

# THE PROTECTION OF HUMAN RIGHTS IN THE MEXICAN REPUBLICANISM

CARLOS ALBERTO AGUILAR BLANCAS<sup>1</sup>

**Abstract:** Democracy is not only a procedure of choice and citizen participation, but also a set of values that affirm freedom and citizen's rights. The reform of 2011 rose to constitutional rank the defence, protection and promotion of human rights, representing an unprecedented historic breakthrough. With these reforms, Mexico seeks to consolidate its constitutional system adapting it to reality, increasing its cultural diversity, values and traditions that have been shaping the Mexican identity. The full knowledge of their rights produces a citizenship aware of them, which, even for Mexico, is a long-term task.

**KEYWORDS:** State, Government, Mexican Constitutional Law, Human Rights, International Law, Sovereignty.

**Summary:** I. INTRODUCTION; II. AN APPROACH TO THE RULE OF LAW IN MEXICO; II.1. General aspects of the rule of law; II.2. Rule of law in Mexico; III. SCOPE OF CONSTITUTIONAL REFORM IN THE FIELD OF HUMAN RIGHTS FROM 2011; III.1. Aspects of the reform in the field of human rights, III.2. Jurisdictional implications of the reform in the field of human rights; III.3. Realities and prospects of human rights in Mexico; IV. CONCLUSIONS; V. REFERENCES.

## I. INTRODUCTION

The constitutional state is characterized by the defence of the fundamental rights of individuals, in contrast to the classic constitutionalism, which sought the political freedom of the citizens against the public abuse of power (SCHMITT, 1992: 138), i.e., in those days it was reflected that there was not a bourgeois rule of law, that there was no individual rights and the separation or division of powers was not established. Consequently the fundamental idea for the constitutional state is to integrate into the principle of rule of law, present in all modern constitutions, implementing the unlimited freedom of the individual, and as a

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<sup>1</sup> Doctor of Law from Universidad de Jaén, Spain (carlosalberto\_ab@yahoo.com.mx).

consequence the faculty of the state to invade it is limited, therefore, the power of the state is divided and enclosed into a system of circumscribed powers.

In this sense, Maurizio Fioravanti, expresses that Constitution is a very old term, which can be found in Western classical philosophy, where the term Constitution was a political concept identified with the term *politeia* (FIORAVANTI, 2011: 19), that is, with the idea of regime or form of government adopted by the city. However, the Constitution does not necessarily have to be linked with the idea of government, unlike its substance would be on the notion of political unity and social management, therefore, the Constitution would not reflect only the political unity of the state (SCHMITT, 1992: 30). Given this scenario, the constitutionalism<sup>2</sup> is a political theory that is generated from the development of liberal philosophy oriented to obtain modern constitutions, based on the theory of limited Government and the guarantee of having the same rights for everybody.

Regarding the human rights, the conception of modern constitutionalism can be observed in fullness in the Declaration of the Rights of Men and Citizens, document that establishes that without fundamental rights and separation of powers doesn't exist the Constitution, and in postulates written in the American Constitution, in the 1776 Virginia Declaration as well as in the French Constitution of 1791, among others.<sup>3</sup>

In this sense, Vicente Bellver points out that to get guaranteed human rights, the state must provide the appropriate means; law in which administration bodies can be enacted and effective, and courts to those who demand justice (BELLVER, 2004: 166). Meanwhile, Antonio Cançado, asserts that the presence of human rights strengthens the recognition that respect for human rights is the best measure of the degree of civilization.<sup>4</sup> This effort made permanently for the respect of the rights has resulted in that international public opinion deals with legal certainty the serious cases of violation of rights that occur in the different countries of the world. The true figure of an *ius gentium*, has caused a tendency to criminalize grave violations of human rights, consolidating a public order both internal and international around the protection and respect of human rights. Transcending the recognition of treaties as a source of obligations for states, overcoming the objection to compliance based on sovereignty, encouraging compliance with one of the normative principles that must be observed by the executive power, the promotion and respect of human rights (SALTALAMACCHIA Y COVARRUBIAS, 2011: 23 -24).

Spaemann expresses that every person is an end in itself and their dignity is completely independent of all function, since it relies on the personal character of the man

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<sup>2</sup> For Constitution, could understand such as management of life in common given to men of a city (LOUGHLIN, 2010: 60).

<sup>3</sup> The constitutionalisation is but a process for which it comes reshaping the political theory of constitutionalism. (CARBONELL, 2005: 54).

<sup>4</sup> However, Bellver, expresses all these instruments, as necessary, are not sufficient, since a community not be fully guaranteed their rights if you do not have a civic culture of rights (CANCADO, 2009: 417).

(SPAEMANN, 1989: 49-50). Human dignity ontologically (BALLESTER, 1993: 134-142, 193) refers to the importance and excellence of the being of the human being, that makes them different and put them on a level of superiority with regard to other beings, the concurrence of other conditions or circumstances that may resemble or approach to be irrelevant. This dignity lies in the act of being, derived from the condition of the body, i.e., not only it is today out of which nothing exists, but it is also the foundation of all values because it was of being the same value is nothing, there is no value without being. Expressed in a different way, being is the act for which things and people are, is the most original and most intimate part of the body, which gives all their fullness from within (MELENDO, 1999: 99).

For Baumgartner, the constitutional guarantee of human dignity can be basically both in the person's relationship with the State as the interrelationship of people, being the Foundation of a free, and solidarity, community that links the State power to the self-understanding of the person (BAUMGARTNER, 2002: 24).<sup>5</sup> For Gregorio Peces-Barba, human dignity is the base of public ethics and constitutes a prius of the political and legal values (PECES-BARBA MARTÍNEZ, 2003: 12, 67), and principles and rights deriving from those values such as freedom, equality, solidarity and security which only reach its fullness when its moral content is positivized in legal rules at the highest level (PECES-BARBA MARTÍNEZ, 2004: 62). Because of this, the legal expression of human dignity forms the ethical paradigm for the exercise of political power on a principle of legitimacy (MARTÍNEZ BULLÉ-GOYRI, 1998: 166-167), being the most effective mechanism to fight against prejudices education (FERNÁNDEZ GARCÍA, 1987: 120), since ignorance is the main and the most fertile ground of discrimination and violation of human rights.

Human rights are designed to find the means to translate into law, the dignity of the person and its protection (TALAVERA, 2006: 58). The practical function of human dignity<sup>6</sup> is the foundation of the legal order, guiding its interpretation and integration, and substantive human rights, the correlative duties including validation, pointing its practical meaning of a supra-value or meta-norm on which rights are developed either natural or positive (GONZÁLEZ, 1986: 87- 94). Human rights behind the ruling-ruled relationship in fulfilment of their constitutional obligations (FERNÁNDEZ GARCÍA, 2001: 25), based on the principles

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<sup>5</sup> Norbert Hoerster said, what is special about the concept of human dignity is that it is not a descriptive concept, the consequence of this is that the controversies of application are necessarily ethical valuation disputes and, as such, for reasons of principle, are, ultimately, inaccessible to a scientific-rational decision (HOERSTER, 2000: 99).

<sup>6</sup> For César Landa, the functions of human dignity: a) function practice, you configure a fundamental order, a series of reasons and justifications for action, that give meaning to the dynamism of public and private entities; b) the integrative function, is to recognize the human dignity, it generates unity of purpose to the inside of a particular community; Additionally, from the feature dignity integrative reveals its strength of duration, which gives stability to the institutions, namely the Constitution; c) limiting function, which gives an account of the practical meaning of dignity, as an antidote against the authoritarianism of any kind (LANDA, 2002: 124 – 128).

of universality, interdependence and indivisibility, escalation pro personae recognized and established by international law and legal doctrine.

