This summary contains the cover page, the synthesis and the extract of a decision of Mexico's Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

RIGHT OF REPLY
(*DERECHO DE RÉPLICA*)

CASE: *Acción de Inconstitucionalidad* 122/2015 and its consolidated cases 124/2015 and 125/2015

REPORTING JUDGE: Javier Laynez Potisek

DECISION ISSUED BY: Plenary of Mexico's Supreme Court of Justice

DATE: February 1, 2018

KEY WORDS: right of reply, right to freedom of expression, right to honor and reputation, right to information, right to freedom of the press, right to equality and non-discrimination, limits on the exercise of freedom of expression, inaccurate or false information, official information, offensive information or information contrary to the laws, special electoral regime, restrictions on the dissemination of ideas and opinions, equal access to means of communication, electoral propaganda, public interest, obligated subjects, electoral subjects

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Acción de Inconstitucionalidad* 122/2015 and its consolidated cases 124/2015 and 125/2015, Plenary, Javier Laynez Potisek, J., decision of February 1, 2018, Mexico.

The full text of the decision and the vote may be consulted at the following link: https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AI%20122-2015.pdf

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SUMMARY OF THE *ACCIÓN DE INCONSTITUCIONALIDAD* 122/2015 AND ITS CONSOLIDATED CASES 124/2015 AND 125/2015

BACKGROUND: On November 4, 2015 the Decree issuing the Regulatory Law of Article 6, first paragraph of the Political Constitution of the United Mexican States on the right of reply (Law of Reply) was published. Also, article 53 of the Organic Law of the Federal Judicial Branch (LOPJF) was amended. The Democratic Revolutionary Party (PRD), MORENA [party] and the National Human Rights Commission (CNDH) filed several unconstitutionality actions (*acción de inconstitucionalidad*) before this Supreme Court against the decree since, in their opinion, they violated various constitutional and conventional articles.

ISSUE PRESENTED TO THE COURT: Whether various provisions of the challenged decree regarding the regulation of the right of reply are in conformity with the Federal Constitution and with various international treaties Mexico is a party to.

HOLDING: The invalidity was declared of articles 3, second paragraph, in the phrase "In electoral matters, the right of reply may only be exercised by the affected party", and last paragraph, in the phrase "for the pre-campaigns and electoral campaigns"; 10 second paragraph, in the phrase "in a period of no more than five business days from the day following the publication or transmission of the information to be corrected or responded to"; 19, sections IV and V, and 25, section VII, in the phrase "or those that demonstrate the prejudice that such information has caused them", essentially, for the following reasons. The special electoral regime creates a stricter rule for exercising the right of reply that is arbitrary and discriminatory, since the reasons for establishing the measure are equally applicable for electoral subjects. In addition, the fact that what is disclosed about them not only affects their campaign, but the perspective people have of the political party they belong to, which could affect other candidates and precandidates of the same party and also affect the person alluded to in the personal sphere. Furthermore, the reason for the creation of a special regime in electoral matters is the need for greater celerity than the electoral processes require, and therefore it is not proportional to establish greater celerity in the stages less close to the end of the contest and not on the

subsequent ones. In a different sense, it was considered that the measure established by the lawmaker with respect to the fact that the period for requesting the reply begins to run on the business day following the day the information has been published or transmitted, is not disproportional in itself rather, together with the short period of 5 business days to present the corresponding brief, the rule is disproportional and negates the right of reply, and therefore the need is seen to balance the moment in which the period begins to run, with the specific time established to exercise the right. Regarding the reason the obligated subject may refuse to publish the reply requested, consisting of considering it offensive, it was deemed that such determination would be left to the judgment of the obligated subject, without having any objective parameter to guide the decision, which would generate legal insecurity and could have the effect of censuring the message. Regarding the reasons that the reply will be considered contrary to the law or that the person did not have a legal interest in the disputed information, it was considered that such evaluations would require a technical and specialized knowledge that cannot be presumed or demanded from the obligated subject and that they could have as a direct effect the negation of a constitutional right and the obligation to go to a judicial body to question and, if appropriate, reverse the interpretation. Finally, regarding the demand for the initial brief to demonstrate the harm that the disputed information has caused, it was considered that neither of the two possible interpretations were constitutional, since with the first the petitioner would be required to prove the grievance, when it is proven with the simple fact of proving that false or incorrect information was alluded to and, in the second, it would be permitted to present a request for reply with respect to information that is true but has caused harm, which was contrary to the scope of the right of reply. Consequently, it was determined that the regulatory phrases indicated were unconstitutional.

