

Cannabis in Mexico Report

Mexican Supreme Court Declares Prohibition on Use of Cannabis Unconstitutional: Ball Back in Congress' and Government's Court

June 29, 2021

Supreme Court Ruling

On June 28, 2021, the Supreme Court of Mexico (*Suprema Corte de Justicia de la Nación* or SCJN) decided by a vote of 8 to 3 to issue the outstanding Declaratory Judgement on Unconstitutionality (*Declaratoria general de inconstitucionalidad*) declaring unconstitutional the prohibition on the recreational and adult use of cannabis in Mexico. This is only the second time that such a judicial mechanism has been used.

At issue are five specific articles in the General Law on Health (*Ley General de Salud*).

Background

The saga began over three years ago when, after a series of legal complaints from citizens that produced a critical mass of five consecutive court decisions on the same subject, the Court first declared that these articles violated the constitutional principle of the free development of personal identity. The Court subsequently informed Congress that the health law would need to be amended, agreeing to provide Congress time to make the necessary changes in an orderly way. The general political consensus has been that this was a unique opportunity to not simply delete the offending articles from the General Law on Health, but rather to design and implement a fulsome regulatory regime by means of a new cannabis law. The objective would be to create a new cannabis-related economic sector and govern not just use, but production, marketing and sale of cannabis and cannabis-derived products for adult and recreational use.

Three years on and despite three successive extensions from the Court, however, the Congress has not been able to finish this legislative work. In the face of this inability to meet an order of the judicial branch, the Supreme Court has retaken control of the process, prescribed several key elements of an authorization regime in the absence of a regulatory framework adopted by Congress, and upped the ante again for the legislative and executive branches.

In a press release describing the background and main elements of its June 28 decision, the formal text of which will be published in due course, the Court declared:

“The Court explained that with this declaratory judgement the legal obstacle is removed so that the Ministry of Health, through the competent body, authorizes activities related to the personal consumption of cannabis and THC – how to plant, cultivate, harvest, process, possess and transport –, for recreational use, respecting in this way the right to the free development of personal identity.

Furthermore, in determining the outcomes of the ruling, the Court specified that the Ministry of Health must issue those authorizations only to adults and for the personal consumption of cannabis and THC, but not for other substances. In addition, it specified that COFEPRIS [the Federal Commission for the Protection against Sanitary Risk under the auspices of the Ministry of Health] must establish guidelines and ways in which to obtain seeds, on the understanding that the authorization will not be able to include under any circumstances permission to import, sell, supply or any other act of transfer of ownership and/or distribution of such substances.

It was also indicated that, in issuing the authorizations, COFEPRIS will have to specify that the right to personally consume cannabis and THC for recreational use can under no circumstances affect third parties, so it must not be exercised in the presence of minors nor in public places where there are persons who have not been granted their authorization. In addition, it must be indicated that it is not permitted to drive vehicles or operate heavy machinery under the influence of these substances or, in general, undertake any other activity under the influence of these substances that can put at risk or harm third parties.”

What's Next

The declaration has the effect of creating a potentially chaotic legal situation regarding cannabis in Mexico in the short term. Congress is in recess until September. There had been talk in early June about the possibility of convoking an extraordinary session of Congress following the June 6 elections to the *Cámara de Diputados* (the “House”), to be held as early as the end of June, but so far there has been no confirmation of any such session. There are a number of urgent pieces of unfinished legislative business. The recent elections changed the political complexion of the House so it is hard to predict how that Chamber might consider the current draft law on the recreational adult use of cannabis should it be returned there by the Senate once Congress again sits.

Assuming that there is still a broad view in Congress, the Presidency, and the government more widely that an orderly and systematic regulation of the cannabis sector is in the best interests of the country, then Congress will have to take up the recreational use cannabis bill as a priority (among many) as soon as possible, under pressure of the Supreme Court’s action and despite the lack of a political consensus about the issue. In the absence of a regulatory regime, the legal situation defaults to a kind of constitutional No-Man’s Land. This seems unsatisfactory and unrealistic as a matter of public policy.

The legal and political situation created by the Supreme Court’s Declaratory Judgement will not satisfy the cannabis advocacy community, which also expects to see measures to deal with citizens currently jailed for cannabis-related charges in a new legal environment where such prohibitions are unconstitutional. It will not satisfy the business community interested in seeing a new cannabis sector where growing, processing, marketing and sale of cannabis products is regulated in a clear way. It will not satisfy proponents of sound public policy.

The Supreme Court has forced the issue to a head.

In summary, the passage of a new cannabis law now seems even more likely than ever and, when taken together with the already regulated and existing medical use space, the time is right to explore how best to enter the cannabis market in Mexico. Monarch and Privus are here to help guide you through the process.

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Monarch Global Strategies and Privus Capital

The steadily increasing commercial interest in cannabis, its derivatives, and ancillary products and services (for recreational and medicinal use) across North America creates business opportunities. Yet rapidly evolving legal and regulatory frameworks, which differ among jurisdictions, together with the associated complex domestic and cross-border politics, warrant careful analysis and well-planned strategies for entry into any aspect of the sector, especially for firms seeking cross-border partnerships, distribution channels, or investment opportunities.

Monarch Global Strategies LLC and Privus Capital, Inc. work together to help clients navigate this complex environment, offering unique skills, experience, and relationships to successfully expand into the legalized cannabis sector across North America.

Services include:

- Market entry support
- Risk analysis and strategic planning
- Match making for strategic partnerships, distribution agreements, start-ups, and M&A
- Private equity and corporate strategic investment
- Regulatory filings and trademark registrations
- Government relations, advocacy, and stakeholder engagement

To discuss business matters related to the emergent cannabis space in Mexico, contact us at:

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