Mexico is and has been part of statements and treated international that recognize the principles of the Universal Declaration of Human Rights of 1948, as well as those international instruments which afford greater protection to the human person, in light of this, these instruments have been integrated in the Mexican legal system, either through the Constitution itself or by other provisions of the internal legal order.

In the year 2000, Mexico initiated a process seeking to reform and it has been expressed by its Constitution to human rights, a process that was completed in the first instance with the publication on 10 June 2011 in the Official Journal of the Federation.<sup>7</sup> With the reform certain nationalistic and defensive position was exceeded that was based in Mexico, where the concept of sovereignty was valued in an excessive way. From amendments to constitutions assumed more clearly a collaborative and internationalist stance, resizing the hierarchy of international treaties on human rights ratified by Mexico in accordance with the constitutional article 133, deepened the constitutionalization of human rights, not only was strengthen the defence of the same system, but also the democratic institutions and the recognition and protection of human rights.

## II. AN APPROACH TO THE RULE OF LAW IN MEXICO

The State and the law are means, organizations or instruments, made by men and for men, to ensure its aims, the company creates or recognizes the power of the State and submits it to the right so that it becomes rational and logical. The State is not a body endowed with a soul, because there is no other spirit than that of the humans, nor is there another will that the will of them.<sup>8</sup>

Humanity through its evolution has been observed as the extension of the coverage of the rights of the people has been routed to cover the aspects that affect the development of the individual and their coexistence. These rights sitting in the Constitution only may be subtracted for review that permits its extension and never its restriction, nor their suppression. In the majority of countries the Constitution defines the level and the legal tools that will establish the regulation of fundamental rights stipulating clearly the legal property protected, their scope of protection and safeguarding the State. The establishment of guarantees and limits to power is due to the need to curb abuses and transgressions to the

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<sup>7</sup> The purpose of the constitutional text is to make this more responsive to the needs and challenges that impose the political, economic, cultural and social reality of the country (GARCÍA RAMÍREZ, 2011: 818).

<sup>8</sup> The State as a whole social structure lacks a real and own will, which expressed through its bodies is not but will exclusively human. The idea of State body only can be explained on the basis of the existence of certain people, rulers and officials that the legal system attributed some powers conferred to his will, the value and effectiveness of the will of the State (LLORENS, 1958: 9).

most fundamental rights that face humanity, making it possible to lift them to a hierarchical level of constitutional order, therefore, the basis of human rights is the human dignity.<sup>9</sup>

Finding on the right the way of regulation of freedoms, it is one of the biggest challenges of the rule of Mexican law, in the sense of freedom, is the pillar of any society, under the premise, without freedom, there is no rule of law. Series of inalienable rights are recovered to which the individual cannot disclaim in its Constitution as a citizen, rights that predate even the construction of the State. The rule of law concerns citizens because they win more decision spaces and increase their representativeness; demanding more popular representatives, making more effective surveillance rights on State performance. However, the stronger a true rule of law requirement is to the State, its bodies and powers, representatives and leaders.

## **II.1. General aspects of the rule of law**

Democracy is one of the classic forms of government, it is considered today as the government of the people, due to its etymological roots to return us to a relationship inevitable and indissoluble between two concepts such as the people and the Government. Although it is appropriate to say that these terms are insufficient to define democracy, since due to its complexity and nature it is required to incorporate terms like consensus, majority government, equality of rights, popular sovereignty, protection and respect for human rights, among other essential terms. For this reason, democracy is not only a procedure of election of governors and citizen participation, but also a set of political values which say freedom and citizenship rights to facilitate coexistence and, above all, to allow the political and social stability (MONTEMAYOR, 1999: 37, 160). Dahl exhibits certain characteristics such as minimal to configure any democratic system: competition between the various political elites in equality of circumstances; a free and fair electoral system with periodic and transparent elections; and respect for human rights (DAHL, 1991: 21).

One of the most sophisticated forms of democracy is in this context that is inserted into a rule of law causing general use to convert them into synonyms: rule of law is equivalent to democracy or democratic state, not in the sense of people's democracies, but which still appear with a reference of location become rule of valuation as western democracies (SCHMITT, 2003: 70, 71, 138, 147, y 260). However, the rule of law is more than democracy, it goes beyond, it is a guarantee to the limitation of the power of the state (MORLINO, 2005: 40), so the latter is concerned and proper law, namely the rule of law and respect for rights.

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<sup>9</sup> Carpizo has expressed that the set of powers recognized in international instruments and in the constitutions to enforce the idea of the dignity of all persons, can lead to a really human existence from the areas as individualism, the social, political, economic and cultural (CARPIZO, 2011).

The rule of law is based on the aspiration that men are governed by law and not by other men. The so-called rule of law contains features for any civil order, the rule of law is not only the strengthening of legal norms, but the principle of the supremacy of the law, and is at least the capacity, even if it is limited to the authorities to respect the law. In this sense, it must be clear that although in our days all states have law, by their very nature, since it is difficult to conceive of a political society that does not have a political regime, regardless of this, only the rule of law serves as a scheme that allows two perspectives are designated in a unit: the public force hobbled legally, and the instrumental politician of the right (LUHMANN, 1989: 493-506).

This brings us to express that with the combination of interests and the manifestation of explicit will, the democratic rule of law shaft joint society with the State itself.<sup>10</sup> In this order, the rule of law does not only combines imperium and forcefulness, but respect for human life, the recognition of the values that order and guarantee life in association, security for property rights, the philosophy of the public, the validity of the democracy and the postulates of social equity.

Making a bit of history, the rule of law<sup>11</sup> was protected in a coherent manner for the first time in liberal states. The rule of law is not anything other than the European-continental version of the rule of law, linchpin of the Constitutionalism in English; it was in Germany where the term *rechtsstaat* (rule of law) was and in France evolved into the *Régime Administratif* (administrative regime) which are different versions of the original rule of law. In the absence of an exact translation into Spanish the term Empire of the law, a reduced version of government under law, may be used (FERRAJOLI, 2001: 40).

The rule of law arose from the process by which the English people conquered their liberties against political power, which started with the expedition of Magna Carta in 1215, in which the principle of English constitutionalism was enshrined, which is known as the guarantee of due process of law, in which no free man shall be put into prison, banished or killed after a legal judgment by their peers, and in accordance with the law of the land or *lex terrae*. Even though the guarantee of due process of law tried to be hijacked by the monarchical absolutism that sought the subjugation of the judges and the right to political power finally won autonomy of law, preserving for regular judges the Faculty meet and

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<sup>10</sup> Society maintains an extensive field of activities under the supervision and encouragement of the State, can be summarized that the individual within the legal system can do everything, except what the law prohibits. For this reason, the official is limited in its activities, and can do nothing other than what the law allows. Its capacity to act is subordinate to the general interest (PORRÚA, 1969: 414).