The votes may be consulted at the following link:
http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=191501

EXTRACT OF THE *ACCIÓN DE INCONSTITUCIONALIDAD* 122/2015 AND ITS CONSOLIDATED CASES 124/2015 AND 125/2015

p. 1 Mexico City. The Plenary of the Supreme Court of Justice of the Nation (this Court), in session of February 1, 2018, issues the following decision.

BACKGROUND

The Democratic Revolution Party (*Partido de la Revolución Democrática*, PRD), MORENA party and the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH), filed several unconstitutionality actions against the Decree issuing the Regulatory Law of Article 6, first paragraph, of the Political Constitution of the United Mexican States in the Right of Reply (Law of Reply) and reforms and additions to article 53 of the Organic Law of the Federal Judicial Branch (*Ley Orgánica del Poder Judicial de la Federación*, LOPJF), published in the Official Federal Gazette (*Diario Oficial de la Federación*, DOF) on November 4, 2015.

STUDY OF THE MERITS

I. The scope of the right of reply

a) Is it constitutional that the lawmaker has limited the right of reply to inaccurate or false information, excluding true but offending information?

p. 13 The right of reply is one of the most “disputed” rights with least homogeneity in its regulation internationally. This is the result, in large part, of its relationship with two rights that are often at odds: on the one hand, the freedom of expression and, on the other hand, the right to honor and reputation. Therefore, the scope of the right of reply must take into account the balance that ensures its enjoyment without rendering the other rights nugatory.

p. 15 In this way, the constitutional protection of the freedom of expression also ensures the right to receive any information and know the expression of differing views.

p. 16 In addition, this Court has repeatedly held that the public side of the freedom of expression —also known as the right to information— contributes to the creation of an extensive body

of citizens who can think critically and are committed to public issues and that, consequently, become a central piece for the adequate functioning of a democratic and representative society.

Therefore, the role the media plays is very relevant. They are the principal offerors of the "marketplace of ideas" and the "information market", since they not only generate their own content but also permit the dissemination to the public in general of ideas or opinions of various positions; which strengthens debate and critical thinking in the search for the truth.

p. 17 This primordial role that the media plays in the exercise of the freedom of expression means they must be protected from improper intrusion, directly or indirectly, by the State in the content they publish and from any type of censure.

p. 17-19 In the judgment of this Court, however, it is not possible to hold absolutely that the intervention of the public power in itself generates an effect on the freedoms of citizens, since while the constitutional protection of freedom of expression is intended to prevent the influence of governmental agents, such intervention cannot be completely proscribed, since that would imply that the right in question was absolute, and it would overlook the fact that in a society as complex as ours, the dissemination of an idea can be silenced not only by the governmental power itself, but also by other private subjects that, by virtue of their privileged position over others, could restrict or impede the dissemination of some ideas. Given this mere possibility, this Court considers that public intervention is not only reasonable but justified to guarantee the rights that are constitutionally granted to private parties.

p. 21-22 In this regard, what is important is to specify that in the context of an "information market" private parties are not in equal circumstances compared to other informational agents. Although it could be considered that private parties can disseminate their ideas through the "informal" media such as social networks, the media has a preponderant position in the marketplace of ideas —which could even be classified as "monopolistic"— since they

do not confront the barriers that a private subject would find in disseminating a newsworthy event.

p. 22 Given that equal access to the dissemination of ideas is impossible, this Court considers that in this case the intervention of the State is not only legitimate but essential, since otherwise the exercise of the freedom of expression of individuals could not be fully guaranteed.

p. 23 For this purpose, the regulation of the right of reply is one of the tools with which the State can justifiably intervene in the "marketplace of ideas" to guarantee that citizens have access to it in similar circumstances as other agents —the media—so they can disseminate information that corrects or clarifies what is originally published by the media.

p. 24 It could be considered that allowing any such person to access the media to exercise his right of reply, would allow him to "repair" his honor and reputation. However, this cannot be understood as the primary function of the right of reply and in many cases, it could not even fulfill that function. This is because there will be information that, once published, even when it could be "corrected" through the exercise of the right of reply, will have already caused greater harm that requires additional measures to be fully repaired. In addition, the right of reply does not serve as a reparatory measure in the case of a disclosure about someone's private life, since even when a person's right to honor and reputation is violated, it is unlikely he will seek to exercise that right, to the extent that it would imply continuing to expose his private life to the eyes of public opinion.

