

The Criminal Justice System in Mexico and the Problem in the Enforcement

Carlos Alberto Macedonio Hernández, José Yair Moreno Hernández
Autonomous University of Yucatán, Merida, Mexico

The criminal justice system in Mexico changed radically as a result of a constitutional reform in 2008, in which the inquisitorial criminal process was modified to an accusatory one. This gave rise to a series of legislative reforms to adapt it to the new trends of the law, such as respect for the human rights of the parties involved in the process, based on a criminal guarantee where the penalty must be the last reason for the state to impose it. It also establishes other mechanisms to solve the conflict without the need to arrive a judicial resolution. All this with a purpose: prompt and expeditious justice, but what happens in reality, does the enforcement of this system present problems in Mexico? This is a matter for reflection and debate, but above all for the contribution of ideas to make effective the desire of society: justice.

Keywords: criminal law, justice system, reparatory agreement, abbreviated procedure

Introduction

To achieve a true state of law, an effective and efficient criminal justice system is required, which allows society to live in harmony. But above all in the search for comprehensive reparation for the victim or offended when order has been broken legal and damage has been suffered, be it tangible or intangible, which is where the social desire that has been called justice is sought and found.

Justice is therefore one of the most controversial and longed-for concepts by the human being. This concept has constituted the hope of society in any of its stages of development and regardless of its form of government. An example of this is undoubtedly the precepts or decisions that make up the so-called Code of Hammurabi, where it is intended to compensate the damages caused in many cases, as well as the well-known “Law of Retribution”, as a means of repairing the damages precisely (Rabinovich-Berkman, 2016, pp. 12-14).¹

The truth is that the Code of Hammurabi contemplates, in the prologue of its laws, the principle of the criminal jurisdiction of the state. This to administer justice to its subjects, with this happening, that the delivery of punishment thus passed to full jurisdiction state, has this punishment a public character.²

Carlos Alberto Macedonio Hernández, Dr., coordinator, member of the National System of Researchers Level I, Legal Research Center, Faculty of Law, Autonomous University of Yucatán, Merida, Mexico.

José Yair Moreno Hernández, student of the Master's degree, lawyer, Accusatory Criminal Procedure Law, Faculty of Law, Autonomous University of Yucatán, Merida, Mexico.

¹ The aforementioned author indicates that it is not really a Code but of jurisprudential decisions that were taken as appropriate.

² Hammurabi Code, Anonymous, Edit. Ramón Llaca y Cía. S. A., Mexico, 1996, p. 68.

The previous paragraphs constitute a form of justice system, which in our country has also developed through history, not only from a social point of view, but through the legal norm, such as the last constitutional reform of 2008, where it went from a retributive criminal justice system to an accusatory one.

Thus, even though the concept of the criminal justice system is configured by the European-Roman-Germanic legal system (Floris Margadant, 1992). In the words of Dr. Serafín Ortiz, our legal system “follows the inertia of legal institutions by the family to which it belongs, but on the other hand receives the ideological and social influence and lifestyle of the United States” (Ortiz Ortiz, 2015, p. 330). This is true by virtue of the fact that we have passed from one justice system to another, but we must also point out that our current system has been influenced by European theories and dogmatics, since more than ever the world is globalized and the law is not the exception.

From a public policy perspective,

the ultimate goal of the Criminal Justice System is to provide effective and efficient access to justice, guaranteeing, protecting and respecting the rights of all persons involved in a criminal process, particularly those of victims and those accused of committing a crime.³

That is the true objective of a criminal justice system, which does not have as its objective only a constitutional reform and the creation of a legislative framework to determine the functions and obligations that must be carried out for its mandatory application. It is required, basically a true sociological dimension that is reflected in its real application, but always for the benefit of society.

Therefore, this study will analyze the paradigmatic change of the criminal justice system in Mexico, but above all, its purpose in the field of social reality, that is, its implementation and effectiveness to achieve justice, respecting from then the human rights of all those involved in the system.

The Criminal Law and Its Guarantee Evolution

Criminal law has been conceived in different ways, going from its beginning through the degree of civilization of the peoples that have implemented it. For Zaffaroni, Alagia, and Slokar (2016),

the use of the expression is equivocal, since it is often used to designate a part of the object of knowledge of criminal law, which is penal law. The imprecision is harmless because it confuses criminal law, which is a discourse of jurists with criminal legislation, which is an act of political power, (p. 3)

consequently criminal law with punitive power, they are a concept that must be separated.