<sup>11</sup> Theoretically in Mexico, you have a system that combines both elements of the Rule of Anglo-Saxon law as under the French administrative system, as it can be seen from the most common interpretation of articles 14 and 16 constitutional. In Mexico, the last of the validity of the Law Foundation is the Constitution considered all fundamental law, not for the intrinsic rationality of its precepts, but for its formal validity, we consider that it is a rule of law closer to the French system where the law does not have (PEREIRA, 1997: 99-100).

resolve all causes, even those challenging acts of authority, resolved in accordance with the *lex terrae* integrating both in the Common law or case law as customary law, in addition to legislative provisions issued by the King and Parliament. Rule of law helped safeguard judicial independence, even in the judgments in which the authority was part, as well as the autonomy of law as cases are resolved which therefore guaranteeing minimum conditions for a fair trial (PEREIRA, 1997: 99-100).

On the other hand the administrative regime of French origin, involved a separate or special jurisdiction, integrated within the structure of the Executive power, to meet and resolve the challenges for violations of the administrative authority to the rights of the governed, and must resolve in accordance with the law legislated by the same authority, who thus becomes judge and part at the same time reducing its role to ensure the legality, but not necessarily the justice of the acts of the public administration. The administrative regime contemplated the creation of administrative courts, whose members were appointed by the executive power whose independence is not guaranteed, for being part of the same public administration. The scope of the powers of the courts in the administrative scheme is more limited than in the rule of law reduced to verify the conformity of the acts of the authorities with the state law, i.e. law and regulations promulgated by the same authority (FERRAJOLI, 2001: 40).

It is noted that the history of the modern State is the result of the rationalization of the power, reaching its maximum expression in the 18th century (SERRANO, ARRIOLA, 2003: 22), period in which the absolute monarchs had the means of economic management and domination of society by officials exercising their duties by delegation of the sovereign and without can claim this prerogatives or rights acquired in public order. An example is the French Revolution, which liquidated the absolutist *ancien-régime* and established the liberal regime, transforming a stratified society in a classist society producing the generalisation and flourishing of the rule of law with this movement (NORIEGA, 1998: 20).

Elías Díaz expresses that the most basic demands and essential of an authentic rule of law can be realized by means of the law being the expression of the general will, the legality of judicial control, and rights and freedoms. Certainly not all rule by law is an authentic rule of law, since it is not such if the law comes from an absolute individual will and not from an assembly of popular representation freely chosen. Where law is taught without sufficient popular participation, and where the other requirements of the rule of law, forget is to the authoritarian context where the rule of law does not mean neither more nor less than the absolute will of the executive uncontrolled empire. The rule of positive law in very concrete sense is under provisions of the National Assembly. The aim of all rules of law and its basic institutions focus on the aim of achieving a sufficient guarantee and legal certainty for the so-called fundamental human rights, which today constitute an essential element of the system's legitimacy that supports the rule of law (DÍAZ, 1998: 40-45).

In relation to the first characteristic of the rule of law, the right exercised an ordering function, delimiting the competence of state power and safeguarding the freedoms of the governed (NORIEGA, 1998: 20). Thus, in the rule of law the powers of state are fixed by the positive law and their responsibilities are clearly defined and default, therefore, their actions are impersonal, objective and predictable. The rule of law is characterized for putting in one side the standard and in the other side the implementation of the standard emerging system of legality, the not men send nor authorities, nor the legislative bodies, but they only apply rules decoupling of them (SCHMITT, 1994: 41 Y 74).

It is appropriate to emphasize the general principles of the rule of law: the principle of the legal reserve, where it is claimed that any intervention in the freedom and property of individuals can be done under a general law, or to prevent a risk to the rest of society; non-retroactivity of the law, making sure that the law copper effect only at the time of its enactment and not towards the past; the autonomy of judges in their decisions and actions; the hierarchy of norms; the determination that the standards have been created by other standards, and so on; guarantee the conservation and defence of the Constitution for the organs of the civil power in a society. The legal principles give certainty to legal action for the state based on a recognition of the fundamental principles of the man, understood as the right to property, to freedom and security of individuals, recognized in civil, economic, and political rights, are summarized in the individual rights of every human being. The effective principle of government, whereby, the ruling in turn is subject to accountability through mechanisms of surveillance by the population, also involving an effective separation of powers, in which the three branches executive, legislative and judicial control each other. The principle of authority of the law, supported by the fact that law is not only legal, but legitimate, i.e., those who make the law have effective representation of their members and, therefore, law is a reference for the betterment of society (VILLAFUENTE, 2007: 200).

## II.2. RULE OF LAW IN MEXICO

Historically, the rule of law in Mexico<sup>12</sup> has been a conquest, slow and gradual, made by individuals who against despotic powers sought safety for their person and their property, to the extent of living for many years, under the facade of democratic forms which hid social and political structures completely opposed to the concept of rule of law.

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<sup>12</sup> We can find a distant forerunner of the rule of law in Mexico in the Royal Ordinance of intendant of 1786, whose objective was the definition and distribution of powers in the political and economic organization of new Spain. The Ordinance contained features such as the duty of the sovereign has with each and every one of his subjects to ensure that they achieve their happiness and well-being. Also, in the Ordinance of mayors, is set aside the legitimating weightings of the authority of the monarch, under the argument that is no longer required at least in their codes of religious considerations to justify the orders of the monarch (SERRANO, ARRIOLA, 2003: 23).



Therefore, the rule of law in Mexico hosted in a truly democratic Constitution, but in many ways without a real application.<sup>13</sup>

For the 19th century Mexico unfolded within the ideas of radical and moderate liberalism, culminating with the so-called reform movement and the disclosure at the end of that century some moderate socialist tendencies. Rule of law models, which assume a relationship with fundamental rights, advancing, developing and updating in a modern constitutionalism<sup>14</sup> where their main function is the inclusion of fundamental rights are conceived from those events. The rule of law is becoming a social product, and unfolds as creating institutions that allow their everyday application.

Currently, in the Mexican Constitution, the law is the instrument for the development of the individual and social guarantees and in its articles there are constant references to supplement the fundamental rights (SARTORI, 1987: 167-179). Likewise, the existence of three powers of the Union is undeniably fully constituted and in functions, three different orders in addition, federal, state and municipal governments, as well as some organisms endowed with autonomy. However, Mexico, presents a variety of problems posed for the establishment of a genuine rule of law; on the one hand, how to establish institutional components allowing to face the wide margins of social inequality, to give solution to this problem legal mechanisms enabling participation and accountability must established so that inequalities disappear, as well as instituting democratic social fabric to the inside of the social structure (VILLAFUENTE, 2007: 195).

In Mexico one of the main problems has been indeed trying to close historic gaps of inequality and neglect of large sectors of society, so this situation causes the search of mechanisms so that justice and the law can be applied effectively to all sectors of society. Another issue for the construction of the rule of law in Mexico is the problem of the instrumentalisation generated by a political and discretionary use of the law, with specific particular political interests; a selective application of rights from the allocation of economic and social policy bounded to certain social groups, so this selective use of public service has violated systematically the rule of law, on the grounds of an economical-social policy (VILLAGRÁS, 2001: 4-7).

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<sup>13</sup> The failure of the constitutional model in Latin America is manifested for severe political instability which has failed to contain the countless succession of constitutions enacted, and its low degree of validity. Democratic participation is reduced sometimes to the election of candidates, what has been called delegativa democracy was observed as a premise the low educational level of the voters, being easily manipulated for campaigns of parties, delegating decision-making to the popular representatives and making even more difficult the transparency and accountability. In the absence of a genuine citizen participation is conducive to phenomena of caudillismo, caciquismo, corruption, corporatism and the creation of various fiefdoms around the different agents brokers can (BRAVO, 1992: 18).