In this regard, the right of reply is independent of the civil and criminal judicial recourses that a person may make use of when his honor and reputation has been violated by the publication of certain information, whether false or true, or the publication of an opinion that is offensive.

Finally, the nature of the right of reply is not to find the truth about the information published, but rather to comply with the function of disseminating a different version of certain information so it is available to the receivers and they have more elements to form an opinion in that respect.

p. 27 More specifically, it cannot be argued that there is a violation of the American Convention on Human Rights (ACHR) because the possibility of a reply is not included in the case of a true but offensive disclosure. This Court coincides with the Inter-American Court of Human Rights that the purpose of the right of reply is specifically to correct false or inaccurate information, such as information that is disseminated incompletely, out of context or is distorted. And even while some utility is recognized in permitting these types of exchanges, the risk it represents for the freedom of expression and freedom of the press is much greater than the benefits it brings.

b) Is it constitutional to require that the dissemination of false or inaccurate information has generated an offense for the person?

p. 28 In this regard, the offense, although it is an essential element of the right of reply, does not need to be proven independently. Its existence is shown automatically upon proving that the affected party has a legitimate claim that false or inaccurate information on that party was published.

This cannot lead to the conclusion that any request for reply must be valid, since what permits a person to request a reply is the existence of a legitimate claim, which situation occurs when the dissemination of false or inaccurate facts results in a real, actual and objective harm to the petitioner's legal sphere, either directly or in a manner easily identifiable. Thus, the reply will not be valid when it is clear that the information disseminated did not allude to the petitioner, or when the "inaccuracy" is related to informative errors or inaccuracies that are obviously unimportant.

p. 29 The questioned article regulates the evidence that the interested person must present together with his request to initiate the judicial proceeding. Two interpretations of the article are possible. The first is that it requires proof of the falseness or inaccuracy of the published information, and also the harm that such information has caused to the petitioner. The second is that it confers the option to the petitioner to prove disjunctively: a) the falseness or inaccuracy of the published information, or b) the harm that such information has caused to the petitioner.

If the first reading is correct, the phrase “those that show the harm that such information has caused to the petitioner” would be unconstitutional since it would be requiring the petitioner to prove the offence, when this is proven with the simple fact of proving that the petitioner was referred to with false or inaccurate information.

The second reading of the same regulatory phrase would also make it unconstitutional since, while it is not required to prove the harm, it would also not be required to prove the falseness or inaccuracy of the information. In other words, it would be permitted to present a request for reply with respect to true information, since it would be enough to justify that a harm was caused to the petitioner. But this possibility would be contrary to the scope of the right of reply.

p. 30 Given that neither of the two possible readings conforms with the constitutional scope that this Court has conferred to the right of reply, it is appropriate to declare the invalidity of that phrase contained in the corresponding challenged norm.

There are other sections that indicate that the right of reply implies that false or inaccurate information alluding to a person was disclosed and caused harm to him. However, this Court considers that those provisions are not unconstitutional, since they do not establish an evidentiary burden for the party attempting to exercise the right of reply, but only refer to the indisputable fact that a person on which certain false or inaccurate information was published, is harmed by that circumstance. In view of the above, the validity of those provisions are upheld.

II. The regulation of the right of reply

a) Is it constitutional that the reply has not been regulated specifically for internet publications?

p. 31 This claim of invalidity is without grounds, since the Law of Reply expressly refers to electronic media, which undoubtedly includes the internet.

p. 31-32 Furthermore, when the Law of Reply makes reference to the “subjects” that are obligated to publish the reply, no reference is made to the type of “media” or “form” in which the

reply is disseminated, but rather any of such subjects that disseminate false or inaccurate information will be considered bound. In this regard, from the reading of the Law of Reply no impediment is seen textually or in its effects that impedes the regulation of the right of reply from being applicable to whoever publishes information on the internet. Therefore, this claim of invalidity is without grounds.

b) Is it constitutional that when a person cannot exercise the right of reply himself, its exercise is limited to the first one that makes the request?

p. 33 In the consideration of this Court, this claim of invalidity is without grounds because if all the legitimate subjects exercise the right in the name of the one directly affected and the media must publish as many replies as subjects legitimately existing, this would break with the equality intended, generating an excessive limitation on the media's right to freedom of expression.

