

# Mexico

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## 1. LegalTech used in Mexico

Law firms in Mexico rarely rely on advanced LegalTech. According to "Thomson Reuters 2018 Poll Opinion on Tech in Law in Mexico", 84 % of Mexican lawyers utilize some basic form of technological aid to perform legal work. However, the usage and knowledge of artificial intelligence (AI) are relatively low, and current resources are used mainly in administration and billing matters. The same poll concluded that Mexican lawyers are generally non-familiar with LegalTech and perceive its advance as rather slow. Nonetheless, singular exceptions may be pointed out,<sup>1</sup> in what must be considered a promissory future<sup>2</sup>.

Arbitration in Mexico has yet to incorporate LegalTech. However, regarding mediation, a significant project exists related to consumers' rights. In 2008, the Consumer Protection Federal Agency (Procuraduría Federal del Consumidor- PROFECO) initiated the "Concilianet" project. Concilianet is an online dispute resolution (ODR) mechanism that allows a simplified version of the registration and filing of complaints relative to a breach of warranty, breach of contract, or refusal to surrender<sup>3</sup> not restrict-

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- 1 For example, Advosoft (software which organizes the workload of Law Firms and additionally manages Court Dates), Trato (a system that manages and controls electronic contracts securely through Blockchain technology), or Contactabogado (a system that generates automatic contacts between potential clients and lawyers through offer and demand in an automatized system). Noteworthy is also "Max", the virtual lawyer of the Fractal Abogados Law Firm (which offers automatized legal advisory through a Facebook bot chat capable of calculating precise compensations in Labor Law cases). Finally, worth mentioning is also the GEBD Legal-Tech Firm, which offers e-consulting and digital administration of cases and CIAJ (developing legal technology regarding access to justice), *inter alia*.
  - 2 See the Mexican report on LegalTech by Legaltechies: Legaltechies, 'El estado de la Legaltech en... México' (legaltechies.ec, 25 November 2020) <<https://bit.ly/371wbZk>> accessed 10 February 2021.
  - 3 Louis Del Duca, 'Facilitating expansion of Cross-Border E-Commerce- Developing a Global Online Dispute Resolution System' (2012) 1, 1 Penn State Journal of Law & International Affairs 66.

ed to online contracts or services. Concilianet does not allow PROFECO to determine compensation coercively but instead relies on the parties' agreement. However, the lack of a mediation agreement does not ban consumers from bringing actions to Court if the parties disagree on the remedy or want to pursue damage claims (which are inadmissible under Concilianet). The ODR managed to reduce the resolution time per complaint from 73 days to 22<sup>4</sup> while maintaining a high percentage of positive outcomes<sup>5</sup>.

Despite recent criticism,<sup>6</sup> the Federal Judiciary rarely employs Legal-Tech in automatized procedures (actual legal workers perform most bureaucratic procedures such as the processing and serving of court notices, including hearing notices, as well as undertaking agenda management and the publishing of rulings and procedural decisions). The standard "digital" resources remain the "SISE" electronic system which allows the tracking of case files, procedural history and documents as well as the compilation of binding precedents (Semana Judicial de la Federación), and a relatively complex Search engine (Buscador Jurídico, employing AI in data search algorithms). Also worth mentioning are the auxiliary search engines of "Consulta Temática" and "Módulo de informes". Besides the abovementioned tools, there is extensive use of electronic case files, the possibility of filing documents using electronic signatures, and a recently introduced automatized website for the management and generation of hearings (System "Agenda OJ"), which generates a QR code correlated to the Court hearings. Some of these features will be analyzed further in this report.

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4 Gabriela Szlak, 'Online Dispute Resolution in Latin America: Challenges and Opportunities', in Mohamed Abdel Wahab and others (eds) *Online dispute resolution: Theory and Practice* (Eleven International Publishing, 2012) 554.

5 For example, in 2019, the percentage of favorable conciliations was 84.73 %, over the 7,780 cases processed. See the Consumer Protection Federal Agency, Procuraduría Federal del Consumidor, 'Informe Anual de la Procuraduría Federal del Consumidor 2019' (PROFECO, 2019) 22.

6 Santiago Oñate and Martín Haissiner, 'Tribunales digitales y jueces máquina' (2020) *El mundo del abogado* 22.

### 2. *Blockchain and DLT in government systems.*

Currently, neither the Judiciary nor any other state bodies employ Blockchain in Mexico. However, recently a legislative initiative<sup>7</sup> proposed a transition to full electronic voting through Blockchain; thus, a future discussion may arise on this topic. Blockchain is sometimes used by private companies.