<sup>14</sup> For constitutionalism can be understood, the submission of the State to the right, so that no can require no action or impose any omission, cannot send or prohibit citizens but under a legal provision authorizing this mandate or that prohibition (BORJA, 1997: 159).

The delivery of justice is instrumentalized by the political power to the extent that the application of the law becomes an instrument of demobilization of the participation of citizens in targeted sectors, so it occasionally in a systematic manner, and in clear violation of the rule of law, political or business stakeholders determine, influence and impede the free exercise of the law enforcement.<sup>15</sup> The result is that the principle of universality of application of the law within the rule of law is denied, due to the fact that the majority of the population is excluded from the principles of the universality of the rule of law while a few have unrestricted access.

The constant in Latin America and Mexico is the increase in crime, which is accompanied by impunity, and this lack of democratic conditions to ensure the delivery of justice has led to the emergence and the explosion of new problems. In Mexico, citizens political rights are respected but not their civil and social rights (SOSA, 2001: 3). The application of the rule of law under the logic of liberal doctrines is that they are held in an implied duality between the state and society, from the point of view that both have limits set for enforcement frames, so they have different functions and powers. Society is determined by law and the rule of law while the state is perceived as a fictional human, built to safeguard the principles of freedom among equals, where the state is a guarantor of human freedom (MOUFFE, 1998: 120).

Mexico tries to find the most suitable way to consolidate a constitutional regime adapted to reality, building on and enhancing cultural diversity, values and traditions that have been shaping the Mexican identity. In any case, it is undisputed that currently Mexico is experiencing a democratic change in which already no one can question the democratizing will of the government, nor much less the irrevocable decision of the society to move forward in this process to achieve change through consensus through agreed arrangements.

### **III. SCOPE OF THE CONSTITUTIONAL REFORM IN THE FIELD OF HUMAN RIGHTS FROM 2011**

It is appropriate to recall that the beginnings of the constitutional state date back to the social breakdown that led to the tyranny of feudalism during the 18th century; the independence of the American colonies from England; the eradication of absolutism and acceptance of a catalogue of rights in favour of the French people, the proclamation of the Universal Declaration of Human Rights, the consolidation of this document are the basis of

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<sup>15</sup> The effectiveness of the rule of law is based on the principles of accountability and certainty. The principle of certainty is based on the correct application of the law, under the logic that your application is going to be equal to the same type situations and, when this is not so, there will be other duly qualified authority which sanctioned the authorities responsible for this situation and repair the tort committed. The rule of law is a legal system, a set of rules with several features, as well as its proper enactment (PLATAS, 2001: 13, 112).

the constitution and the fundamental rights (CARPIZO, 2009: 3). As a result of these events the state has the obligation to recognize, respect, and defend the human rights (FERRAJOLI, 1999: 145).

Respect for human rights by the government should be and is a purpose which would question the validity of the rule of law in Mexico, the abolition of slavery and equal rights were flags of emancipation movements. In the Constitution of Mexico of 1824, there were not implemented standards that refer to individual rights, because the state of Mexico required previously the guarantee of national sovereignty and to organize the exercise of power. Later the Constitution of 1857, recognized the individual guarantees, as well as the faculty of the government to dictate laws through Congress to reduce inequality and ignorance, to reorganize the country and to end with charters and privileges.

After some decades Mexico passed through a tormented and bloody process towards a new stage, resulting from this, a new constitutional order comes in 1917, in the document as well as the individual rights already embodied in the Constitution of 1857, joined the so-called social rights, these rights synthesized the demands of a population that was trying to change through a rebellion against an intransigent and despotic power.

With the constitutional reform of human rights promulgated in Mexico in June 2011, the regulatory framework on which the judge works in the judicial field was transformed, as well as the mechanisms that served this occupation. These transformations of the Mexican legal system experienced a true paradigm shift in the Mexican law of human rights, with the new demands placed on who are charged with the judicial work, in the form of interpreting both the substantive normative precepts as adjectives or procedural relating to his performance up to the perception of its function.<sup>16</sup>

### **III.1. Aspects of the reform in the field of human rights**

The Mexican state has historically followed a nationalistic and defensive position that puts the protection of sovereignty against the international regime of human rights to an international and cooperative application. Principles have been developed within this path as: supremacy and recognition of the universality of human rights; the full autonomy of the protective bodies and the nature of membership of its recommendations; fight against all forms of discrimination; strengthening of citizen participation (CÁMARA DE DIPUTADOS, 2005).

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<sup>16</sup> The positivist theory of rights human, are subjective public rights and it's basis lies in the order of highest recognition called Constitution, constitutes the highest and most important legal document from which emanate the guidelines of all secondary standards (SILVA Y SILVA, 2009: 1-7).

With the constitutional reform of 2011, elements and mechanisms necessary to ensure the maximum protection of human rights were conferred, seeking to meet international obligations that Mexico has signed and ratified in various international treaties, incorporating thus a broader protection of the regime.<sup>17</sup> The Congress of the Union served a historical work for giving human rights a prominent place in the Magna Carta. With the widespread recognition of human rights not to create rights of first and second category, the principle of “conforming interpretation” was adopted, allowing a subsidiary application of the international order to remedy gaps without implying, in any moment, abrogation or non-application of a rule of domestic law. With this principle of subsidiarity removed criteria of supra-subordination, making it possible that the interpreter of the Constitution is assisted standards enshrined in international treaties.

One of the momentous changes is the conceptualization, the term human rights replaces the individual guarantees, with the change in Mexico, the concept human rights, refers to the set of prerogatives inherent to the nature of the person, whose effective implementation is essential for the full development of the individual living in a legally organized society. In addition to being recognized and guaranteed by the state, these are universal, permanent, progressive and pre-existing state or fundamental norms.<sup>18</sup> Meanwhile, individual guarantees are subjective public rights that give owners the power to demand them legally through the legal instruments set forth in the Constitution, therefore, the individual guarantees are the limits of the action of public authorities. Moreover, human rights predate and surpass the public power, and the state is forced to recognize, respect and protect them.<sup>19</sup> Human rights inherent to the dignity of the person must be recognized by the state through its law, in addition to this, its validity, protection, defence, promotion, education and surveillance are also responsibility of the state, which is reinforced with the signing and ratification of international treaties in that area. With reform various obligations were introduced to the state against the violation of human rights, such as the prevention, investigation and punishment of the acts in violation of these rights.

Another aspect of relevance is the replacement of the term “individual” by “person” in order to avoid limitations and provide a legal connotation more appropriate for the recognition of the human rights. With the incorporation of the principle “pro personae” it is ordered, on the one hand, a more extensive interpretation of the constitutional rule at the

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<sup>17</sup> Rodríguez and Rodríguez, human rights are defined as the set of privileges, liberties and claims of civil, political, economic, social and cultural character, including resources and guarantee mechanisms of all of them, recognizing the human being whereas it individually and collectively (RODRÍGUEZ y RODRÍGUEZ, 1985: 223).

<sup>18</sup> For Félix Trigo, human rights are inherent in men, one as a human being, since the human person is regarded as a qualitative and esteemed entity in relation to its dignity (FÉLIX, 1990: 315).