Based on the foregoing, “the projection of criminal law, focuses on the explanation of complex regulations that enable a form of state coercion”, namely, “the punitive power, which is characterized by sanctions different from other branches of law: the miseries” (Zaffaroni et al., 2016, p. 3).

The containment and reduction of punitive power, planned for judicial use by criminal law, Zaffaroni et al. (2016) pointed out:

It drives the progress of the rule of law. There is no pure state of law, this is conceived as one that subjects all inhabitants to the law, and is opposed to the police state, in which all inhabitants are subordinate to the power that

³ Documents “Findings 2017: Follow-up and evaluation of the operation of the criminal justice system in Mexico” is the result of the efforts of the members of México Evalúa, Center for Public Policy Analysis, Mexico, 2018, p. 12.

commands. The principle of the rule of law is attacked, from one extreme, as an ideology, which masks the reality of a power apparatus at the service of the hegemonic class. (p. 5)

With good reason, Zaffaroni points out, quoting Nils Christie,

Punitive power does not resolve conflicts because it leaves one party (the victim) out of its model. In short, the volume of conflicts suspended by a state will be inversely related to its vocation as provider of social peace and therefore, it will be an indicator of its strength as the rule of law.⁴

From the above ideas, we understand, following distinguished criminal lawyers, that the

criminal system is the set of agents who coincide on the criminal issue. Some are exclusively criminal, others participate in the punitive power, but their functions are broader, agencies of ideological reproduction, international organizations that organize programs, and of course, the great propaganda apparatus without which it could not survive, in other words, mass communication agencies. (Zaffaroni, Tenorio, Alagia, & Slokar, 2013, p. 9)

In summary, in the criminal justice system, modern societies contemplate two forms of social control, formal and informal. The first one is criminal law, because it is applied on formalized methods of control, which necessarily requires a whole process, as is the legislative, in the second of the control cases, these derive from the beliefs and family or religious values of society (Ontiveros Alonso, 2018).

In this way, our country, at the beginning of the 20th century, opted for a system of justice for retributive purposes, where the punishment prevails over the integral reparation of the victim or offended by the crime, disobedience to the law matters more than the damage caused by the criminal offense. Could we speak of a true rule of law where the criminal justice system prevails? Was it necessary to change that procedural scheme in which human rights contemplated in various treaties and the American Convention on Human Rights were violated? This criminal process called mixed the violation of human rights to impart retributive justice? We consider that not each process depends on the state model to which we aspire if our perspective was aimed at a true rule of law we would have to bet on a system of protection of the human rights of those who are part of the criminal drama (Ferrajoli, 2005).⁵

Ferrajoli (2005) pointed out that the problem of the procedural truth of a justice system lies, in the differentiation that exists between guaranteeism and authoritarianism in criminal law, therefore, “in an alternative between two different judicial epistemologies: between cognitivism and decisionism, between verification and valuation, between proof and inquisition, between verification and valuation, between reason and will, between truth and power” (p. 45). Then, he is right stating: “If a criminal justice completely ‘with truth’ constitutes a utopia, a criminal justice completely without ‘truth’ amounts to arbitrariness” (Ferrajoli, 2005, p. 45).⁶

⁴ On the concept of “suspension” of the conflict, Nils Christie, will I abolish the penis? Cited by Zaffaroni et al. (2016, p. 3).

⁵ Luigi Ferrajoli points out in the introduction to his work “Law and Reason” that criminal law, even when surrounded by limits and guarantees, always preserves an intrinsic brutality that makes its moral and political legitimacy problematic and uncertain. The penalty, whatever the way it is justified, is in effect a second violence that is added to the crime and that is programmed and carried out by an organized community against an individual.

