with-

with refined legislation and achieve an improvement in legal dogma on the matter?

The 2014 enactment of the National Code of Criminal Procedure appears to have proven Alcalá-Zamora right in each of the three aspects he pointed out so long ago. And surely the same will happen with regard to civil and family procedures.

The text of the National Code of Civil and Family Procedures, being applicable throughout the Republic, will allow for uniformity in its interpretation and (hopefully) in its application.

But it must also be acknowledged that, although it is not a perfect rule, it improves in several aspects the existing situation at the federal and local level in the matters it regulates.

And finally, it will allow the emergence of a modern procedural doctrine, which is capable of serving all law students in the country and all legal professionals, regardless of the place in the Republic in which they practice.

For procedural doctrine, a golden age is foreseen that will result in "extraordinary progress", as Alcalá-Zamora had also anticipated in the article we have already cited. The jurist Rubén Sánchez Gil is right when he states that the issuance of the National Code of Civil and Family Procedures "will be a great revolution in legal practice, in our legal conceptions and in the way in which we are going to operate and practice law, whether from the judiciary, from the legal profession or from academia"³.

Some historical background

The new National Code of Civil and Family Procedures is the result of a long historical journey. It has as a remote antecedent, under the cloak of the then recently issued Mexican Constitution of 1857, the so-called "Zuloaga Code" of 1858, whose official name was "Law for the Arrangement of the Administration of Justice in the

² "Unification of Mexican procedural codes, both civil and criminal," Review of the Faculty of Law of Mexico, volume X, numbers 37-40, Mexico, January-December 1960, pages 265 and following.

³ "National Code of Civil Procedure: federalism, challenges and opportunities", Tohil. Journal of the Autonomous University of Yucatan, year 21, number 46, Merida, January-December 2021, pages 53-54.

Courts and Tribunals of Common Jurisdiction". At the local level, it is worth highlighting the precedent of the "Law of Civil Procedure of the State of Jalisco" of 1868, which is considered the first truly procedural code in the history of Mexican law.

Also very influential were the civil procedure codes applicable to the territory of the capital of the Republic and to the then still existing (although now defunct) federal territories - such as Baja California, for example - from the years 1872, 1880 and 1884. Also important were the federal codes on the subject from the years 1896 and 1908.

The immediate antecedent of the National Code is found in the two major regulatory references on civil procedural matters of the 20th century in Mexico. On the one hand, the Code of Civil Procedure for the Federal District, which came into force on October 1, 1932. On the other hand, the Federal Code of Civil Procedure, which was published in the Official Journal of the Federation on February 24, 1942, and whose text was not amended during its first 45 years, until 1988, when a set of issues relating to international procedural cooperation were added.

It is from these antecedents, from the doctrine that analyzed them and from the jurisprudence that sought their correct application, that the National Code draws, which we hope can remain in force (with the reforms that the passage of time will suggest, of course) for a long time.

The quantitative importance of civil and family processes in Mexico

While it is true that, in terms of its media presence and the impact it generates on public opinion, it would seem that in Mexico the predominant branch of the legal system is the criminal branch (at least it is the one that is heard the most, for good or not so good reasons), the truth is that the greatest impact of the functioning of justice occurs precisely in civil and family matters.

According to INEGI data collected in the "National Census of State Justice Administration 2022" (which accounts for data referring to the previous year, that is, 2021), the sentences issued by the jurisdictional bodies of the federal entities in that year in civil and family matters represented 76.2% of the total sentences issued by

first instance bodies; and 71.1% of those issued in the second instance.

In exact numbers, in 2021, 950,699 new family cases and 539,117 civil cases were brought to the attention of local jurisdictional authorities. This number indicates that family matters represent 44.6% of the total number of cases brought in, civil matters 25.3%, commercial matters 19.7%, and criminal matters (fortunately) account for 10.4% of the income, considering both the justice system for adults and those dealing with adolescents in conflict with the criminal law.

Of the cases received, 69.4% were processed in the traditional system and 30.6% under an oral procedural system. This data is important because we will have to be prepared for a massive extension of oral hearings, as provided for in the National Code.

This quantitative dimension is better appreciated if we consider that, in round numbers, one and a half million new cases (or cases that require new procedures, even if they are cases that were already under the jurisdiction of some jurisdictional authority, as is often the case in family matters) are brought to the attention of the civil and family jurisdiction. If we consider that, at least, in each one of them at least two people are involved, then this means that almost three million people pass through our civil and family courts, year after year. From the moment they are put into operation, those millions of people will begin to be governed by the National Code that we are now presenting.

Contents of the National Code of Civil and Family Procedures

The National Code is divided into a total of 1,191 main articles and another 20 articles of the transitional regime. Its content covers a very large number of topics and issues, which cannot be summarized in a simple manner. I will simply state some notable aspects of its content, as an example.