<sup>19</sup> It is important to point out that the epistemology of rights and of human rights indicates that these are studied from different streams of legal thought: the debate which is founded on an axiological approach in which the most important is justice; and, the jus that is based on the assessment of the right and the validity of the standard according to a formal process (ARÉVALO, 2001: 47 – 49).

time of the protected rights, and on the another, a more narrow interpretation when established limits in the exercise of the rights or their extraordinary suspension and wider application.

The distinction between human rights and the legal instruments through which ensures their respect is clear, this distinction makes sense to the extent that, the rights are recognized by the state, in the case of a legal reality whose validity is not subjected to the will of those who have the power to define the content of positive law. While individual guarantees are implemented and to some extent granted to provide owners the means and mechanisms to demand their respect and observance.

The inclusion of important obligations explicitly which will assume the Mexican state against them. Noting that all authority in the scope of their powers have the obligation to promote, respect, protect and guarantee human rights, as a result, the state must prevent, investigate, punish and repair violations of human rights. From the theoretical point of view, these warranties are classified as primary and secondary, the first relating to the establishment of obligations and explicit prohibitions, while the latter constitute obligations of sanction or repair the rights violations, identifying and punishing those who are responsible, as well as restoring and repairing the right violated; in addition to this, the state has the duty of prevention with legal, political, administrative and cultural, with respect to the acts of individuals, you must set a system of prevention, investigation and punishment of those who violate human rights (FERRAJOLI, 2002: 61).

The reform of 2011 includes permanently imprinted principles such as the universality, indivisibility, interdependence and escalation, including the principle *pro personae*. The principle of universality has two aspects as starting and arrival point in the practice of human rights, i.e., the guarantee of such rights is independent of the situations and circumstances in which human beings live and legal positions which eventually play (MARTÍNEZ, 1995: 264). The principle of interdependence binds the content and requirements of human rights, means that the validity of a law is precondition for the full realization of each other, in such a way that the violation or disregard of any of these affect the whole. The principle of progressivity is linked to the obligations of the state to increase and implement the development of public policies focused on greater protection, respect and guarantee of human rights; linked to this is the principle of non-degressivity or irreversibility, which aims at the impossibility of suppressing the condition of a human right once the state has recognized it.<sup>20</sup>

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<sup>20</sup> Article 15 of the Mexican Constitution, embodies this principle to establish, the failure to abolish the status of a human right once the Mexican State has recognized for some ad hoc legal instrument. "Do not allow the celebration of treaties for the extradition of political offenders, nor of those offenders on the common agenda which have taken in the country where they committed the crime, the condition of slaves; or of conventions or treaties under which will alter the human rights recognized for this Constitution and in the international treaties which the Mexican State is a party".

The most relevant inclusion is the principle *pro personae* or principle *pro homine*<sup>21</sup>; this principle expresses that the rule that in each case is more favourable to the person, either national or international, must be selected and applied. This principle is obliged to attend the broader standard or interpretation more extensive, when recognition protected rights and, conversely, the standard or the more narrow interpretation when it comes to establish limits to the exercise of the rights or their extraordinary suspension.<sup>22</sup> The recognition of this principle is in the second paragraph of article 1 of the Mexican Constitution, which says: “the rules on human rights shall be interpreted in accordance with this Constitution favouring in all time people broader protection”.

The reform included that any act of expulsion of foreigners should be based legally, exhausting a hearing in which the person concerned may express which right to appropriate, because that in Mexico foreign people who have that quality shall enjoy human rights and guarantees that the Mexican Constitution recognizes. Likewise, recognized right of every person to seek asylum, protecting individuals who are subjects of a pursuit by the authorities of the state from which they are sourced. With the reform, the quality of refugee is protected through various facets recognized within the right of asylum, both doctrinal and practical: the right to be admitted to the territory of a different state of origin; the right to remain in that territory; the right to not be expelled; the right not to be extradited to the country of origin where takes place the chase, among others (RAMÍREZ Y PALLARES, 2011: 257-259).

To the Supreme Court of Justice of the nation is attributed the faculty informally reviewing the constitutionality of the decrees issued by the executive in the area of restriction and suspension in the exercise of law and legal guarantees to them associated. The agency focused on the protection of human rights, both at federal and state level, has an instrument known as recommendations. Established the obligation of the authorities or public servants whose acts are the subject of a recommendation, to found, to motivate and to make public non-acceptance and non-compliance with the issued recommendation. In case of refusal, it is reflected the faculty of various legislative bodies to request the attendance of holders, to effect to explain the negative recommendation.

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<sup>21</sup> The legal right protected for human rights is the dignity of the person, from the French Declaration of the rights of man and of the citizen of 1789, in that document were affirmed as anterior and superior to the State with feature: fundamental and innate positivizada way (DE PINA, 1989: 217).

<sup>22</sup> To formally fundamental rights, these are at one level above-ordered with respect to any other, conferring their holders owned, such ownership lies in sovereignty, this idea is reinforced the political notion of democracy defended by Bovero. Democracy is the power of the people, already not simply in the sense that the people and therefore a citizens correspond them only rights political and, therefore, through the mediation of representative self-government, but also in the further sense that corresponds to the people and to all the people who make it up all of those "contra-poderes" which are fundamental rights, freedom and social (FERRAJOLI, 2003: 234-235).

Among the new powers granted to the national of the Human Rights Commission,<sup>23</sup> this may investigate incidents that constitute serious violations of human rights and, where appropriate, make allegations and complaints to the respective authorities. Likewise, it shall be competent to deal with violations of human rights in labour matters, and may also controvert international treaties that violate human rights through an action of unconstitutionality.<sup>24</sup>

On the prison issue in Mexico, this system will be designed to comply with the requirement of full respect for human rights. Catalina Pérez Correa expressed that the problem of the rights of people in detention is the enforcement and enforceability of these rights. Prisons are hidden places, away from the society, which, in addition, enclose those that the society consider reprehensible and, often, deserving of condemnation. The legal rules on the rights of the detainees rarely are met, and this is a gap between what law says and what is being done, in addition to an incompatibility with the values of the social state (PÉREZ, 2011: 253).

In Mexico, the international treaties to which it is part, are primary sources, will be membership the fulfilment of obligations, shall apply the rules of *jus cogens* in international law, shall be binding sentences of judicial processes in which the state has been convicted;<sup>25</sup> in the case that the state does not endorsed nor apply a recommendation directed to it, must, by the principle of good faith in international matters and their constitutional obligations, substantiate its offered alternative solution to protect more and better human rights (RAMÍREZ Y PALLARES, 2011: 379).

Finally, the 2011 constitutional reform established the right to non-discrimination,<sup>26</sup> the recognition of the legal personality, to life, to personal integrity, the protection of the

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<sup>23</sup> The National Commission on human rights, since its inception in 1990, has undergone a constant process of transformation in its work for the protection of human rights. During this long process he has sought new mechanisms of response to the demands of a changing society and the challenges that demand the protection of vulnerable groups (GALINDO RODRÍGUEZ, 2011: 147).

<sup>24</sup> The ombudsman finds its origins in Sweden and was used to refer to a person or body that protects the interests of the individuals in a community. The ombudsman appears under the controversy between the King of Sweden and the Parliament, therefore was appointed to a staff member whose job would be to investigate complaints from the public against the Government bureaucracy. In 1809, was created by the Swedish Constitution the first ombudsman, responsible for ensuring compliance with the laws. However in the 19th century, the ombudsman was not very well-known was until 1919 when Finland established a similar figure backed by its Constitution (PELLÓN, 1981: 132).

