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Violations of the Constitutional Principles of the 2013 Energy Reform

Jesús Santiago MORALES BRITO

Universidad Juárez Autónoma De Tabasco (UJAT)

jsmb_93@hotmail.com, ORCID: https://orcid.org/0000-0003-3868-480X

Martha Ruth CRUZ SALAYA

Universidad Juárez Autónoma De Tabasco (UJAT)

Ruth_052f8026@hotmail.com, ORCID: https://orcid.org/0000-0001-6648-7630

Abstract

This article aims to illustrate and highlight the violations of the constitutional principles that the Original Constituent of 1917 gave life to, making modifications to articles 25, 27 and 28 of the Constitution with the Energy Reform presented by Enrique Peña Nieto in 2013.

Keywords: Energy Reform, Principles, Privatization, Pemex, CFE**.**

Introduction

The energy reform presented to the Senate on August 12, 2013 by the then President of the Republic, Enrique Peña Nieto, meant a final blow to fulfill the purposes of the agenda established by the Washington Consensus, where the guidelines were established to comply with structural reforms in strategic countries for the government of the United States. But mainly to meet the interests of large companies in energy matters.

It is worth mentioning that this reform not only threatens National Sovereignty, but also delivers strategic resources to companies being able to impose themselves on the Mexican State, so our natural resources are at a latent risk due to the weakening of the public force over the private ones, and consequently the most benefited is the United States. Because it ensures its energy self-sufficiency.

In the explanatory statement, President Enrique Peña Nieto invokes the nationalist spirit of General Lázaro Cárdenas Del Río, nothing more paradoxical in it, alluding that oil will continue to be the exclusive domain of the Nation. However, in the articles that were amended; 25, 27 and 28 of the Federal Constitution, the changes are minimal, but of great impact.

On December 20, 2013, Enrique Peña Nieto caused a delay of 76 years in the country by enacting a constitutional reform that would return control over the oil and electricity industry to the same

transnational companies that were expropriated by the father of the modern Mexican state, President Lázaro Cárdenas Del Río and Adolfo López Mateos. (Ackerman, 2015).

Before the reform, the Mexican oil industry was one of the most national in the world, as it included a strict constitutional prohibition against any contract in the private sector that allowed direct control or property rights over any stage of oil extraction, refining or marketing.

I. Constitutional Reforms in Energy Matters

To contextualize the reforms made in energy matters, we will begin with the oil law promulgated by Porfirio Díaz on December 24, 1901, where article 1 of said law granted "... Authorization to the Federal Executive to grant permission to carry out explorations in the subsoil of vacant or national lands, and lakes, lagoons and lagoons that are under federal jurisdiction, in order to discover the sources or deposits of oil or gaseous hydrogen carbides in which they may exist." The second paragraph prescribed "The Federal Government shall also be authorized to issue patents, by virtue of which the exploitation of the sources or deposits of oil or gaseous carbide of hydrogen must be carried out in accordance with the requirements of this Law."

In terms of Article 2, permits could be granted to individuals or companies duly organized. In addition, it prescribed that individuals or companies that discover springs or deposits of oil or gaseous hydrogen carbides, would notify the Ministry of Development to issue the patent to exploit the sources or deposits discovered. According to Article 3, exploitation patents lasted 10 years from the date of their publication in the official gazette, ending this period, the franchises and concessions granted to operators ceased, as well as the obligations contracted.

As can be seen in the context of this law, there was no limitation whatsoever on the intervention of private initiative and foreigners in the exploration and exploitation of oil.

Later, Francisco I. Madero by decree on June 3, 1912 established a tax on crude oil, called "special stamp tax on crude oil of national production", at the rate of twenty cents per ton. After the revolutionary struggle of 1910 to 1917, Sex called for the Constitution of 1917, where its article 27 in its original version, highlighted the direct dominion of the nation over oil and all solid, liquid or gaseous hydrogen carbides. In addition, it prescribed that the dominion of the nation was inalienable and imprescriptible, and authorized the federal government to grant concessions to individuals, civil or commercial societies constituted in accordance with Mexican laws, on condition that they perform regular work for the exploitation of the elements in question and comply with the requirements that the laws prevent.

