

CONGRESS APPROVES AMENDMENTS TO ARTICLE 57 OF THE CODE OF MILITARY JUSTICE

On April 30, 2014 the House of Representatives unanimously approved the amendments to the Code of Military Justice, in order to restrict military jurisdiction and ensure that cases of violations of human rights committed by the military against civilians are tried by civilian courts. Days earlier, the initiative was approved also unanimously by the Senate.

Once promulgated and published by the Federal Government, Article 57 of the Code of Military Justice will read as follows:

Article 57.- “The following constitute offenses against military discipline:

I. - Those specified in the Second Book of this Code, with the exceptions provided for in Article 337 bis;

II - . Federal or State crimes, **provided that the passive subject (i.e. the victim) who suffered an affectation caused by the criminal behavior, or the holder of the legally protected good endangered by the act or default prescribed under criminal law as a crime is not a civilian, in the following cases:**

a).- That they are committed by military personnel while on duty or in connection with acts thereof;

b).- That they were committed by the military personnel on a warship, or building, or military point, or militarily occupied, provided that, as a result, tumult or disorder occurs in the troop that is in the place where the offense was committed or disrupts or impairs military service;

c).- Repealed.

d).- That they are committed by military personnel against formed troop or before the flag;

e) - . That the crime was committed by the military in connection with one of those referred to in paragraph I.

The Federal and State crimes committed by soldiers in wartime, territory declared in martial law, or any of the cases prescribed in the Constitution, shall always relate to the military jurisdiction provided that the victim is not a civilian.

In cases where military personnel and civilians act as active subjects, only the first may be tried by military courts.

The State crimes that require formal complaint for their investigation will not be within the jurisdiction of military courts, except in cases provided in subsection (e) of Section II.”

Thus, the reform excludes as an offense against military discipline those violations of human rights of civilians committed by the military. In such cases, the prosecutorial authorities and federal and local courts are competent.

The amendments to the Code of Military Justice are intended to comply with four judgments of the Inter-American Court of Human Rights, which stressed the incompatibility of military jurisdiction to address violations of human rights of civilians and ordered the Mexican government to reform the legislation (Cases of Rosendo Radilla and Others, Ines Fernandez Ortega and Others; Valentina Rosendo Cantu and Other; and, Montiel and Cabrera and Others). With this reform, several recommendations of other international human rights bodies, including the Human Rights Council of the United Nations, are attended.

It is important to emphasize that prior to the adoption of the aforementioned amendments, the Mexican Supreme Court of Justice issued criteria that restricted military jurisdiction for crimes against military discipline when not involving civilians. As a result, between September 2009 and December 2013, the Office of Military Justice declined jurisdiction in 317 inquiries and 226 cases of alleged human rights violations committed by military personnel against civilians.

This reform constitutes an essential aspect of the developments on human rights pursued by the government of President Enrique Peña Nieto in order to harmonize secondary legislation with the constitutional reform of human rights of 2011 and with Mexico's commitments pursuant to international human rights treaties to which it is a Party.

With this reform, Mexico reaffirms its commitment to move forward to ensure full respect for human rights in the country.

FOR FURTHER INFORMATION, PLEASE VISIT THE FOLLOWING WEBSITES:

Opinion adopted by the Congress: <http://gaceta.diputados.gob.mx/PDF/62/2014/abr/20140430-II.pdf>

Senate Press Release: <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/12320-por-unanimidad-aprueba-senado-que-militares-puedan-ser-procesados-por-la-justicia-civil.html>

Office of the UN High Commissioner for Human Rights in Mexico Press Release : http://hchr.org.mx/files/comunicados/2014/04/140424_ComPre_nsa_ONUDH_JurisdicMilitar.pdf

Mexican NGO Press Release: http://www.tlachinollan.org/index.php?option=com_content&view=article&id=2350%3Arestriccion-de-la-jurisdccion-militar-en-casos-donde-haya-civiles-triunfo-historico-de-las-victimas-frente-a-la-impunidad-castrense&catid=313%3Acomunicados&lang=es

WOLA Press Release: http://www.wola.org/es/noticias/el_congreso_mexicano_apruebe_reforma_historica_en_materia_de_derechos_humanos

Amnesty International Press Release: <http://www.amnesty.org/es/for-media/press-releases/m-xico-el-congreso-debe-aprovechar-la-oportunidad-hist-rica-de-poner-freno->

Informative newsletter number 32. "The human rights policy of Mexico" on the withdrawal of reservations to international human rights instruments.