<sup>25</sup> The Supreme Court of Justice of the nation has studied aspects of the decision of the IACHR Radilla Pacheco vinculatorios vs. Applicable to the judiciary Mexico: for the case of remedies, in the plenum of the Supreme Court a proposal of criteria that can be used to elucidate the solution for this issue as to the legal value and scope of these international statements (CORTE INTERAMERICANA DE DERECHOS HUMANOS, CASO RADILLA PACHECO VS. MÉXICO. EXCEPCIONES PRELIMINARES, FONDO, REPARACIONES Y COSTAS, SENTENCIA DEL 23 DE NOVIEMBRE DE 2009, SERIE C, NÚM. 209).

<sup>26</sup> The prohibition of discrimination is referred to in article 14 of the European Convention of human rights (ECHR), which establishes that every person enjoys the rights without distinction on grounds of sex, race,

family, the name, nationality; the rights of the child; political rights; the freedoms of thought, conscience and profess any religious belief; the principle of legality and retroactivity; the prohibition of the death penalty; the prohibition of slavery and servitude; the prohibition of enforced disappearance and torture; the judicial guarantees essential for the protection of such rights.

### III.2. Jurisdictional implications of the reform in the field of human rights

It is well known that in Roman law, both in the Digest, the Pandects as well as the Law of the XII Tables, noted the argumentation of justice as a supreme principle to achieve the equitable, the just, so that in the procedure, rigidity is imposed for the judge to act and exert *jus dicere* is prioritized *ius naturale* from *ius homini*, whereupon, the sentence was leaning in favour of man and their fundamental rights. For Aristotle the Constitution was more fundamental than the law, in the sense that it shaped the rest of laws, also approaching it the rule of law, since the generality and rationality of the law would be better than the arbitrariness of a particular decision. The Constitution and politics were not oriented to promote human excellence and improvement of citizens, since the primary task of the policy<sup>27</sup> according to Aristotle, is not perfect the souls of men but preserve regimes real and imperfect, to empower people against the bad habits and destructive trends encouraged for the way of life that the regime has enshrined (ARISTÓTELES, 1999: 1276B, 5-8).

Popular sovereignty as historical and normative reality finds its reason and principle in human rights, it is appropriate to recall that this sovereignty gave the man as a social individual, the power to delegate the function to rulers of their representation. These relationships between civil society and the state are reflected in an instrument in which the limits of that relationship are formalized, hereunder is the so-called political constitution, in where the activity of political power by limiting it to the existence and respect of fundamental rights is indicated in its rules. Therefore, moving from a national sovereignty to a popular sovereignty requires that society must not continue to be built, from the strengthen of the power of the state, but on the contrary, since respect for fundamental

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language, political or religious beliefs or origin. The Protocol 12 to the ECHR broadens the scope of the prohibition to establish that the enjoyment of all the rights recognized for the law must be ensured without any discrimination, in particular for reasons of sex, race, colour, language, religion, political opinion or of other nature, national or social origin, membership of a national minority, wealth, birth or any other situation. No one may be discriminated against by any public authority. Meanwhile, the Charter of fundamental rights of the European Union, incorporating the prohibition of any form of discrimination, pointing, prohibiting all forms of discrimination, and in particular the exerted for reason of sex, race, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other type, membership of a national minority, birth, heritage, disability age or sexual orientation (AGENCIA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA Y CONSEJO DE EUROPA, 2010: 33).

<sup>27</sup> Aristotelian political science not seeks to transform regimes imperfect as democracies and oligarchies, in regimes devoted to human excellence, but rather seeks to institute measures that allow imperfect regimes to respect its principles and moderate his reckless tendencies (BERKOWITZ, 2001: 32).



human rights which must build and program the state activity. Thus, the acts of the state and its institutions must be governed by the law, and sovereignty, as expression of power moved from state to society, specifically in the full exercise of their rights and respect for fundamental human rights.

The constitutionalisation is the process by which public life is subjected to the discipline of constitutional standards (COMANDUCCI, 2002: 91-93), being in this way, the Constitution a series of rules that prescribe the criteria to be able to justify an action or conduct (ZAGREBELSKY, 1999: 110), wherein is no longer considered as essential set limits or controls the state but that priority is given to the protection and guarantee of fundamental rights (BOBBIO, 2009: 23). Constitutionalism is also considered as a theory of the right, as a method to address the study of law or an ideology of the right (RIDALL, 1991: 149-185). The constitutionalists considered that it is a moral obligation to obey the Constitution, because the principles that are in it, on the basis that they symbolize justice.

The recognition of civil and political rights throughout history has been a purpose and a limit to the exercise of power, which implicitly or explicitly become a requirement of human dignity, for putting in place a limit on sovereignty and the exercise of state power (NOGUEIRA, 2003: 4). In this sense, the importance of fundamental rights, lies in the range established within each state, as well as protecting individuals and mechanisms established for law guarantees. There are some references with respect to the protection of human rights as opposed to the sovereign which include the Magna Carta of 1215, the Petition of Rights of 1627, the Habeas Corpus of 1679 and the Bill of Rights of 1688, which are repeated manifestations of rejection of the arbitrariness of the absolutism that the monarchs intended to continue ruling; these documents give rise to the concept of fundamental rights reflecting the conquest of the people against the power; they are the documents that provided guarantees.

The Magna Carta of 1215 of England is the document in which for the first time the powers of the sovereign will be delimited. It must be remembered that due to the existing confrontations between the nobles and the Anglo-Saxons, these imposed on King John I of England through this document, a Council or Parliament limiting his power, establishing general provisions as the subject to a process for judging an individual or even established the separation of Church and State, among others. Clause 39 of the mentioned document, instituted that: “no man may be arrested or imprisoned or deprived of their rights or property, or moved outside the law or banished its range of otherwise private, or we will use force against him or send to others who do so, but under the judgement of their peers or by law of the Kingdom”. While clause 40 stated: “we will not sell, deny or will delay anyone their right or justice”.<sup>28</sup>

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<sup>28</sup> Clause 39 is considered to be a statement of individual freedom and the principle of legal certainty or the principle of legality. From a first reading one could suppose that their objective is to defend people against arbitrary detention, but in reality it is content goes beyond that, represents a history of the right to an impartial

In France in 1789, people noted the inability of leaders to address the state's problems and the waste of public resources and excesses of the monarchy, such as tax increment resulting in the impoverishment of workers. Therefore, between 20 and 26 August 1789 the National Constituent Assembly discussed and approved the Declaration of the Rights of Man and Citizen, this document recognized rights such as personal liberty, property, equality, security and resistance to oppression, among others. In its explanatory statement, expressed public ills and corruption of governments originated the forgetfulness, ignorance or contempt of the rights of man, therefore resolving declare and recognize natural and inalienable rights of man, in the area of the state (CIENFUEGOS, 2005: 52).

With regard to the Federal Constitution of the United States of America, adopted in 1787, initially it was criticized by the absence of a declaration of human rights, causing Congress to prepare a section of individual rights, which was voted and approved in 1789, ratified by states members in 1791 under the document Bill of Rights. In it were implanted, freedom of religion, freedom of expression, of Assembly and petition; the freedom to carry and possess weapons, the right to a fair trial and jury, the guarantee of legality and legal certainty among others (SIRVENT, 2010: 124).