⁶ Ferrajoli calls procedural decisionism “the non-cognitive but optional nature of the trial and the irrogation of the penalty, which has an intrinsic authoritarian nature, since the trial actually refers more to the authority of the judge than to the empirical verification of the assumptions typical accusatory”, while “cognitivism is a theoretical or normative model of the criminal process of cognition or verification, where the determination of the fact configured by law as a crime has the character of an inductive probative procedure, which excludes evaluations in the most possible and admits only or predominantly, assertions or denials, in fact or in law, of which the truth or procedural falsehood are predicable, since a non-arbitrary criminal justice must be to some extent with truth, based on predominantly criminal trials, cognitive (of facts) and cognitive (of law), subject as such to empirical verification” (pp. 36-45).

For all of the above, in our country, a paradigmatic change in the criminal justice system was necessary, so as not to continue in a mixed criminal process, now called inquisitorial, to move to an accusatory process, which in a certain way determines the protection of rights humans.

Ferrajoli's (2005)⁷ theory of criminal guarantees was the turning point in the change of a justice system in Mexico, which upset the entire approach to criminal prosecution and which forced the different actors of the administration of justice, the public ministry, police, judges, magistrates, etc., to a change of mentality, legal, and procedural, especially because the change led us to go from an inquisitive process to an accusatory one, where the protection of human rights is prioritized.

The Reform of the Penal System in Mexico

The current criminal justice system in Mexico had as its starting point, on June 18, 2008, when the Decree that amended Articles 16, 17, 18, 19, 20, 21, and 22 was published in the *Official Gazette of the Federation*; Sections XXI and XXIII of Article 73; Section VII of Article 115 and Section XIII of Section B of Article 123, all of the Political Constitution of the United Mexican States. Decree in whose transitory articles the maximum term of eight years was established for its establishment throughout the national territory, which in the end, allowed that today. We have a new model of criminal justice, and of which the reflections made in this work.

Thus, our nation went from an inquisitive justice model to one of an accusatory and oral nature, based on the principles of publicity, contradiction, continuity, concentration, and immediacy. Although they can be deduced from the comprehensive analysis of the amended constitutional text, they are expressly established in Article 20 of the Magna Carta, which makes said normative device the nucleus of the new current procedural model, by defining its essence and establish the criteria for its legislative development (Natarén Nandayapa & Caballero Juárez, 2013).

Regarding these principles, the criminal process is developed through hearings based on these new rules of the game (Official Gazette of the Federation, 2014a).⁸ Thus, by publicity, we understand the basic rule that any hearing held before the control judge, on the occasion of a criminal investigation, regardless of the initiation of the process or not, must be carried out publicly, thereby making the way in which it is taught transparent justice in Mexico.

By Immediation, we understand the guarantee that said hearings must be witnessed and presided over directly by the jurisdictional body that hears the matter, as well as by the persons with the quality of procedural subjects who must intervene in them. Contradiction implies knowing, confronting, and challenging the evidence, petitions, and arguments presented by the opposing party, obliging the judge in any case to privilege the right of the parties to reply; situation endows this procedure with an adversarial essence.

And finally, by concentration and continuity, we have two principles that seek to avoid delay in the resolution of cases in criminal matters; because, while the first one orders the exhaustion of all procedural acts in

⁷ Among the various meanings of the expression guaranteeism, Ferrajoli is interested in references to: I—the Rule of Law and its levels of delegitimization; II—to the theory of law and legal criticism, and III—to the philosophy of law and the criticism of politics. That even “when they refer to the elements of a criminal theory, it also applies to other sectors of the legal system, so it is possible to elaborate for them, with reference to other fundamental rights and other techniques or criteria of legitimation, models of justice and models guarantors of the legality of civil, administrative law, etc.”.

⁸ It should be noted that these principles, although they are not the only ones, are the main ones by constitutional order; for an appreciation of the legal definition of these principles, see Official Gazette of the Federation (2014a, Articles 5 to 14).

a single hearing or in the least possible number, the second implies that the time between one hearing and another is less, ensuring the constant succession of these throughout the entire criminal process.

Naturally, these principles have exceptions that were landed in the adjective rule; However, what is relevant about these new rules of the game is their presence as a general rule of criminal procedure, differentiating it diametrically from its predecessor system, where the task of the judge could be delegated to the secretary of agreements, or even to a judicial officer or technician; where legal weapons were unequal; where the procedural acts could take months or even years, returning to the process materially at the request of the party; among other negative aspects.