This does not imply that each of these legitimate subjects do not have a particular interest in the impacts they could feel personally from the dissemination of false or inaccurate information on their family member, but there are other ways through which the repair of such impacts may be claimed. The purpose of the right of reply does not include repairing those rights.

c) Is it constitutional that it could be possible to consider "any person that disseminates information by any media" as obligated subjects?

p. 36 While it is true that the challenged phrase would permit including subjects that are not specific or expressly listed in the law, this does not imply a violation of legal security. This is because the obligation of the lawmaker to guarantee legal security does not imply granting absolute certainty over which cases are included in the norm and which are not. Rather, it is sufficient to clearly establish the conditions or requirements that make its individualization foreseeable.

The fact that the lawmaker has established, on the one hand, more specific premises of application and, on the other hand, a category that only establishes material criteria that describe the conditions of its application, not only is constitutional but it even adds to the

protection of the freedom of expression of those alluded to by the dissemination of a message.

p. 36-37 In this way, the right of reply will have its optimum protection when it is possible to consider as obligated subject not only the "conventional" channels of dissemination of news, but also the unconventional or new media that by virtue of the constant technological or social changes could have access to the information market with a similar echo or impact —or even a greater one— as the "traditional" media for the dissemination of a certain message or informative fact and obviously greater than what the person alluded to could have by his own channels.

p. 38 Therefore, and from the point of view of who can be considered an "obligated subject", the regulatory phrase challenged is not contrary to the principle of legal security nor violates the freedom of expression.

For the same reasons, but from the perspective of the one alluded to by the information that is disseminated, the challenged article is also not unconstitutional.

p. 38-39 Finally, no grounds are found to support that the phrase challenged is unconstitutional because the premises established do not coincide between the subjects that can be sued and sentenced in a judicial setting. This alleged "omission" must be remedied or interpreted according to the provisions of the Law, without assuming there is an "inconsistency" that leads to declaring its unconstitutionality.

d) Is it constitutional that the services of open television and audio have not be been specifically mentioned?

p. 40 In spite of the fact that the "open" television and audio services are not specifically included in the definition or in the subsequent articles, such services are included in the first premise: "broadcasting services". This interpretation is consistent with the relevant law which considers open radio and television as within such services.

p. 41 Thus, the challenged provisions are not discriminatory since they do include open radio and television.

e) Is the regulation of the right of reply in live programs constitutional?

p. 41-42 The interpretation of the provision by the petitioners is erroneous. What the article does is guarantee that if the person affected learns of the false or inaccurate information that is being disseminated at the time the program is being broadcast and exercises his right at that instant, the obligated subject must disseminate the reply at that precise instant. This mechanism is of greater efficiency and celerity for both parties since it guarantees that the reply is disseminated in the same space as the information that gives rise to it and in the least time possible.

p. 42 Furthermore, if the format of the program does not permit the publication of the reply at that moment, the right to exercise it is not precluded.

p. 43 Finally, if in the judgment of the media the reply is not valid and therefore the possibility of broadcasting it during the program live is denied, the affected party has the possibility of initiating the respective judicial procedure.

f) Special electoral regime

The Law of Reply establishes a special regime for some electoral subjects, for the purpose of regulating those questions that the lawmaker considered require a certain differentiation, given the specific conditions present in the electoral process.

1) Is it constitutional that the rule of business days applies only during the campaigns and pre-campaigns?

p. 47 This Court considers it advisable to proceed to make a proportionality analysis of such measure.

p. 48 The reason the lawmaker created a special regime was to establish greater celerity for the exercise of the right of reply within the electoral processes. This is justified given the reduced times and the existence of terms that would render the right of reply nugatory if it is not exercised in the least time possible. In addition, the public interest in the right to information intensifies during these periods, given the impact the publication of false or inaccurate information can have on the subjects of the contest in the electoral results.

The requirement of celerity in the disputes that arise in the electoral process is seen in section III of Part D of article 41 of the Constitution. In this regard, celerity in the resolution of the disputes that arise in the electoral process is not only constitutionally valid but required. Therefore, the first requirement is proven.

p. 50 Furthermore, the special regime of business days that the lawmaker established is only applicable to a certain part of the stage of preparation of the elections and excludes not only those subsequent to election day, but also the replies that are requested: a) prior to the initiation of the pre-campaign; b) between the end of pre-campaign and the initiation of the campaign, and c) after the campaign, and therefore such replies must be processed according to the general regime established in the Law of Reply.

p. 51 In this regard, taking into account the purpose of giving greater celerity to the reply through the special regime, it is not rational that the lawmaker would establish that greater celerity applies to the stage further from the end of the contest, and not at subsequent moments.