### 3. *Electronic communication with the Court.*

Mexico is a federal country. The 32 states are entitled to issue Civil, Administrative, and Criminal legislation. Although recent centralization amendments to the Constitution have transferred to the federation legislative competences to issue unifying legislation regarding Civil and Criminal law<sup>8</sup>, the states are still in charge of applying that legislation if the case falls within their jurisdiction. This fragmentation implies that the federal entities' situation mostly depends on implementing programs by their judicial powers (administered by Judicial Councils) while the federal procedures hold a separate and autonomous status. Mexican "Amparo" is a remedy for protecting constitutional rights, which allows the Federal Judiciary to review in practice both local and federal ordinary judicial decisions<sup>9</sup>. Hence, this report will center mostly on the Federal Judiciary.

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7 Deputy Adriana Medina, "Iniciativa con Proyecto de Decreto que reforma diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos y la Ley General de Instituciones y Procedimientos Electorales en Materia Electoral", in *Gaceta LXIV/ISR-25/97621*. Available at: <<https://bit.ly/3pjngsF>>. accessed 24 July 2018. Mexican Electoral Law seems particularly prone to considering Blockchain in certain processes. For a proposal regarding the financial audit of political parties see: Gabriela Valles, 'Financiamiento Público de los Partidos Políticos en México: tópicos controversiales y propuesta de alternativa tecnológica para su fiscalización', (2018) 27, 2 *Díkaion* 303-305.

8 The National Code of Criminal Procedures was published on 5/03/2014 at the DOF. In contrast, even though a constitutional amendment (DOF 15/09/2017) established a federal constitutional competence to regulate a common National Civil and Family Procedural Code, to date such a Code has not been issued. Therefore, Civil Procedure in the states is still governed by local legislation.

9 Recently I provided an introductory account of our complex Amparo procedure. See. Mauro Arturo Rivera, 'An introduction to Amparo Theory' (2020) 12, 2 *Krytyka Prawa* 190-208.

Amparo was the first procedure to employ electronic communications. In 2013, the Amparo Act (DOF 02/04/2013) introduced the possibility of employing electronic communications with the Courts in Amparo cases (District Courts, Unitary Courts, Circuit Courts, and the Mexican Supreme Court).

Article 3 of the Amparo Act, as inherited from the 1936 Amparo Act, maintained the traditional written nature of the Amparo trial (the procedure lacks formal oral hearings). However, the second paragraph openly stated that the plaintiff might discretionally choose whether to file documents physically or electronically. Article 3 issued a relatively extensive regulation of such communications. In the first place, it stated that parties must file all digital communications employing an electronic signature, designed by the Federal Council of the Judiciary<sup>10</sup>. Therefore, the law required an electronic signature *sine qua non* regarding the digital filing of documents, with the sole exception of a *numerus clausus* catalog of cases<sup>11</sup>. Ordinary federal procedures followed the Amparo legislation by an amendment to article 81.XVIII of the Federal Judiciary Act, granting competence to the Federal Judicial Council to establish digital judicial files and electronic signature usage in these procedures (homologating them somewhat to the possibilities in Amparo).

Notwithstanding, the law upheld the obligation for the Courts to hold physical files matching the digital archives. Only the involved parties may access physical case files. In contrast, digital files are openly accessible to everyone through an electronic system called "SISE" (Sistema Integral de Seguimiento de Expedientes), which offers unlimited access to any rulings or procedural decisions (with name suppression). The Amparo Act equally

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10 Jaime Cardenas, 'La nueva Ley de Amparo', *Cuestiones Constitucionales*'(2013) 29 *Cuestiones Constitucionales*. *Revista Mexicana de Derecho Constitucional* 389.

11 For example, cases regarding situations which may endanger the plaintiff's life or affect personal freedom outside the procedure, among others, are exempt from the electronic signature. This catalog of situations corresponds to what the doctrine has called the hypotheses of "Universal Representation", that is, cases in which any person may file an Amparo in the name of another person given the severe nature of the acts. See: Mauro Arturo Rivera, 'Las partes en el juicio de amparo' in Juan González and others (eds) *Teoría y Práctica del Juicio de Amparo*, (Flores Editor, 2018) p. 156, Supreme Court of Mexico City. Besides this case, any plea without an electronic signature must be dismissed, as the Supreme Court stated recently in the CT 45/2018 and in the legally binding precedent P./J. 8/2019 (10a.), titled: "Demanda de amparo indirecto presentada a través del portal de servicios en línea del poder judicial de la federación. Procede desecharla de plano cuando carece de la firma electronica del quejoso" (Digital Registry 2019715).

regulated the electronic service of court documents, although it expressly made such a service optative and binds this possibility only to those parties possessing an electronic signature. Under the 21/2020 Regulation of the Federal Judicial Council, the Courts serve documents regarding future Court hearings or procedural obligations, providing them with a QR code which contains the relevant information and access permits to the Court.