On the occasion of these reforms, on March 5, 2014, the National Code of Criminal Procedures was published, an adjective law that, as its name indicates, defined the issues that encompass criminal procedure, such as its phases, consisting mainly of the investigation, intermediate and trial; the action of the Public Ministry both in the investigation stage prior to the intervention of the control judge, and once the process has begun; the scope of the intervention of the judicial body in the investigation and during the formally initiated process; the existence of precautionary measures other than preventive detention, making this the *ultima ratio*; the alternate output figures of the process; the abbreviated procedure; rules on the test in terms of its legality, admission and relief; the development of the trial; opportunity and scope of resources; special procedures; among others.

This Code currently has 490 articles and is divided into two books, where the first one deals with general provisions; and in the second, the rules of procedure. However, the particular note of this system that makes the difference with its predecessor is that relating to the role played by the intervening procedural parties. Now, the authority in charge exclusively in the investigation of crimes is the Public Ministry, thus eliminating the image of the inquisitive judge who continued investigating for the resolution of a case, to make him a guarantor of due process and the fundamental rights of victims and defendants.

Thus, in the words of Carla Pratt (2016):

This represents a huge change compared to the inquisitive or mixed court systems, since nowadays the judges will not be able to influence the evidence, in relation to requesting the production of evidence, and should not intervene in direct requests for information. This guarantees respect for the activities of the parties and therefore impartiality. (p. 2)

In this sense, the same author emphasizes that this system is characterized by the division of functions, being that, on the one hand, the accuser is the one who pursues and exercises the requesting power; on the other hand, the accused can resist the accusation, exercising his right to defend himself; and finally, the court has the power to decide in its hands (Pratt, 2016).

Now, regardless of the change produced within the ordinary criminal process, the constitutional reform in criminal justice matters included the existence of alternative dispute resolution mechanisms, which will ensure reparation of the damage in favor of the victims.

Derived from the implementation of alternative media, landed in Article 17 of the federal constitution, on December 29, 2014, the National Law of Alternative Mechanisms for the Resolution of Disputes in Criminal Matters was published in the *Official Gazette of the Federation*, norm in which the figures of mediation, conciliation, and restorative board was established.

In this context, there is the possibility that the criminal process ends by means other than judicial resolution. This implies the constitutionalization of a cultural change, together with the repressive position. There will be the alternative justice route, which strengthens the position of the victim and will give preference to the search for a solution to the conflict (Natarén Nandayapa & Caballero Juárez, 2013).

With what has been said so far, we can see that the Criminal Reform of 2008 established two forms of justice as far as criminal law is concerned. The first is related to the punitive criminal justice system, where although criminal responsibility has the same penalties and traditional security measures, a guarantee process of the fundamental rights of the victim and the accused is established. The balance of arms is balanced between the procedural parties, and an objective and impartial decision is sought by the judge. While the second would be the one related to restorative justice, the purpose of which is not to punish the commission of a crime, but to rebuild the social fabric damaged as a result of an unlawful act, through the repair of the damage and the construction of a good relationship between the parties in conflict.

Thus, restorative justice is a way of interpreting justice and the ways to reach it, which places the victim in the right place as the protagonist of the conflict caused and recognizes that not only she suffered an impairment in her interests, but also that the conflict could also transcend the community. Likewise, it seeks that the perpetrator of the harmful conduct assumes responsibility for the damage that he caused, giving him the opportunity to repair the adverse consequences (Méendez Romero & Hernández Jiménez, 2020).

The Enforcement of the Mexican Criminal Justice System

Landed to reality, the criminal justice system materializes in a procedure that begins with the complaint or complaint made by anyone before the public prosecutor⁹. From this moment, this law enforcement body can make various determinations, whether it decides to integrate the investigation, or to conclude it by not exercising the criminal action, temporarily shelving the investigation, granting a criterion of opportunity in favor of the investigated person, or even simply refraining from investigating the case because it is obviously treated, of a situation that does not require persecution by the state.