In this context, the norm allowed the exploitation of oil through a legal concept of the concession, which was granted to individuals, civil or commercial companies, with three requirements a) that they be constituted in accordance with Mexican laws, b) carry out the exploitation works and c) not comply with this law, with which the legal regime of exploitation was public law, specifically administrative law.

This contractual regime was not completely liquidated, as can be seen in the decree of Venustiano Carranza of February 27, 1918, by which it establishes a tax on land and oil contracts prior to May

1, 1917, which established in its article 1 a tax on oil lands and on oil contracts, which were concluded prior to 1 May 1917 and whose object is the lease of land for the exploitation of hydrogen carbides, or permission to make it an onerous title.

In the field of contracts, Article 15 provides:

The contracts referred to in this law must be recorded in a public deed and only those concluded private deed will be valid, when due to the amount of the business they do not claim the formality of the public deed, and that by other indubitable means of proof, it is demonstrated that such contracts were actually concluded privately, on the dates indicated and with the clauses it contains. The above shows that despite the content of article 27 of the Constitution, the previous contractual regime coexisted with the concession.

On December 26, 1925, President Plutarco Elías Calles, issued the regulatory law of Article 27 of the Constitution in the Petroleum Branch, which highlighted in its article 1 the direct domain of the nation of all natural mixture of hydrogen carbides found in its deposit, whatever its physical state, and defined by "petroleum" all the natural mixtures of hydrocarbons that compose them, accompany it or are derived from it.

Article 2 prescribed that the direct dominion of the nation was inalienable and imprescriptible, and only with the express authorization of the Federal Executive, granted under the terms of the law and its regulations, could the work required by the oil industry be carried out. With regard to oil concessions, Article 4 emphasized that Mexicans and civil and commercial companies constituted in accordance with Mexican laws could obtain it subject to legal precepts. However, it also allowed foreigners to obtain these concessions, previously complying with the provisions of article 27 of the Federal Constitution.

Continuing with the evolution of the legal regulation of energy reforms, on January 10, 1934, President Abelardo L. Rodríguez reformed Article 27 of the Political Constitution of the United Mexican States, regarding contracts.

After a legal struggle with foreign oil companies, in his refusal to accept the ruling of the Supreme Court of Justice of the Nation, On March 18, 1938, President Lázaro Cárdenas issued the "decree of oil expropriation", where he significantly highlighted:

Article 1. are declared expropriated for reasons of public utility and in favor of the nation, machinery, facilities, buildings, pipelines, refineries, storage tanks, communication routes, tank cars, distribution stations, vessels and all other movable and immovable property owned by Compañía Mexicana de Petróleo El Águila, S.A., Compañía Naviera de San Cristóbal, S.A., Compañía Naviera San Ricardo, S.A., Huasteca Petroleum Company, Sinclair Pierce Oil Company, Mexican Sinclair Petroleum Corporation, Stanford y Compañía, S. en C. Penn Mex Fuel Company, Richmond Petroleum Company de México, California Standard Oil Company of México, Compañía Petrolera el Agwi, S.A., Compañía de Gas y Combustible Imperio, Consolidated Oil Company de México, Compañía Mexicana de Vapores San Antonio, S.A., Sabalo Transportation Company, Clarita, S.A., and Cacalilao, S.A., as necessary, in the opinion of the

Ministry of National Economy for the discovery, capture, conduction, storage, refining, and distribution of the products of the oil industry.

Thus, on November 9, 1940, the reform to article 27 of the political constitution of the United Mexican States was published in the official gazette of the federation, which stood out in oil matters; In the case of petroleum and solid, liquid or gaseous hydrogen carbides, no concessions will be issued and the respective regulatory law will determine the way in which the nation will carry out the exploitation of these products.

Later, on October 22, 1959, it updated article 27 of the Federal Constitution, following the United Nations Conference on the Law of the Sea of 1958, where exploitation contracts were prohibited. It is important to note that Deputy Arturo Llorente González adhered to what he called the spirit of the 1917 constituent assembly on the need for concessions for the exploitation, use or exploitation of natural resources; in addition, he opposed the incorporation of the word "contracts" to the constitutional text of Article 27.

However, on January 20, 1960, in the government of President Adolfo López Mateos, the reform of article 27 of the Political Constitution of the United Mexican States was published in the Official Gazette of the Federation, which states: "In the case of petroleum and liquid solid hydrogen carbides or radioactive minerals, No concessions or contracts will be issued, those that may have been granted will subsist and the Nation will carry out the exploitation of those products in the terms indicated by the respective regulatory law.

