



# NEWSFLASH

## Methods for Judges to uphold the principles of the Mexican Constitution and Treaties

#159 July - September 2022 | August 17, 2022

On June 19th, 2022, two important judicial decisions were issued by the First Chamber of the Mexican Supreme Court and published under case numbers 1a./J. 84/2022 (11a.) and 1a./J. 85/2022 (11a.), with the headings: “Adherence to Constitutionality and conventionality ex officio. Methodologies to exercise such adherence” and “Upholding Ex officio legal constitutionality and conventionality. Such does not imply that authority must always be exercised, without formally considering material aspects of admissibility and origin of the attempted actions.”

In said rulings, the First Chamber confirmed the obligation of judicial authorities not to apply laws and norms that could violate human rights in cases in which, in a particular way, such action is requested by the parties, or they notice that the law warrants said control, without setting aside the formal and material aspects of admissibility of the attempted actions.

The Court specified a practical methodology to be used by judges to exercise ex officio their authority regarding a law's conventionality or constitutionality according to the following steps:

- 1 Identification.** Identify the potentially affected human right, based on the facts of the case, which emerges from the narrative of the rightsholder or the evidence in the case file.
- 2 Source of law.** Determine the source of that human right; that is, if it is recognized in the Constitution and/or international conventions to which Mexico is a member, and establish its subject matter by explaining its contents, in light of both its source and the precedent developed by the corresponding court.
- 3 Analysis of constitutionality and conventionality.** Analysis of the potentially unconstitutional and unconventional law in light of the subject matter of the human right at issue and determine if such law is violated.

**4 Determination.** Rendering a decision on a law's constitutionality and/or conventionality; that is, determining if the law is constitutional or unconstitutional, or conventional or unconventional; how it should be interpreted, and, if applicable, whether it should or should not apply in a specific case.

Through these case precedents, the criteria of the Court has been confirmed in the sense that judicial authorities must ex officio carry out their responsibility to control the constitutionality and conventionality of the laws and regulations they apply, clarifying the cases in which it proceeds to carry out said authority and control, as well as a practical methodology at the time of applying it, in such a way that it is not an arbitrary exercise of the judge's decision not to apply the law to a specific case.

**Contact:**

Abel Quezada

Associate

[aquezada@ccn-law.com.mx](mailto:aquezada@ccn-law.com.mx)