From this analysis, it is clear that the measure is not appropriate and does not meet the reasonability required, since it is essential that it apply to the entire electoral process and not just part of it. Therefore, it is appropriate to declare the unconstitutionality of the last paragraph of article 3 of the Law of Reply, in the phrase that indicates “for the pre-campaigns and electoral campaigns”.

2) Is it constitutional that in electoral matters the right can only be exercised by the affected party when the affected party cannot exercise the right or has died?

P. 52-53 The special regime in this area does not create a more protectionist rule. On the contrary, it creates a more restrictive one when it involves electoral subjects. This Court finds that in this case the difference is arbitrary and, therefore, discriminatory.

p. 54 In this context, no constitutionally admissible purpose is found for excluding the right of reply to pre-candidates and candidates, since the reasons for establishing the measure are also present in their case.

In addition, what is disclosed about pre-candidates and candidates not only affects their campaign, but also the perspective the electors have of the political party; which situation could potentially affect other candidates and pre-candidates of the same party in simultaneous contests, including whoever substitutes the affected party in case he cannot continue with his campaign.

Finally, limiting this right ignores the fact that the false or inaccurate information not only affects the person alluded to in his political context but also personally, and therefore even if he is unable to continue in his electoral campaign, it is relevant that the false or inaccurate information be corrected as in the case of any person unrelated to these processes.

In view of the above, this Court determines that the unconstitutionality must be declared of article 3, second paragraph, in the regulatory phrase that indicates: “In electoral matters, the right of reply may only be exercised by the affected party”.

3) Is it constitutional that special rules have been established for some electoral subjects and not for others?

p. 55 In the opinion of MORENA, the subjects that should also be included in the special electoral regime are the following: aspirants to pre-candidates, aspirants to independent candidates, independent candidates, electoral observers and foreign visitors, and directors or representatives of the political parties.

p. 56 The term “aspirant to independent candidate” could refer to two types of subjects: any person who only intends to be an independent candidate, or a person that has expressly stated his wish before the electoral institutes in terms of the respective laws. In the first case, this intention is not relevant in public terms and therefore it is not justified to apply to him a regime different from any other person. In the second case there is a special situation, equivalent to that of the pre-candidates. However, the law can be interpreted in the sense that the term “pre-candidate” also includes the first subjects.

p. 57 Regarding the aspirants to pre-candidates, the fact that a person has the intention to participate in a voting procedure is not relevant in public or collective terms until he is

subject to the rules that the collectivity established for participating in the contest, and therefore including him in a special or preferential regime would be discriminatory with respect to any other citizen that intends to exercise it.

On the other hand, independent candidates are included in the special regime in the generic term “candidates”. To interpret otherwise would not only go against the text of the challenged paragraph but would also be discriminatory and, therefore, unconstitutional.

p. 57-58 In the judgment of this Court, the fact that false or inaccurate information on the observers or the foreign visitors could be disseminated does not have an impact on the result of the electoral contest, since they are not party to it and, therefore, their public relevance is not sufficient to include them in the special regime.

p. 58 Finally, the directors or representatives of the political parties are also not a direct party in the electoral contest, and therefore it is also not justified for the special regime to be applied to them. In any case, if false or inaccurate information that alludes to them and is directly related to the political party to which they represent is disseminated, then the political party will be able to exercise the respective right.

As can be seen, in none of the cases analyzed is it justified that such subjects form part of the special regime, and therefore it is appropriate to uphold the validity of the articles analized.

III. The procedure before the obligated subjects

a) Is it constitutional that the media that have disseminated certain information can refuse to publish the reply that is requested of them in view of the fact that the information was generated by a third party?

p. 62 In this regard, it is clear that what is relevant for the proper protection of the right of reply is to identify the agents or means of dissemination of the news that detonates it and not necessarily those involved with its “source” or “origin”.