On November 24, 1977, the initiative to reform articles 7 and 10 of the law-regulating article 27 of the Constitution in the oil sector was presented, to establish sufficiently practical and agile mechanisms so that Petróleos Mexicanos can provisionally occupy, without burdensome delays, the area necessary for the development of its programs. Thus, on December 30 of the same year it was published in the Official Gazette of the Federation.

Continuing with the trajectory of the reforms, on April 21, 1995, the "initiative to reform the law regulating article 27 of the Constitution in the oil sector" was presented, in which its explanatory statement highlights:

It is also necessary to have the participation of the private sector, to facilitate the distribution of gas for domestic use through networks of low-pressure pipelines, to replace the distribution schemes by surface roads in tanks and containers, which involve risks, are ineffective and have secondary effects on vehicle traffic and environmental pollution.

(...)

5°. Promote private participation in pipeline transport activities, to constitute new fields of investment and employment and to strengthen the gas industry and productive activity in general.

As we can see, this reform constitutes the violation of article 27 of the Constitution, opening the field of new account for private initiative, in this context on May 11, 1995, during the presidency of Ernesto Zedillo Ponce de León, the reform to articles 3, 4 was published in the Official Gazette

of the Federation. Fifth, 7th, 9th, 10th, 12th, 13th, 14th, 15th and 16th of the Regulatory Law of Article 27 of the Constitution in the oil sector.

Since 1958 the path begun was no longer abandoned, without changing the constitution, highlighting that rhetorically that "the ownership of oil for the nation", sectors of the oil industry of high economic profitability were lost, as was in the case of gas distribution, later came the transformations in the field of secondary petrochemicals.

Article 28 of the Federal Constitution was amended on February 3, 1983, to establish that the activities exclusively carried out by the state in the strategic areas of petroleum and other hydrocarbons do not constitute monopolies. It also emphasizes that the State would have the agencies and companies it requires for the management of the priority areas in its charge.

On December 20, 2013, Enrique Peña Nieto published in the Official Gazette of the Federation the "Decree amending articles 27 and 28 of the Political Constitution of the United Mexican States." Its sole article prescribes:

SINGLE ARTICLE. The sixth paragraph of article 27 and the fourth paragraph of article 28 of the Political Constitution of the United Mexican States are amended to read as follows:

Article 27 (...)

In the case of petroleum and solid, liquid or gaseous hydrogen carbides, no concessions will be issued and the respective Regulatory Law will determine the way in which the Nation will carry out the exploitation of these products.

Article 28. The functions exercised exclusively by the State in the following strategic areas shall not constitute monopolies: mail, telegraphs and radiotelegraphy; radioactive minerals and nuclear power generation; and the activities expressly indicated by the laws issued by the Congress of the Union. Satellite communication and railways are priority areas for national development under the terms of article 25 of this Constitution; the State, in exercising its stewardship in it, protecting the security and sovereignty of the Nation, and in granting concessions or permits, shall maintain or establish control of the respective communication channels in accordance with the laws of the matter. In the case of electricity, petroleum and other hydrocarbons, the provisions of article 27, sixth paragraph, of this Constitution shall apply.

II. Analysis of the 2013 energy reform

The constitutional changes in energy matters of 2013, a delay of 76 years in which it is intended to return Mexico to the conditions of the Porfiriato, in which foreign investments were protected under the laws of Porfirio Díaz where an economy of dispossession and political domination was established.

Constitutional change, without rational and ethical foundation, leads the country to a status of colony, with a regime of economic, democratic, ideological, military and diplomatic control of the United States of America,

These changes lead to energy dependence, to the accelerated depletion of our few proven oil reserves to supply the U.S. market; the reduction of oil revenues for Mexicans, industrial, technological and commercial dependence; the drastic reduction of the fiscal contribution of PEMEX and CFE to the public treasury, compensated by higher public debt and higher taxes for Mexicans; and the replacement of energy agencies of the Mexican State by global corporations that will obtain the benefits of rent and profits from the exploitation of hydrocarbons and electricity.

These structures will systematically and permanently impede economic growth and development, and will necessarily lead to the impossibility of creating formal jobs with higher incomes for Mexicans.