In case of choosing to carry out an investigation and that the results of this allow to reasonably establish the existence of a crime, as well as the probable intervention of a certain person in the commission of a legally-criminally relevant act, the Public Ministry must request the opening of the initial hearing in which the investigated person will be informed of the investigation, specifying the facts attributed to him, the preliminary legal classification of the fact, the degree of intervention attributed (authorship, participation), the identity of the person who indicated it in the commission of the fact, and in general, any information that allows the accused and his defender, to be clear about the reason why the Public Ministry has requested the beginning of the process.¹⁰

The part of the process indicated in the previous paragraph has only one variant, which arises when the investigated person is arrested for committing the crime and being discovered in flagrante delicto, or, in urgent cases that the procedural law provides; in which case, prior to the formulation of the accusation, it is necessary to

⁹ This with the exception of the case of the exercise of criminal action by private individual, whose development is foreseen from 426 to 432 of the National Code of Criminal Procedures.

¹⁰ Even though there is debate regarding the moment where the process begins with the exercise of criminal action, it is important to mention that the adjective law indicates that the process begins with the initial hearing, a moment located within the investigation stage, as established by the Numeral 211 of the National Code of Criminal Procedures.

resolve the legality of the detention and the acts carried out by the intervening authorities from said detention to the availability of the investigated before the control judge.

After this, within the same initial hearing, the legal situation of the accused is resolved, the precautionary measures to which the accused must be submitted during the duration of the process are set, and where appropriate, a deadline is established for the closing of the proceedings, the complementary investigation, so that the parties have time to gather more information, prior to the intermediate stage or preparation for trial.

Once the complementary investigation is closed, the Public Ministry can present the accusation, and request the suspension of the process or the dismissal of the case. It is common for the social representation to formulate an accusation against the accused, a situation that motivates the evidentiary discovery of the elements available to the Public Ministry, and where appropriate the victim with his legal adviser, to support his accusation, and overshadows with the celebration of the intermediate audience.

In said hearing, the means of proof that the parties have to go to trial are offered, and where appropriate, excluded; likewise, evidentiary agreements are made. In such a way that the parties, with the supervision of the control judge, determine the matter of the *Litis*, excluding from it everything that is not subject to debate, and allow them to concentrate the analysis on the merits of the matter.

Having done the above, we proceed with the third and last stages of the process, the oral trial, in which the parties unburden the evidence offered in the previous stage, question and confront those offered by their adversary, and present their theory of the case. Before the trial court who, having listened to the parties and analyzed the elements of conviction expressed at the hearing, under the principles of immediacy and contradiction, resolves the trial by means of an acquittal or conviction, thus concluding the criminal process properly established, unless with the challenge of said ruling results in the reinstatement of the process; and regardless of the stage of execution of the sentence that although it is part of the criminal procedure, it is not part of the process.

Having broadly established the context in which the ordinary criminal process takes place, it is important to note that it has special methods that aim to repair the damage, conclude the process quickly and efficiently, as well as the resolution of the problem without the need for criminal responsibility to result in the deprivation of liberty of a specific person. We are therefore talking about alternative exits or early forms of termination of the criminal process.

First Alternate Exit: Reparatory Agreement

This figure consists, as its name indicates, in an agreement made between the victim and the accused, which requires authorization by the Public Ministry or the control judge, depending on whether the criminal process has started or not (that is, if the initial hearing has been requested). This agreement can be concluded from the presentation of the complaint or complaint, until the issuance of the order to open the trial, which means that this alternate exit can be accessed throughout the time that the investigation stage lasts, both initial and complementary, and the intermediate.

The reparatory agreement proceeds in the case of crimes that are pursued by complaint or equivalent requirement, as well as those where the pardon of the offended party is appropriate; as well as in crimes of negligent commission and in those of a patrimonial nature, as long as no violence is exercised against the aggrieved party.

Second Alternate Exit: Conditional Suspension of the Process

From the moment that the order of binding to the process is issued, until before the issuance of the order to open the trial, the Public Ministry or the accused can present before the control judge, a plan to repair the damage in favor of the victim, as well as the proposal of submission by the accused to various conditions that guarantee the effective protection of the rights of the victim and that, if complied with, will result in the termination of the criminal action. We are therefore talking about the second alternative exit, the conditional suspension of the process.

Said figure requires for its use that the crime for which a certain person has been linked to the process does not exceed an arithmetic mean penalty of five years; that there is no founded opposition on the part of the victim; and that two years have elapsed since the fulfillment, or five since the non-fulfillment, of a conditional suspension to process previously granted in his favor.