In the case of the right of reply, the only relevant dispute is to determine if, as a result of the fact that a certain media or agent disseminated false or inaccurate information, the

person that has been alluded to is or is not able to broadcast or published his response or correction in the same informational spaces in which it was originally disseminated.

p. 62-63 According to the text of the ACHR, the right of correction or reply must guarantee that the person affected can disseminate his version before the body or medium of dissemination, since with that it is presumed it can reach an audience similar to the one that originally received the message alluded to. This situation, which tries to establish an equality of conditions, not only protects the freedom of expression of the person that was affected but also strengthens the right to information of the society in general, since it can receive different versions on the same news.

1) Is it constitutional that the right of reply cannot be exercised in the case of official information?

p. 63-64 The draft presented for the consideration of this court proposed the invalidity of the challenged section. However, the eight votes required to declare the invalidity were not reached, and therefore this claim of invalidity was rejected.

2. Is it constitutional that the media can refuse to publish the reply when it comes from that news agency?

p. 64, 67 The draft presented proposed to declare the unconstitutionality of this section of the law. However, this claim of invalidity was rejected since the majority of eight votes required to declare the unconstitutionality was not reached.

3. Is it unconstitutional to require the media to establish in their contracts with new agencies the obligation to disseminate the reply?

p. 67-68 This court holds that such postulate does not imply that the protection of the right of reply is conditional on or depends on the existence of a legal clause, since the obligation of the media to disseminate, publish or broadcast a reply does not result from a contractual clause but rather is a right whose source is the Constitution and the Law of Reply. Therefore, the article studied is not contrary to the Constitution.

b) Is it constitutional that it is possible for the obligated subject to refuse to publish the reply requested?

p. 69 This Court notes that to establish a procedure through which, in the first instance, the parties involved (obligated subject and affected party) can resolve the conflict without the involvement of the authorities, is the most efficient means to safeguard the need for promptness in the publication of the reply.

p. 69-70 Under this premise, this Court considers it adequate that the lawmaker has established specific premises for which the obligated subject could refuse to publish the information, since this guarantees that the private party will have the tools necessary to be able to go before courts if he wishes to dispute the decision of the obligated subject, thereby safeguarding both the right of the interested party to access to justice and also its right of reply.

p. 70 It is now appropriate to analyze specifically whether or not each of the causes established therein are contrary to the Constitution.

This Court considers that section I is constitutional, since it gives legal security to the obligated subject that if it grants the reply in live programs, the affected party cannot sue it again later.

p. 71 Section II recognizes that if the affected party does not comply with the requirements indicated by the Law, he cannot demand the obligated subject to respect his right. This is intended to guarantee legal certainty and security to the obligated subject, since otherwise it would bear a disproportional burden by not having clarity on the conditions of time and form in which it could be requested to disseminate or publish certain information. This condition is not unconstitutional.

p. 71-72 Section III permits the obligated subject to determine discretionally whether the limit of the clarification is surpassed. This section is constitutional since the discretion of the obligated subject is exercised according to the parameters that the Law itself establishes for the

contents of the reply. In addition, if the affected party does not agree with the refusal to publish its reply, it can initiate the established judicial procedure.

p. 72-73 With respect to the regulatory phrase "(…) and whose dissemination causes it an offense" of this section, its validity is justified provided it is interpreted that this drafting refers exclusively to the fact that the dissemination of false or inaccurate information caused an impact on the petitioner of a reply, but under no circumstance can it be considered that the obligated subject is permitted to demand evidence of any kind to prove that impact.

p. 73 Section IV, on the one hand, establishes a subjective parameter of evaluation with the phrase that indicates "when it is offensive" which gives the obligated subject the discretion to determine what information or expressions will be considered offensive, without providing any objective parameter to guide its decision.

p. 73-74 In view of this, it is considered that contemplating this as a valid cause to deny a reply not only would generate legal insecurity for whoever requests it, but could also allow the obligated subject to censure the message that the alluded person attempts to disseminate.

p. 74 Furthermore, this Court considers that the phrase that indicates "contrary to the laws" is also unconstitutional, since the verification of whether or not certain content is contrary to a law requires technical knowledge that cannot be presumed or demanded from the obligated subjects; especially when an incorrect interpretation of the law would have as a direct effect that the interested party: a) cannot immediately exercise a constitutional right, and b) is obligated to go before a judicial body to question and, if applicable, reverse the "legal" interpretation formulated by the obligated subject. Both conditions, in the judgment of this Court, result in an unjustified obstruction of the exercise of the right for those who attempt to exercise it. Therefore, section IV must be declared invalid.