The opinion published on December 20, 2013 in the DOF, incorporated changes to articles 25, 27 and 28 of the Constitution, as well as 21 transitory articles. The changes made are as follows:

1. Article 25

1. It includes in the Constitution a new form of public entity called "productive enterprises of the State", which shall be owned and controlled by the Federal Government; in which PEMEX and the CFE must be transformed within a period of 2 years.

2. The activities to be carried out by the State in the field of energy refer to the secondary law, in relation to rules of administration, organization, operation, contracting procedures and other legal acts celebrated by the productive enterprises of the State, as well as the remuneration regime of its personnel; and the activities that may be carried out by such enterprises.

3. Reaffirms the provisions of Article 27 to restrict the State's participation in electricity to the planning and control of the national electricity system, and to the public service of transmission and distribution of electricity; and the total privatization of the activities of exploration and extraction of oil and other hydrocarbons, in the name of the "Nation".

4. With the foregoing, the Mexican State grants full right to the self-interest of private companies and individuals, for the exploitation of hydrocarbons and the electricity industry.

5. These changes abolish the imminent direct control of the deposits, extraction, industries, transport system, industrial transformation and commercialization of hydrocarbons of the Constitution of 1917, as well as the activities of generation and supply of the public service of electric energy, nullifying the exclusivity of State agencies.

6. The Nation grants de facto private and foreign companies the right of access to the ownership of hydrocarbons, to oil revenues, and to the profits of industrial transformation into refining and petrochemicals, which is confirmed in the transitory articles.

7. The exploitation of hydrocarbons, industries and companies must observe the criterion of sustainability; which is a simulation before the promotion that has been made to the exploitation of hydrocarbons in shale deposits by fracturing, which is excessively harmful to the environment.

2. Article 27

1. Abolishes the prohibition on concluding contracts and distinguishing between them in the case of petroleum and solid, liquid or gaseous hydrogen carbides or radioactive minerals.

2. Eliminates the exclusivity of the nation to carry out the exploitation of oil and solid, liquid or gaseous hydrogen carbides.

3. Abolishes the Nation as the subject that carries out the exclusive exploitation of solid, liquid or gaseous petroleum and hydrogen carbides, and replaces it with "productive companies of the State", which although they would be federally owned and under its control, would be de facto entities administering contracts with private companies with national or foreign capital, that carry out substantive activities.

4. Abolishes the prohibition on granting electricity concessions to individuals.

5. Eliminates the exclusive power of the Nation to generate, conduct, transform, distribute and supply electrical energy for the purpose of providing public service.

6. Eliminates the mandate for the Nation to take advantage of the goods and natural resources that are required to generate, conduct, transform, distribute and supply electrical energy that has as its object the provision of public service.

7. Reduces the powers of the State in electricity, to the planning and control of the national electricity system, as well as the public service of transmission and distribution of electric energy; Only activities in which concessions will not be granted, so concessions may be granted to generate, conduct, transform and supply electricity for the purpose of providing public service. In the transitional articles, this limitation on private investment is still abolished.

8. State and in fact to the federal executive, so that "it can enter into contracts with individuals in the terms established by law, which will determine the way in which they may participate in other activities of the electricity industry"; without defining in the Constitution itself, the way in which individuals could participate in the electricity industry, as well as the constitutional criteria that should govern such participation.

9. Establishes that "in the case of petroleum and solid, liquid or gaseous hydrocarbons, in the subsoil, the property of the Nation is inalienable and imprescriptible and no concessions will be granted"; but at the same time, it contradictorily denies such ownership of the Nation, by authorizing the conclusion of contracts, "through assignments to productive enterprises of the state or through contracts with them or with individuals, under the terms of the regulatory law." Concessions are prohibited, but contracts that are their equivalents are authorized, as established in the transitory ones. There is a tendency to nullify "public enterprises of a productive nature" with the false argument that contractors would allow obtaining greater "revenues for the state that contribute to the long-term development of the Nation."

10. Eliminates the mandate for the Nation to carry out the exploitation of hydrocarbons in an integral manner, and reduces this exploitation of the state to the "activities of exploration and extraction of oil and other hydrocarbons." This establishes a constitutional limit that prevents the State from participating in refining and petrochemicals, since the State no longer has a mandate to carry out these activities, which are fundamental to energy sovereignty, energy security, national security, the development of industry and national technologies.