As said at the beginning, for the application of the conditional suspension of the process, it is required that the accused submit to various conditions provided in Article 195 of the National Code of Criminal Procedures, which are similar to precautionary measures, with the exception not to foresee preventive detention as one of those measures.

Early Termination Form: Abbreviated Procedure

Finally, the National Code of Criminal Procedures provides for the early termination of the process through the abbreviated procedure. The purpose of this is to resolve the case through the acceptance, by the accused, of the facts for which he is accused by the Public Ministry.

For its origin, the abbreviated procedure requires that it be requested by the Public Ministry, who must previously file an accusation, exposing the evidence that supports it, the attributed facts, legal qualification, degree of intervention, penalties and amount of compensation for the damage. In addition, as in the case of the conditional suspension of proceedings, it is required that the victim does not present a well-founded opposition to it. And finally, it is necessary on the part of the defendant: that they know their right to have an oral trial and the scope of the abbreviated procedure; to waive the oral trial; that it consents to the application of the abbreviated procedure; that he admits his responsibility for the crime he is charged with; and that he agrees to be sentenced with the means of conviction set forth by the Public Ministry.

That said, even when it is an acceptance of responsibility by the defendant in the commission of the act, the benefit of this procedure is the possibility of requesting a reduced penalty of up to one third or one half of the minimum penalty that originally corresponds, in the case of malicious crimes; and from half to two thirds of the minimum penalty in the case of culpable crimes. This has an impact on the greater feasibility of accessing pre-release benefits or non-custodial sanctions, provided for in the National Law on Criminal Enforcement.

General Reflection of Alternate and Anticipated Departures

Exposed, briefly, the alternate exits and the form of early termination of the criminal process, it can be observed a greater concern for repairing the damage caused by the crime, rather than for imprisoning people for the commission of crimes. Well, both in the reparatory agreement, as in the conditional suspension of the process and the abbreviated procedure, it is primarily required that the reparation of the victim's damage be guaranteed, and although in the case of the last two figures listed, the petition is required of the Public Ministry, no less certain

is that the opposition founded by the victim may cause that said alternate exit or early termination is not carried out. It is then that the transition from a punitive justice system to one of restorative justice can be observed.

Reflections About the Enforcement of the Justice System in Mexico

It could be said that the Criminal Reform of 2008 resulted in the material establishment of a procedure whose purpose is to combat crime through a process that respects human rights; and that in turn mitigates historical problems, such as overcrowding in prisons, balance of legal weapons with respect to the Public Ministry and defenders, as well as the low resolution of inquiries by Mexican law enforcement agencies, among others. However, even today, 12 years after the constitutional reform, and four years after the establishment of the criminal, accusatory, and oral justice system throughout Mexico, there are obstacles that have not been overcome for the consolidation of the system.

In this regard, Alicia Hernández de Gante (2017) identified various problems that are still latent in our country and that have not allowed her to achieve the objectives that motivated the 2008 Criminal Reform, of which the following stand out:

Citizens' Perception of the Police

Well, this institution functions as the first link between citizens and the justice system, since it fulfills the important function of being the first respondent in the process, however, citizens perceive it as a public institution with the lowest levels of trust, and from Public security is the weakest link in the penal system.

Early Termination of the Conflict in Serious Crimes

Situation that has been the object of criticism, such as that carried out by the Deputy of San Luis Potosí, Oscar Carlos Vera Fábregat, who in 2017, pointed out that the new Accusatory Penal System not only generates impunity but also more crime, because the ultimate goal is that the alleged offenders go to jail and prioritize conciliation and reparations for damage, although these are crimes that seriously affect the assets of the victims (Vera Fábregat, 2017).

Preventive Prison

Precautionary measure that although, at first, it was classified as an extreme precautionary measure that could only be imposed in specific cases given its negative impact on the enjoyment of fundamental rights; it continues to be routinely applied in criminal proceedings. Situation that was aggravated by the reform of Article 19 of the federal constitution, published on April 12, 2019, by increasing the catalog of crimes that provide for their informal application.