p. 74-75 Section V indicates as a cause to refuse to disseminate a reply "when the person does not have a legal interest in the disputed information, in the terms established in this Law". In the judgment of this Court, it is unconstitutional to require the obligated subject to verify whether or not a person enjoys that condition, since this requires a technical and specialized knowledge that cannot be presumed or demanded with respect to the

obligated subjects. Especially since such evaluation could be exercised with subjectivity and discretion to refuse a reply, without greater justification or support. Therefore, it is appropriate to declare the section invalid.

p. 76 Section VI establishes two conditions that if verified would allow the obligated subject to refuse to publish a reply: 1) that the information was already clarified, and 2) that it was given the same relevance as the information first published.

p. 77 Given that the requisites contained in this section to deny the exercise of the right are clear and objective, it is appropriate to recognize the validity of this section.

p. 77-78 The draft submitted to the consideration of this Court proposed to declare the invalidity of sections VII and VIII. However, those claims of invalidity were dismissed since the majority required to declare their unconstitutionality was not obtained.

c) Is the failure to establish the possibility of presenting the request for reply electronically constitutional?

p. 78-79 The provision is not clear regarding the format in which the request for publication of the reply must be presented. This ambiguity means we can interpret it in two ways: 1) that the request can only be presented physically, or 2) that the request can be presented physically or electronically.

p. 79-80 If we take into account that article 1 of the Constitution requires choosing the interpretation that gives the broadest protection to the person, the challenged article is constitutional and should be read understanding that the request may be presented either physically or electronically.

d) Is it constitutional that the period for requesting the reply begins from the publication and that it is only 5 business days?

p. 80-81 This Court considers that the result of the challenged provision is that the right of reply can only be exercised by persons who are constantly alert to the information that is published in any media and with respect to information published in the mass media.

p. 81 Furthermore, given that it is valid to presume that the person alluded to and affected by false or inaccurate information has incentives to correct or clarify it in the least time possible, the possible bad faith of the subject that attempts to exercise the right of reply cannot be argued as a reason for establishing a regulation with time periods so difficult to meet.

However, given that the right of reply implies an imposition on the freedom of the press, the media's legal security must also be protected.

Therefore, this Court considers that the measure established by the lawmaker that the period begins to run from the business day following the date on which the information has been published or broadcast is not in itself disproportional, but with the short period of 5 business days to present the corresponding request, the disproportionality of the rule and the likelihood of nullifying the right of reply in many cases becomes clear.

p. 82 An analysis of the regulations of other countries regarding the right of reply shows the need to balance the moment in which the period begins to run with the specific time that is established to be able to exercise the right in question.

The current rule in the Mexican law does not achieve this balance, and therefore article 10, second paragraph, in the phrase "in a period of no more than five business days, counted from the date following the date of the publication or broadcasting of the information that it is wished to correct or respond to" must be declared invalid.

IV. The judicial proceeding

a) Is it constitutional to require the affected party to prove the existence of the information he seeks to correct?

p. 84 This Court considers that it is appropriate that the affected party be required to prove the information that he considers false or inaccurate, since that is essential to determine whether or not he has legitimacy to present his request. According to the same logic, it is considered reasonable to demand that the interested party —if he does not have that

evidence prior to presenting his request before the judicial body—, request it from the one that disseminated it.

These two requirements guarantee that the dispute of the judicial proceeding centers on the validity of the claim of the affected party and not on the existence of the information. Therefore, if there is a minimum of evidence that proves at least a presumption of that existence, the claim would not be legitimate.

b) Is it constitutional that a second instance in the judicial proceeding is established?

p. 85, 89 The draft submitted to the consideration of this Court proposed declaring the invalidity of this provision. However, the majority required to declare the invalidity of the article was not reached and, therefore, this claim of invalidity was rejected.

c) Is it constitutional that the possibility is established of ordering judicial costs?

p. 90 This Court has held that the prohibition on judicial costs established in article 17 of the Constitution must be understood as a guarantee that the governed party does not pay the costs for the administration of justice by the State, since that service is free. However, the prohibition on judicial costs does not imply that a judge cannot order the payment of a particular amount of money by one of the parties when, in bad faith, it files a groundless lawsuit.