As regards positivism, this associated the law with justice, while the neoconstitucionalism sets out the mandate of fulfilling what the Constitution orders. In this sense, Comanducci points out that the theoretical constitutionalism can adopt as an object of research the axiological or descriptive model of the Constitution as a rule; in the first case, it is recognized in the Constitution a set of rules that, with respect to other rules, are of superior character; in the second, as the Constitution is a set of rules with respect to each other, provided possess them a value or content, i.e., that the constitution for this model has a value in itself, if the axiological model, constitutionalism is an ideology (COMANDUCCI, 2002: 91-99).

Riccardo Guastini, expresses seven environments that must be fulfilled by a constitutionalized order: a) rigid Constitution; b) the judicial guarantee of the Constitution; c) the binding force of the Constitution fundamentally based on general principles; d) the over-interpretation of the Constitution; e) the direct application of constitutional norms; f) the interpretation of the law must be kept in full harmony with the Constitution; g) the influence of the Constitution on the political relations (GUASTINI, 2005: 50-58).

Meanwhile, political philosophy oriented to the man with the conquest of nature, i.e., that all human beings were included within a universal state (FERRAJOLI, 2004: 24) in a single regime that would be the same for all, enjoy extensive freedoms and equality, this could reach under the regime called democratic constitutionalism (VÁZQUEZ, 2012: 65).

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judge to recognize the right to be judged "pairs" and not for who designate King or feudal Lord. Likewise, at the beginning of the due process of law; for example when links detention, deprivation of rights and possessions and the exile, with the existence of a judgment that should be legal (CARBONELL, 2005: 76).

Under democratic control, the fundamental task of the government is treating its citizens as equals (DWORKIN, 2003: 23).

The Constitutional Court is designed to make possible the exercise of the fundamental right of all people to the integrity and supremacy of the Constitution, mentoring mechanisms to secure the ends of the state, the effectiveness of the principles, rights and duties enshrined in the Constitution. In the constitutional state the principle of an independent judiciary has its origin in the theory of the separation of powers, on the grounds that the executive, the legislative and the judiciary are separated branches of the government, forming a system of checks and balances aimed at the prevention of abuse of power to the detriment of society.<sup>29</sup> For this reason, in what it regards the judiciary, individual judges must exercise their responsibilities without being influenced by the executive, the legislature, or any other medium or person.

As a result, the principle of independence of judges is intended to protect humans from abuses of power, so that judges may not act arbitrarily, resolving or sentencing cases based on their own personal preferences, but their duty is the interpretation and application of the law. Therefore, with regard to the protection of the individual means that judges have the responsibility to apply either the right internal and international human rights, ensuring the application of the principle pro person. Judges regardless of their specialization of labour, civil, criminal, administrative, etc., are primarily constitutional judges, because they are required to acknowledge in their exercise as provided in the Constitution, or to adhere to its postulates and principles, since it is likely that their decisions are subjected to constitutional review.

The judge has been given the role of the guarantor of the Constitution as a mandate enshrined in the notion of popular sovereignty, reflected on the constitutional jurisdiction; this jurisdiction is an institutional guarantee of protection of fundamental rights, conceiving it as a condition for the real fulfilment of the Constitution. It is appropriate to recall that this was one of the pillars for that in the plenary of the Supreme Court of Justice of the Nation of Mexico, it resolved the record concerning compliance with the ruling of the Inter-American Court of human rights issued in the case Radilla Pacheco, preceding that revolutionized the delivery of justice in regards to the control of diffuse conventionality and clarifying the control of constitutionality in the courts. Granting greater protection to people is the basic principle for interpreting the policy statements of the Constitution, that is and will be the ultimate aim of the law, where its realization has an impact that transcends the work jurisdiction, conditioning acting all authority and particular.

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<sup>29</sup> Zamora Grant, points out that fundamental rights are the pillar on which resides all State organization that is based on respect for the right and the consecration of interests to the same supervision. States organize their systems for putting limits on the exercise of the institutions, rulers and in general to the State power in favor of the human dignity of the governed (ZAMORA, 2007: 21).

Then, the international treaties signed and ratified by Mexico are in a range at the of the constitutional precepts,<sup>30</sup> this advance rights human extend rights in favour of the individual trying to principle *pro homine*, indigenous children, abuse of women, in short, human rights have the same rank. Faced with this situation, control conventionality and the diffuse control of constitutionality relate to the obligation of the courts to take into account the rules that human rights granting a greater benefit to the person against rules of secondary nature; as well as the obligation of all the judges of the common law rules that contravene international human rights or provisions of the Constitution, on the grounds that it granted fewer benefits or prevent the exercise of a right is not applied.

The impartial enforcement will take place on the basis of the law protecting human rights and fundamental freedoms of the individual, to do so, it is essential that society has full confidence in the members of the judicial power, to comply with their functions independently and impartially. The importance of the constitutional jurisdiction consists of the opening to the interpretation of the application of the rules of the treaties and international conventions on human rights (STEVEN, WEINBERGER, ZINMAN, 2009: 16). The Commission on Human Rights of the United Nations points out that human rights and fundamental freedoms are better safeguarded to the extent that the judiciary and the legal professions are protected from interference and pressure.<sup>31</sup>

### III.3. Realities and prospects of human rights in Mexico

The Mexican constitutional system planned for more than one century the individual protection through the writ of *amparo* (BURGOA, 2001: 176) in order to monitor and ensure that the action of the state is respectful of human rights. As a result of the recent reform the legal framework was enriched and strengthened (OEA-CIDH, 2015) the legislative aspect, in 2012 the Law of National Registry of Data of Persons Lost or Missing; in January 2013, the General Law of Victims, in April, 2013; the new Law of Amparo; in 2014, the General Law of the Rights of Children, Girls and Adolescents was passed; in 2015, the General Law of Transparency and Access to Public Information, which was awarded to the National Institute of Transparency, access to information and protection of personal data, attribution

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<sup>30</sup> There are four levels in the classification on the normative orders: a) supranational, b) constitutional, d) legal and supralegal c). The first distinction, international treaties prevail even with respect to the Constitution of the State; on the second level, he equated them with the same normative hierarchy of the Constitution, they acquire constitutional rank, rigidity and supremacy of the same level; the third level, equated it with domestic law, however can not be over or modify the Constitution; and last, some constitutions give international treaties a hierarchy equivalent to internal rules causing changes to the system (GOMEZ, 2003: 25-29). Three dimensions in the determination of human rights; the first relates to the axiological value of philosophical; the second considers human rights as a legal independent figures, thus alluding to the institutionalization that is sustained from a normative structure; and, finally, a political or consensual dimension that speaks of the interpretation of such rights in a collective institutionalism (ALEXY, 2007: 47).

<sup>31</sup> NU DOC. E/CN.4/SUB.2/1993/25, *INFORME SOBRE LA INDEPENDENCIA DE LA JUDICATURA Y LA PROTECCIÓN DE LOS ABOGADOS EN EJERCICIO*, PAR.1.

of declassified information concerning serious violations of human rights. Enacted in 2008, a constitutional reform aimed at transforming its inquisitorial judicial system into one accusatorial and oral, whose implementation will be in 2016.

Administrative matters approved the Mechanisms of Protection of Defenders of Human Rights and Journalists; the National Plan for Human Rights (2013-2018); the National Programme of Human Rights 2014-2018, which contains main objective to achieve the effective implementation of the constitutional reform of human rights; the adoption of the National Programme for the Social Prevention of Violence and Crime (2014-2018); the General Prosecutor of the Republic announced the creation of the Special Prosecutor for the Attention of Crimes against Migrants for 2016; the approval of research Protocols in the Field of Forced Disappearance and Torture.