11. The Nation is lied to by establishing that "in any case, the hydrocarbons in the subsoil are the property of the Nation and this must be affirmed in the assignments or contracts", since the registration in the accounting in the companies of said "assignments or contracts", for the purposes of obtaining financing credits from companies and individuals, de facto it would grant them the right to mortgage the reserves and industries of the nation and therefore the domain of the ownership of them before international financial entities.

3. Article 28

1. Eliminates the strategic areas in charge exclusively of the State, oil and other hydrocarbons; basic petrochemicals and electricity.

2. Confirms that, according to Article 27 as amended, the Mexican State has as a limit for its intervention in the relationship with the provision of the public electricity service, "the planning and control of the national electricity system, as well as the public service of transmission and distribution of electric energy."

3. Grants to the activities carried out by individuals for "the exploration and extraction of petroleum and other hydrocarbons, under the terms of the sixth and seventh paragraphs of article 27 of the Constitution", they shall not constitute monopolies, which de facto gives them precisely this character, since these activities have an unassailable protection to act monopolically, without it being possible to abolish such monopoly control by the State.

4. Establishes a system of unlimited procurement in energy matters, both in terms of oil and electricity, the processing of natural gas, oil refining, transport, storage, distribution and marketing of these products and their derivatives; By which private and foreign corporations will carry out the substantive activities of extraction and integral exploitation of hydrocarbons, as well as the generation, conduction, transformation, distribution and supply of the public service of electric energy.

5. The Mexican State loses ownership, direct ownership, and the right to exclusively and integrally exploit hydrocarbons; and in terms of electricity, it becomes a technical entity for the dispatch of electric energy throughout the country, which would be generated and supplied by private and foreign corporations.

The transitory articles confirm the meaning of the constitutional reform, whose essence is to provide the Federal Executive Power with legal power to transfer ownership of national energy resources and Mexican state agencies, in favor of individuals and national companies foreign incorporations:

1. The first transitory order the conversion of Pemex and CFE into productive enterprises of the State, with powers to receive assignments and enter into contracts, that is, for national and foreign private companies to carry out all their substantive activities (third transitory).

2. The second transitory terminated, in an anti-constitutional manner that violates the human and labor rights of Pemex and CFE workers, to the labor relations of their workers, by affirming that "respect will be given to the labor rights of workers."

3. The fourth transitory order Congress to provide legal bases for service, utility or production sharing contracts, or licenses, for the exploration and extraction of oil and solid, liquid or gaseous hydrocarbons; as well as the consideration of the State and contributions to its productive enterprises or to individuals, for activities of exploration and extraction of oil and other hydrocarbons, including: a) cash (service contracts); (b) a percentage of profit (shared utility contracts); (c) a percentage of production (production sharing contracts); (d) the transfer for consideration of hydrocarbons extracted from the subsoil (licence agreements) and (e) any combination of the above.

4. The fifth transitory is especially serious, confirming the transfer of property rights of hydrocarbons and the oil and electricity industry, in favor of private and foreign corporations, by establishing that productive enterprises of the State as well as individuals, may report for accounting and financial purposes the corresponding assignment or contract and its expected benefits, provided that it is stated in the assignments or contracts that oil and all solid, liquid or gaseous hydrocarbons found in the subsoil are the property of the Nation. That is, this is only required for the assignment and contracts between corporations and Pemex or CFE; But foreign corporations' contracts with foreign banks are not required to obtain financing, so they are free to register them as the property of the corporations. This wording is not cynically and hypocritically against the national interest.

5. The sixth transitory: a) seeks to prevent Pemex from receiving new allocations, to deliver them to foreign corporations; b) the Ministry of Energy will give allocations to both Pemex and corporations on the same terrain, although different depth, which means that Pemex's exploratory effort will be transferred to the corporations; c) if Pemex is not successful in its exploration plan for five years, the allocation will be returned and handed over to private companies; d) for extraction, Pemex will maintain rights in the fields where it currently produces; e) allocations will be made for the extraction of hydrocarbons at different depths, that is, the same deposit will be exploited simultaneously by Pemex and by foreign corporations, but at different depths, which means that these corporations will simply come to extract the oil in the fields already exploited and developed by Pemex; and finally, in this transitory Pemex is totally nullified, since it is authorized to migrate its assignments to contracts with individuals.