The Code states in its article 7 the following as guiding principles of the system of administration of justice in civil and family matters:

- a) access to justice; b) concentration; c) collaboration; d) continuity;
- e) contradiction; f) procedural direction; g) procedural equality; h) immediacy;
- i) best interests of the child; j) procedural impetus; k)

procedural loyalty; 1) open litigation; m) orality; n) gender perspective; o) preclusion; p) privacy; and q) publicity.

Some of these principles have been recently interpreted in relation to accusatory and oral criminal proceedings. It may be useful to look at this experience to understand its scope and challenges.

In Article 11, the Code classifies actions in civil and family matters, taking into account their object, as follows: a) real actions; b) personal actions; and c) actions of the civil status of persons. In Articles 12, 13 and 14, the Code details the content of these actions, and in Articles 15 and following, it describes each of them individually.

In Article 63 the Code sets out the procedural exceptions and in Articles 64 and following it details them.

Starting from Article 77, the Code sets out the principles from which jurisdictional competence in the matter it regulates will be determined. This competence is articulated based on 17 different assumptions, collected in Article 89.

The Code is detailed in determining the causes and methods of processing impediments and excuses. It lists 16 cases in which the jurisdictional authorities will be prevented from continuing to hear a case, in order to clarify the correct determination of "subjective jurisdiction" (see article 104).

The Code contains an interesting way of regulating that very Mexican forensic practice called "hearsay" or "allegation by ear", the application of which is usually quite informal but now will have to be subject to the provisions of article 134 of the Code.

The very delicate issue of how the evidence is to be assessed is found, for example, in article 343, which states that said assessment will be carried out "in a free, logical manner and based on experience... (exposing) the rational motivation of the evidence produced both individually and as a whole...".

It is noteworthy that in some proceedings a very decisive intervention by public notaries is permitted. Such is the case of voluntary jurisdiction (article 432) or the processing of some divorce cases (article 661).

An interesting regulation is established on the so-called "extraordinary support" for people with disabilities (articles 445-455), in compliance with the declaration of unconstitutionality made by the Supreme Court of Justice of the Nation of the so-called "state of interdiction" (for example in Direct Amparo 4/2021, resolved by the First Chamber of the Court on June 16, 2021) and the mandates of the UN Convention on the Rights of Persons with Disabilities.

The Code modernizes and improves the legal regime of class actions (articles 855 et seq.), which can be initiated by 15 people (previously at least 30 had to be present) and the statute of limitations is extended, which is now 5 years (article 861). The exclusive power of the Judicial Branch of the Federation to hear and process them is the responsibility of the Courts of Appeals.

The Code establishes three different remedies (Article 905): appeal, reconsideration and complaint. The admissibility of the appeal is provided for in Articles 910 and 911; the admissibility of the reconsideration is found in Article 927 and the admissibility of the complaint is established in Article 929.

One of the major new features of the Code is the issue of so-called "digital justice" in its articles 933 and following. This is an issue that is already essential, but in which Mexico had been advancing rather slowly, especially at the level of the federal entities. The regulation that the Code makes of this large area is a good opportunity to change the way legal operators work, especially in the case of judges and applicants.

The regulatory foundations have been laid. Hopefully we will not waste this new regulation to do things better and faster, with the support of new information technologies.

Supplementary

There is no doubt, as has already been demonstrated from a quantitative point of view above, that civil and family matters are of a relevance that cannot be exaggerated. They touch the lives of millions of people every year, including thousands and thousands of girls, boys and adolescents. Hence the importance of knowing and properly applying the rules of the National Code of Civil and Family Procedures.

But this importance is reinforced if we consider that this is the rule that will be applied in a supplementary manner when in other matters there is no complete regulation (or there is no regulation at all) of a certain legal institution.

Regarding the figure of supplementary power, the Supreme Court of Justice of the Nation has said the following:

Digital registration: 2003161

SUPPLEMENTARY LAWS. REQUIREMENTS FOR IT TO OPERATE.

The supplementary application of one law with respect to another is necessary to integrate an omission in the law or to interpret its provisions so that they are integrated with other norms or general principles contained in other laws. Thus, for supplementary application to operate it is necessary that: a) The legal system to be supplemented expressly establishes this possibility, indicating the law or norms that can be applied supplementarily, or that a system establishes that it applies, totally or partially, in a supplementary manner to other systems; b) The law to be supplemented does not contemplate the institution or the legal issues that it intends to apply supplementarily or, even establishing them, does not develop them or regulates them deficiently; c) This omission or legislative vacuum makes it necessary to apply supplementary norms to solve the controversy or the legal problem raised, without it being valid to address legal issues that the legislator did not intend to establish in the law to be supplemented; and, d) The supplementary applicable rules do not contradict the legal system to be substituted, but are consistent with its principles and with the bases that specifically govern the institution in question.