p. 92 Furthermore, if the due protection of the right of reply implies that it be published in the least time possible, there is an interest that the conflicts between the interested party and the obligated subject be resolved without needing to go before a judge, except for cases in which the presence of the premises required in the Law of Reply is truly doubtful. In this regard, this Court notes that the possibility of being ordered to pay costs is a valid mechanism for generating incentives to achieve that purpose since if the judge considers it relevant, he may order the party that has filed a superfluous case to pay costs, whether because an obligated subject refused arbitrarily or without justification the dissemination of a reply or when an interested party requests it in the same terms.

d) Is it constitutional that fines are established without criteria of individualization?

p. 93 This Court has held that in order for a fine not to be considered excessive, the authority authorized to impose it must be able to take into account the seriousness of the infraction, the economic capacity of the infringer or any other element that could indicate the seriousness or levity of the act. This implies that the lawmaker, at the time of formulating the regulatory provision that establishes a fine, must incorporate a minimum and a maximum parameter that gives the judge a margin to consider substantial factors at the time of individualizing the sanction.

p. 95 The challenged provisions establish both the conduct and the minimum and maximum amounts of the fines to apply. In the judgment of this Court, such contents are clear and their drafting does not generate any doubt with respect to the subjects to which they are directed, the conduct sanctioned, or the amounts within which it should be individualized.

e) Is it constitutional that the competency of the district judges to hear any proceeding for purposes of exercising the reply is established, without distinguishing the processes that the "electoral subjects" file?

p. 97 The nature of a certain conflict is determined in function of the dispute that is resolved and not based on the nature of the subjects involved in it, nor on the nature of the body involved in its resolution. In this respect, and regardless of whether one or more electoral subjects are involved or even in spite of the fact that the result of a reply procedure could indirectly impact or influence the electoral contest, the matter to elucidate in such procedure does not have in itself the nature of electoral, since the dispute in such procedure is centered on determining whether or not the refusal of the obligated subject to disseminate a reply that has been requested of it was in compliance with the Law of Reply.

p. 98 Furthermore, the scope of jurisdiction of the Specialized Chamber of the Electoral Court of the Federal Judicial Branch to hear political or electoral advertisements that is considered slanderous, is not violated in any way by conferring jurisdiction to the federal judges to resolve disputes related to the Law of Reply, since the premises that trigger the possibility of initiating one or another procedure are different.

p. 102 First of all, because the right of reply is intended to guarantee equal access to the media to be able to respond to or correct false or inaccurate information that was originally disseminated. However, for purposes of electoral advertisements , the political parties and independent candidates already have their access to radio and television guaranteed.

p. 103 Secondly, because in contrast to what happens when an obligated subject in terms of the Law of Reply disseminates certain information (of which it was not necessarily the author), it assumes a certain co-responsibility. This is so because of the universe of information available, the obligated subject voluntarily decides to disseminate something (and on the contrary, not to disclose other news), whether to be consistent with its editorial policy, or because it considers it relevant or of interest to the public or its followers.

This “freedom” to disseminate a piece of news does not apply in the case of political or electoral advertisements. Therefore, it would be disproportionate and unjustified to obligate it to publish a reply on information that is disseminated in terms of article 41, base III, of the Constitution.

p. 104 The above is without prejudice of someone who feels “affected” by information disseminated in electoral advertisements being able to go the INE to request the immediate suspension or cancellation of the radio or television broadcast that slanders him and send the file to the Specialized Chamber of the TEPJF to issue a final decision as appropriate.

p. 107 Therefore, this Court does not find any reason for the unconstitutionality of the regulation, which contemplates the jurisdiction of any district judge for any procedure related to the exercise of the right of reply.

DECISION

In this decision the following articles of the Law of Reply were declared invalid:

p. 108 1) Article 3, second paragraph, in the phrase “In electoral matters, the right of reply may only be exercised by the affected party”, and last paragraph, in the regulatory phrase “for the pre-campaigns and electoral campaigns”; 2) Article 10, second paragraph, in the

phrase “in a period of no more than five business days, counted from the day following the publication or broadcasting of the information it is wished to correct or respond to”; 3) Article 19, sections IV and V, and 4) Article 25, section VII, in the phrase “or those that show the harm that such information has caused him”.

p. 108-110 The declarations of invalidity will take effect as of the day following the date of the publication in the DOF of this decision, except regarding the above mentioned regulatory phrase of article 10, second paragraph, of the Law of Reply, which will take effect ninety calendar days after this decision is published in the DOF, within which period the Congress of the Union shall issue legislation to remedy the indicated defect.