6. In the eighth transitory, the exploration and extraction of oil and hydrocarbons, and the public service of transmission and distribution of electricity, are considered of social interest and public order, so they will have preference over any other that implies the use of the surface of the subsoil of the lands affected by them, which leaves the owners in a state of defenselessness, to whom no

right or compensation is recognized. In addition, the door is opened for mining concessions to exploit hydrocarbons, because although it says that no rights will be conferred for the exploration and extraction of oil and hydrocarbons, it will be done "without prejudice to the rights provided for in their own concessions." However, the law will provide mechanisms to facilitate the coexistence of the activities mentioned in this transitory with others carried out by the State or individuals.

7. The eleventh transitory mandates Congress to issue laws for the financing, installation, maintenance, management, operation and expansion of the infrastructure for the public service of transmission and distribution of electric energy carried out by individuals. This transitory nullifies the supposed exclusivity of the State in the system of transmission and distribution of electrical energy established in the Constitution.

III. Constitutional Violations of the 2013 Energy Reform

It is important to highlight the procedural violations of the Decree. These can be grouped into fourth: 1) The permanent Constituent Assembly was not competent to approve this reform but the original Constituent; 2) The Permanent Constituent Assembly did not observe Article 18 of the Federal Law on Budget and Financial Responsibility; (3) There were various regulatory violations during the approval of the Decree by the Chambers of the Congress of the Union and local legislatures; and (4) When carrying out the procedure referred to in the second paragraph of Article 135 of the Constitution, the Permanent Commission did not count the votes of the local legislatures or declare that the constitutional additions or amendments to articles 25, 27 and 28 of the Constitution had been approved in them, but the President of the Permanent Commission.

On the first question and given the importance of the reform that implies the affectation of fundamental political principles, it corresponds to its discussion and approval of the original constituent, since the principle established in the constitution of 1917 that determines that the nation is the owner and corresponds to the exploitation of hydrocarbons was violated. By allowing, for example, foreigners to receive as payment, to give us production sharing contracts, a part of the production or crude oil extracted violates the principle that hydrocarbons belong to the nation because they will be shared in property with them, that is, a part of them will be their property. It also violates the principle that the nation should exploit these resources, since transnational corporations will participate in all phases of the hydrocarbon industry, from exploration, extraction, refining, storage, transport, distribution and even first-hand sales.

Transnational corporations will have all or part of the control and administration of these processes. in this sense it is convenient to mention that although the constituent of Querétaro formally approved only the first two constitutional principles on oil, the third and fourth were the product of the three reforms -those of 1940, 1960 and 1983-, which did not mean a change in the original line of the Constituent Assembly, but adapted the constitutional regulation on oil to the basic meaning of the norms of Querétaro, which is to consider these resources as the property of the nation, of all Mexicans, for their sovereignty.

The prohibition of concessions and contracts to individuals responds to the social character of the nation's right over hydrocarbons, which takes into account the negative historical experience of

private companies, mainly foreign, that had turned away from any interest in favor of the nation; or, the fact that oil is considered a strategic area of the State and, that only it corresponds to the exploitation of these resources, constitute reforms consistent with the constitutional vision of the Constituent Assembly of Querétaro. All the modifications reinforce the principle of direct and inalienable imprescriptible domination of the nation over all the natural resources of the subsoil, notably hydrocarbons.

Guastini mentions that it is one thing to modify the Constitution without altering its identity, that is, if the supreme principles and distinguish from other Constitutions and, another is, good to introduce supreme principles different from those of the previous constitution, since in no case can the constitutional reform be used to modify the supreme principles of the existing constitution.

If the reforms of 1940, 1960 and 1983 had had the purpose of weakening the principles of the Constituent Assembly of Querétaro, establishing that the Nation no longer had direct, inalienable imprescriptible dominion over hydrocarbons or, favoring individuals with the exploitation of their resources over the interests of the Nation; these constitutional modifications would have implied the destruction of the Constitution, the alteration of it, by an incompetent body such as the revising power of the Constitution. In this situation, Carl Schmitt said that the constitutional reform bodies are not the holder or subject of the Constituent Power – they are a constituted body – and are commissioned for its permanent exercise, so that through the reform procedures provided for in the constitutions it is not feasible to give a new Constitution or to disrupt or suppress a fundamental political decision.