In jurisprudential matters, the Supreme Court of Justice of the nation established the inadmissibility of “evidence based on an illegal arrest and violating fundamental rights”, established the obligation of judges to open two separate incidents before a complaint of torture, to investigate the allegations and determine the need to exclude evidence, avoiding postponing the admissibility until judgment and unlinking the exclusion of proof of the outcome of the investigation; it met the unconstitutionality of the local roots for the commission of serious crimes, confirming the federal jurisdiction of rooting for cases of organised crime; it was determined that the rights guaranteed by international human rights treaties have the same weight as the enshrined in the Constitution. In addition, it stands out the resolution of the Supreme Court of Justice, which restricts military jurisdiction in cases in which the elements of the armed forces committed violations of human rights against civilians, as well as the right to make the control of conventionality for all courts in the country.

In Mexico, the changes have not been limited to policy and exercise in the government, they have also covered other aspects of it is legal scaffolding, however, the distrust of authorities and institutions still persists in some sectors, with regard to settling disagreements. For this reason, this protection in a legal system based on the respect for the rule of law requires independent and impartial judges willing to investigate and prosecute alleged crimes committed against human beings even if they were committed by the rulers. This system defends the idea of justice in its daily version based on the equation of justice and human rights. Where the judges not fulfilled their function there is a risk of impunity from taking root, widening the difference between the general population and the authorities, in addition to presenting the scenario that citizens have problems to resort to justice, impairing the administration of justice. For this reason, it is important that between the rule of law and the exercise of the right there is a process of legal causation, driving the consolidation of a culture of full respect of the law, compliance with international commitments and the strengthening of the participation of civil society.

The formation of citizen's aware of their rights and responsibilities is still a long-term; in addition to this task, we need to professionalize all units of the government so that they can comply with the rules on human rights, as well as the implementation of the recommendations issued by the Mexican ombudsman. In this regard, it is appropriate to recall Thomas Humphrey Marshall, who said that in the development of citizen's and its relationship with the government class associates a civilian element with the courts or the courts of Justice, pointing out that one of the bases for the protection of the rights of man resided in eliminating the social privileges, establishing equality before the law ensuring a fair trial for any citizen (HUMPHREY, 2005: 25).

Notwithstanding the marked progress, in the Mexican State shortcomings and obstacles in their implementation are perceived, as well as a yawning gap between the legislation and its application in the judicial field, and everyday reality that millions of Mexicans live. The lack of access to justice resulted in impunity consequences behind the repetition of serious human rights violations (OEA-CIDH, 2015). The justice system does not offer justice to victims of violent crimes and violations of human rights, due to corruption; lack of training; complicity of agents of the Public Ministry and advocates of trade; weak enforcement of the law, the latter to lead to the emergence of armed citizen self-defence groups in some regions of the country.

Human Rights Watch documented that in Mexico even torture are practiced to get information and confessions under duress, pointing out that there are judges who accepted confessions obtained under torture. Judicial officials do not apply the Istanbul Protocol, to assess the state of people who may have been victims of torture or ill-treatment. They also detected that the authorities have failed to properly investigate crimes against journalists, causing journalists to opt for self-censorship before attacks by government officials or criminal groups (HRW, 2014).

In present Mexico, it is time to reflect on the necessity of subjecting the power to law, establishing the rule of law as the instrument enabling the cohabitation and coexistence in a multicultural society, where the Constitution is the tool to protect, recognize and strengthen individual rights, therefore, it is of utmost importance for Mexico to have the law as supreme authority (BURGOA, 1985: 385). Do not forget that the Magna Carta is a condemnation of the Government absolutism, which is why no one, not even the President of the Republic, is above the law, this principle being the basis of constitutional freedoms.

The constitutional reforms on human rights marked a before and an after in the history. These modifications aim to comply with universal human freedoms, supervised by the international system, they were the product of the evolution of the Mexican legal system, at this stage an intense legislative process in the recent history of Mexican parliamentarism was observed, where there were enriching contributions and reached consensus (VIGO, 2013: 23).

The consolidation of human rights in Mexico entails the need to make them effective, with the aim that the Mexican constitutional state is described by the society as democratic political system. In this transit a number of challenges remain which could call into question the respect and the guarantee of human rights, as social exclusion, violence, threats to democracy, internal displacement, trafficking and trafficking in persons. In addition to this, will be relevant violations attention to human rights does not end with the issuance of recommendations, therefore, it is necessary, a follow-up for adherence in those cases in which the authorities accepted, peer-form report negatives or obstacles that arise for their compliance. Not to forget that human dignity is the basis of the political, legal and social system of a community.

#### **IV. CONCLUSIONS**

The modern state was built against the regimes of privilege laid the foundation of the egalitarian ideal. Do not forget that in the 19th century, the constitutions of Europe began to consecrate the principle of equality taking inspiration from the French Revolution, notably in the Declaration of Rights of Man and of the Citizen of 1789, which states in its first article that “Men are born and remain free and equal in rights” and that “Men are by nature equal before the law”. The principle of equality is one of the foundations of democracy, where the state guarantees access to social, economic and cultural assets to all persons.

The republican character in modern constitutionalism seeks a political system consisting of a system of political unity and commitment to the pursuit of well-being, emphasizing the political obligations and the protection of individual rights. Human rights are rights inherent to all human beings, without distinction of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other condition. We all have the same human rights, without discrimination. These rights are indivisible, interdependent and interrelated, are referred to in the law, international treaties, sources of international law and general principles of law, pointing out their obligations the rulers, as well as the promotion and protection of human rights.

The re-elevation and legal recognition of human rights is considered a breakthrough for the development of the law, since it is from this moment, when granted supremacy to the fundamental rights of man against the state, without forgetting that these rights are also recognized by each individual. Faced with this situation the judiciary must assume the task of interpreting the principles and values contained in the Constitution and international treaties by devising a new judicial interpretation, this will generate new criteria and jurisprudential thesis. Under this new order of concordance between the Constitution and the international treaties with the laws and secondary regulations, in Mexico it is necessary to revise the principles rooted in its legal and constitutional supremacy and normative hierarchy tradition, since the constitutional reform in the field of human rights from 2011,

abandons the rigidity of the Mexican legal positivism, recognizing the existence of rights inherent to the person regardless that they are enshrined in the Constitution.

Do not forget that the Mexican legal system found traditionally theoretical support in the phased construction of the legal system, where it was that the Constitution as positive standard governing the production of general legal regulations, i.e. the higher standard prescribes the procedure for which produced another standard, and sometimes also designates or limits the contents of the new standard. Thus, it gives support to the principle of constitutional supremacy, establishing that the Constitution creates the public authorities, defines its functions, establishes the legislative procedures, regulates the conclusion and ratification of international treaties. The reform enacted in 2011, is considered the starting point for the adaptation of the new constitutional order, the Mexican legal system, in which should be through a long process of transformation of old institutions and practices rooted, and at the same time to build a new and authentic culture of respect for the law.

Finally, before the tendency for the authorities not to accept the recommendations made by the ombudsman, hampering this progress in the protection of human rights, the constitutional reform of 2011, focuses to give follow-up to the fulfilment of the conciliation and recommendations for authorities who do not accept these instruments, expose the legal support of its refusal, in order to obtain an increase in the number of acceptances, transferring the effect of strengthening the protection of the rights by an open dialogue between the parties.

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