The National Code will be supplementary to a good number of regulations that, before its issuance and entry into force, were only of a federal nature, but which now - having a national scope and therefore also affecting the areas of competence of the federative entities - will also be of a local nature.

The rules that provide for the supplementary nature of civil procedural legislation (previously federal, now national) include, among others, the following:

- **Commercial Code.**
- **National Security Law.**
- **Federal Law on Economic Competition.**
- **Federal Law on Administrative Litigation Procedure.**
- **National Code of Criminal Procedure.**
- **Agrarian Law.**

- Amparo Law.
- Law on acquisitions, leases and services of the public sector.
- Federal Copyright Law.
- Law on navigation and maritime commerce.
- Federal Tourism Law.
- Bankruptcy Law.
- Law on Public Works and Related Services the same.
- Federal Law on the Protection of Personal Data Held by Private Parties.
- Administrative Procedure Law.
- Law to Regulate Financial Technology Institutions.
- Payment System Law.
- Federal Law for the Protection of Industrial Property.
- Regulatory Law of Sections I and II of Article 105 of the Political Constitution of the United Mexican States.
- Federal Tax Code.
- General Law on Ecological Balance and Environmental Protection.
- Heat Market Law.
- Federal Consumer Protection Law.
- Credit Institutions Act.
- Insurance and Surety Institutions Act.
- Retirement Savings Systems Act.
- General Law on National Property.

Furthermore, as noted, the civil procedure codes are, at the local level, supplementary to a significant number of state regulations.

All references to these codes should now be understood as being made to the National Code of Civil and Family Procedures, in accordance with the provisions of transitional article 13 of the Code itself, which states the following: "Any reference to the Federal and State civil and family procedural legislation, in accordance with the provisions of the National Code of Civil and Family Procedures, shall be deemed to be made to the National Code of Civil and Family Procedures, in accordance with the provisions of transitional article 13 of the Code itself, which states the following: "Any reference to the Federal and State civil and family procedural legislation, in accordance with the provisions of the National Code of Civil and Family Procedures ...

various proceedings, shall be understood from the time they are in force, to the National Code of Civil and Family Procedures."

This regulatory effect is also a consequence of the "repeal" of the Federal Code of Civil Procedure and the civil and family procedural laws of the federal entities, which is provided for in the third transitory article of the National Code.

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Transitional regime

As already mentioned, the National Code has 20 articles relating to its transitional regime. Regarding its content, it is worth highlighting that the maximum date for the Code to come into force is 1 April 2027 (second transitory article).

Before that date, both the Federation and the federative entities may make their respective declarations so that, in their territorial area of competence, the Code comes into force. At the federal level, the declaration will be carried out by both Chambers of the Congress of the Union, indistinctly and successively, upon request of the Judicial Branch of the Federation. In the federative entities, the declaration will be carried out by each local congress, upon request of the Judicial Branch of that state.

At both the federal and local levels, the date on which the Code will come into force must be expressly stated, with no more than 120 calendar days passing between the aforementioned declarations and the entry into force.

If the date of April 1, 2027 is reached without the corresponding declaration having been made at the federal level or in any federative entity, the Code will automatically enter into force.

For the proper implementation of the new civil and family procedural justice, the Seventh Transitory Article provides for the creation of a "Commission for the Coordination of the Justice System", created and chaired by the Ministry of the Interior of the Federal Government. The Commission must be created within 60 working days after the publication of the National Code. The Commission will submit a report on its work to the Chambers of the Congress of the Union.

It is important to highlight that, according to the tenth transitory article of the National Code, both the Congress of the Union and the local legislatures in each federal entity must make the necessary adjustments.

tions to the applicable legal framework that are necessary for due compliance with the Code itself. For this purpose, a period of 180 calendar days is established, following the publication of the decree that promulgates the Code.

By way of conclusion

There is no doubt that, with the approval and publication of the National Code of Civil and Family Procedures, we are facing a historic moment for Mexican law and one of the greatest challenges for the country's legal profession in recent decades. I believe it is not an exaggeration to say that this is the third most important law of all those that make up the Mexican legal system, only behind the Political Constitution of the United Mexican States and the Amparo Law.

We must work hard together to ensure that this new code is an opportunity for substantial improvement of civil and family procedures, which have such a significant impact on people's daily lives.

In any case, the correct interpretation and application of the Code is subject to a precondition that will not be easy to meet: that its rules are disseminated, read and understood. It is up to us.

editor