In the United States, William L. Marbury argued that the power to reform the Constitution does not include the power to destroy it and that the term amendment implies that additions or changes to the Constitution must be intended to carry out the constitutional purposes approved by the original Constituent Assembly. In Italy, Constantino Mortari defended the idea that the power of review cannot alter the fundamental lines of the constitutional system. In Colombia, Ramírez Cleves has affirmed that the revising or reforming power of the Constitution is a limited power, either expressly or implicitly, by democratic guarantees such as the fundamental rights that develop, give basis and meaning to the constitutional organization and structure the democratic State of law, since to maintain otherwise would be to delegitimize the very purpose of the original constituent power and the Constitution.

Regarding Mexican doctrine, José María Del Castillo Velasco, constituent deputy of 1857, indicated that the additions and reforms to the Constitution of 1857 could never limit or destroy the rights of man or the rights of society, nor the sovereignty of the people nor the consequences of it. Emilio Rabasa, in his classic work, the Constitution and the Dictatorship, pointed out that the reforming power could not destroy the Constitution. On the other hand, Mario de la Cueva in his Theory of the Constitution, specified that the so-called Permanent Constituent Assembly is a limited and constituted power, a power that presupposes the existence of the Constitution and the constituent power, so that the control of the constitutionality of its acts has to refer to the Constitution and the constituent power, In addition, principles such as equality, freedom, dignity, justice or the federal form of the State are limitations to the permanent constituent power.

Fix-Zamudio and Salvador Valencia recall in comparative law the large number of Constitutions that establish stony or intangible clauses in their texts. They also mention how Article 171 of the Mexican Constitution of 1824 contemplated express substantial limits to the reviewing power, indicating that the articles "that establish the freedom of independence of the Mexican nation, its religion, form of government, freedom of printing and division of the supreme powers of the states" could never be reformed. The form of government and the division of powers on which there was no constitutional reform and which had to be declared permanent.

Jorge Carpizo in his classic work The Mexican Constitution of 1917 considers that fundamental decisions are not universal, but are determined by the history and socio-political reality of each community, they are principles that have been achieved through struggles and as part of the history of man and his yearning for freedom. Among the fundamental decisions implicit in the Constitution of 1917, according to Carpizo, would be sovereignty, human rights, the representative system, the separation of churches and state, the division of powers, federalism, municipal autonomy and the amparo trial, among others. Such fundamental decisions because of their importance and their hierarchy only correspond to the people to reform and not to the revising power of the Constitution.

Ignacio Burgoa, in his work Mexican Constitutional Law makes an important contribution on this subject. It classifies fundamental political decisions into political, social, economic, religious and strictly legal ones. With reference to the Constitution of 1917, it proposes the following fundamental political decisions: a) political, which include declarations regarding popular sovereignty, federal form of State, republican and democratic form of government; (b) legal law consisting of the limitation of public power in favour of the governed by means of the respective constitutional guarantees, the institution of amparo proceedings as an adjective means of preserving the Constitution against acts of authority that violate it to the detriment of the governed, and, in general, submission to the activity of State organs to the Constitution and the law; (c) social rights based on the enshrinement of social rights; d) economic activities that translate into the ownership of the Nation over specific natural resources such as hydrocarbons, state management in certain activities of public interest such as that of Pemex on the different phases of the exploitation of oil and hydrocarbons and the economic stewardship of the State; e) cultural which refer to education, its characteristics - secular, free and compulsory; and (f) religious as the separation of churches and state. For Burgoa, fundamental political decisions cannot be eliminated or reduced by the revising power of the Constitution, since it is competence only corresponds to a Constituent Assembly.

However, more recent authors, such as Carbonell, have accepted the theory of implicit limits to the revising power in the Constitution of 1917. Thus, he proposes that every Constitution, including the Mexican one, be committed to minimum values, since replacing those principles and values is equivalent to little less than a coup d'état, even if it is done through constitutional mechanisms. He quotes Ignatius of Otto, who on the subject argued:

It would not be in accordance with the Constitution to suppress democracy itself, not even by using democratic procedures... If the people have a power that they renounce, they cannot have a foundation in the power of the people, because this means that there has been no such renunciation...