In this regard, we consider other operational issues that to date have not been overcome by the operating institutions of the criminal justice system:

Challenges in Making Available

Even today, there are cases in which police detain allegedly involved in criminal acts for excessive periods of time, without justification, which in many cases make the detention illegal, with the respective negative probative consequences against the investigation carried out by the Public Ministry.

Investigative Police and Their Relationship With the Public Ministry

Even though the federal constitution and the National Code of Criminal Procedures indicate that the Public

Ministry will be in charge of directing the investigation and that the police will be an auxiliary authority of the Social Representation in said investigations, the truth is that as of the day of today this extreme is not fully guaranteed. Well, we have cases, like the one in Yucatán, where the Ministry of Public Security has under its command all the state police, also coordinating the municipal ones since 2016, the year in which the Ministerial Police that the Attorney General's Office had disappeared, that state, and became part of the State Public Security Secretariat, under the name of the State Investigation Police (Source, 2016). The foregoing causes an unnecessary bureaucratization in the operational assistance tasks that the police agencies must provide to the Public Ministry, to the detriment of that direction that the Mexican prosecutor's offices must have.

The Truth in the Criminal Process

Even though the new criminal justice system appeared as a method that would allow us to reach the historical truth behind criminal proceedings, the truth is that as of today, this is a pending goal to be achieved. Well, both judges and agents of the Public Ministry continue to depend on testimonial evidence, mainly, to support their theories of the case. Likewise, the lack of training on the part of experts has prevented the expert evidence, with the accuracy that characterizes science in contrast to the mere statements of a witness, from being erected as the Reyna evidence of the oral trial. The foregoing causes a tendency towards the construction of the factual picture through the information provided by witnesses in a scattered manner, instead of being elaborated by means of expert analyzes that scientifically conclude the fact that occurred in a given case.

Nature of the Public Ministry

Perhaps the most important issue for the consolidation of prosecutors and attorneys' offices as true authorities aimed at the administration of justice in any case is their autonomy. Well, although the Office of the Attorney General of the Republic currently enjoys autonomy with respect to the executive branch, this does not happen in various entities of the republic, where state prosecutors or attorneys' offices are integrated into the centralized public administration, which leaves them vulnerable to interests politicians or of any kind of high-ranking public servants that may hinder the development of their research.

Therefore, it is not denied that the paradigm shift in the way justice is done in Mexico, since the 2008 reform, has brought favorable results both for the victim who has a greater participation in the process and who is guaranteed in any case; the reparation of the damage, as for the accused, who is recognized as having a greater participation in the criminal process and who does not necessarily have to endure a long and tiring process, or the precautionary measure of preventive detention. However, at the operational level, the system is far from fully functioning, which is why a better analysis is required by the government, regarding the weaknesses of the operating institutions of the accusatory and oral criminal justice system that guarantees the respect of the parties in conflict, as well as the due process that must prevail in the Mexican rule of law.

Conclusions

The criminal justice system in Mexico after it was established in the 2008 constitutional reform, and that in its transitory articles established eight years for the implementation of the accusatory criminal process, leaving behind a mixed process, but now called inquisitorial, having as a consequence that each federative entity of the country, promulgate its secondary laws to implement this guarantee process, in which the human rights of the

people involved in the process are respected, together with the fact of trying to resolve the process through other alternative solutions that would prevent that the process came to an end.

The truth is that this minimum criminal law aims to achieve prompt and expeditious justice, a more humanitarian process, so that the Mexican State, despite the provision that each federative entity establish its own regulations, finally determined a National Code of Criminal Procedures, as well as various federal laws aimed at compliance with the accusatory criminal process. However, these legislative reforms cannot be said to have totally changed the citizen's conscience, especially that in our country unsolved crimes continue to be committed, the justice proposed benefits the accused and the victims or offended by the crime, they continue with a re-victimization, which leads us to think that the application of this new criminal justice system should be reinforced with the police institutions, with a greater investment to combat crime, have a citizen awareness, implementation of public policies aimed at preventing crime, culture of legality and peace for all citizens, but above all an effective criminal policy in the application of justice regardless of changes of government, because otherwise, our country will apparently continue to continue with legislation at the forefront, but that is not enough in its sociological application and it must be understood that the law is not only the norm, but also its effectiveness for the benefit of society.

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