However, recognizing the existence of implicit material limits in the Constitution means preventing the legality and constitutionality of the State from being used as an instrument against the Constitution and the original constituent power, that is, against national sovereignty.

So there is no doubt that the constitutional principles on energy provided for in articles 25, 27 and 28 of our Basic Law constitute material implicit limits to the power of review provided for in Article 135 of the Constitution. As Pedro de Vega said, in countries with weak democratic life and little constitutional feeling, the fundamental order is continuously threatened and, therefore, it should not cause surprise that the institution of constitutional reform is viewed with suspicion. This circumstance does not mean that history is paralyzed and that the Constitution is petrified, it implies that the alteration, limitation or reduction of fundamental political decisions, prohibits sovereignty from returning to its holder, so that it, through a Constituent Assembly, determines the maintenance or replacement of the express or implicit limits of a Magna Carta.

Regarding the following issue, the Constituent Assembly did not observe the provisions of the last two paragraphs of Article 18 of the Federal Law on Budget and Financial Responsibility. The Federal Executive, when formulating and presenting its initiative for constitutional reform of articles 27 and 28 of the Constitution on energy matters, did not accompany its proposal with the evaluation of the budgetary impact. The United Commissions on Constitutional Points; of Energy, and First Legislative Studies of the Senate, nor the corresponding ones of the Chamber of Deputies, when preparing the Opinions, carried out an evaluation of the budgetary impact of the respective initiatives with the support of the Center for Studies of Public Finances of the Chamber of Deputies. Both the penultimate and the last paragraph of Article 18 of the Federal Law on Budget and Financial Responsibility establish the following:

The corresponding committees of the Congress of the Union, when preparing the respective opinions, will carry out an assessment of the budgetary impact of the initiatives of law or decree, with the support of the Center for Studies of Public Finance of the Chamber of Deputies, and may request the opinion of the Secretariat on the corresponding draft opinion. (LFPRH, art.18, penultimate paragraph).

The Federal Executive shall carry out an evaluation of the budgetary impact of the bills or decrees presented to the Congress of the Union for consideration. (LFPRH, art. 18, last paragraph).

The rules mentioned above are mandatory and not optional. Therefore, the budgetary impact assessment of an initiative or an opinion is a procedural requirement. The budgetary evaluation of the Opinion is of prior and special pronouncement. If this mandatory requirement is not met, initiatives and the corresponding opinion cannot be discussed, let alone voted on, and therefore adopted. Thus, by approving the opinions without complying with these obligations of the Federal Law on Budget and Financial Responsibility, the parliamentary procedure and its grounds contemplated in articles 72 and 135 of the Federal Constitution were violated.

CONCLUSIONS

The 2013 energy reform, sent to the Senate by then-President Enrique Peña Nieto, saw regulatory violations throughout the approval process. The parliamentary procedure of constitutional reform to articles 25, 27 and 28 of the Constitution in energy matters, considered one of the most transcendental reforms since the promulgation of the Constitution of 1917, was plagued by innumerable violations of the procedure provided for in our legal system.

This reform was promoted under false premises, mainly those that were made to consist of the lack of sufficient economic resources to carry out the exploitation of hydrocarbons and electricity and, referring to the absence of technology to obtain deep-water oil resources and to practice "fracking" to extract hydrocarbons derived from shale. Both premises are incorrect for the following reasons:

The Mexican State has sufficient resources to carry out the exploitation of hydrocarbons and electricity. From 2000 to 2012, Pemex paid 637 billion dollars of various contributions to the Mexican State. The government could, through a reform that repealed the systems of fiscal consolidation, obtain from the large taxpayers the resources necessary for the development of the national energy industry.

It can well be pointed out that the economic decisions that were adopted in Pemex and the CFE in the last three decades were to put those public bodies in crisis, at the point of privatization or adequate liberalization, so that they tried to justify with it, the constitutional energy reform that was consumed in 2013. For example, during the 36 years of neoliberalism, Pemex was divided into subsidiaries to relax and weaken internal and external controls of the State, a good number of engineers and experts were fired, the budgets of the Mexican Petroleum Institute, the Institute of Electrical Research and the Institute of Nuclear Research were reduced. It was deliberately not maintained or operated by petrochemical plants and valuable assets were sold for scrap metal. The big problem of Pemex and CFE was corruption, which is not an important issue or subject of the 2013 constitutional reform on energy.

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