In 2013 the Federal Judiciary issued the 1/2013 Joint Regulation by the Supreme Court, the Electoral Court of the Federal Judiciary, and the Judicial Council. The regulation stipulated a procedure to obtain an electronic signature for natural persons only. Legal persons may not have an electronic signature, and their representatives must open accounts as natural persons and only then file documents in the representation of the legal person. The newly created electronic signature (called "FIREL") established a distinctive procedure for its access comprising electronic registration and a verification consisting of several steps. Nevertheless, the regulation (article 5) established the possibility of employing other "digital electronic signatures" issued by an official state body if the Federal Judiciary has concluded a coordination agreement of the recognition of such digital certifications (although the apparent rigidity of the need of such agreements was the subject of analysis by the Supreme Court in the CT 220/2017)<sup>12</sup>. The joint regulation created a full special unit at the Federal Judiciary solely devoted to the issuing and administration of the electronic signature ("Unidad para el Control de Certificación de Firmas"). The 1/2015 Joint Regulation substituted the previous 1/2013 Joint Regulation and clarified the hypotheses in which the parties may employ the electronic signature while adhering to the original concept (according to the Supreme Court itself in the CT 45/2018).

Filing of evidence is also possible through digital means. The validity of evidence is assessed by the rules established in the Joint Agreement 1/2013 (principally in article 12), which classifies the types of documents whose validity is presupposed in virtue of their digital certificates (mainly a distinction between "public" and "private" documents). The Supreme Court (for example, AR 307/2020) has stated that physical documents may

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12 In the CT 220/2017, the Second Chamber of the Supreme Court established a binding precedent for all judicial bodies (bar the Electoral Court and the Supreme Court itself). The Court stated that in the case of Amparo against final judicial rulings (Amparo Directo), if the authority who issued the appealed act (for example, the judicial power of a state) recognized such an electronic signature, the lack of an institutional agreement was irrelevant to grant that electronic signature full validity in the legal process before the Federal Judiciary).

only be exceptionally required when the authenticity of such documents is doubted by the parties and the judge. All digital trial services are detailed on a special website created by the Federal Judiciary<sup>13</sup> with online support. Parties may file documents in pdf, .doc or .docx extensions.

#### 4. Online court proceedings.

Mexico currently employs online Court proceedings<sup>14</sup>. Given the fact that "Amparo" is a predominantly written procedure, as from the introduction of the electronic signature (FIREL) in the 2013 Amparo Act, the full procedure may be performed online by filing the documents and evidence as digital attachments (as explained above). The Federal Judiciary was already holding fully functional trials seven years before the 2020 pandemic. Rulings and procedural decisions are produced, updated, and served directly through the website in the case of online proceedings. Oral hearings concerning argumentation by the parties are neither forbidden nor expressly regulated. Therefore, Judges may discretionally grant private oral hearings through platforms such as Zoom.

Other procedures concerning the Federal Judiciary may have a rather smooth transition to online regulation in 2020, given the Amparo trial experience. However, criminal procedures have posed some concerns because of their oral and accusatorial nature<sup>15</sup>. Criminal cases currently employ Cisco or "Telmex" software for hearings. However, prisons often lack the type of internet connection or spaces required to perform a hearing properly (a substantial number of processes involve preventive prison). The lack of infrastructure in prisons led to the paradoxical fact that audiences are often undertaken with the accused's physical presence in the Courtroom while the Judge, Prosecutor, attorneys, and remaining parties attend the audience remotely.

Even though, initially, online proceedings pertained to Amparo, given the pandemic, the Supreme Court issued the 10/2020 regulation, establish-

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13 <<https://www.serviciosonlinea.pjf.gob.mx/juicioenlinea/juicioenlinea>> accessed 12 February 2021.

14 *In toto*, is well illustrated in the following report: Arturo Ramos, (coord.), 'Observatorio: Avances de Justicia Abierta en Línea en México 2020' (Escuela Libre de Derecho, 2020) 41-46.

15 Campos analyzed some of this problems: Jorge Campos, 'La justicia penal en tiempos del Covid-19. Los retos de las videoconferencias'(2020) VI, 6 Paréntesis legal.

ing online procedures of conflicts of competences and abstract normative control, thus fully transitioning to online proceedings in its three main competences. The first half of 2020 featured a generalized suspension of procedures in Mexico due to the pandemic, with a transitory partial return of certain procedures in the second half of the said year. Depending on the epidemiological situation, some judicial circuits returned to suspension in 2021, while the ones functioning do so mostly by resolving only digitally filed procedures or procedures with digitalized case files.

Traditionally in Mexico, judicial deliberations must be public (article 96 of the Constitution). Even prior to the pandemic, the Judicial TV Channel was already transmitting the Supreme Court's sessions (both in full composition and in chambers) and the Electoral Court's sessions. In 2020 the Supreme Court issued the 4/2020, 5/2020, and 6/2020 Regulations, establishing binding guidelines in relation to Zoom deliberating sessions. Such regulations stipulated safety measures and protocols concerning potential internet issues. The sessions are transmitted simultaneously on the Judicial Channel and Youtube. The Electoral Court of the Federal Judiciary<sup>16</sup> and the Circuit Courts<sup>17</sup> followed up the mechanics of remote sessions.

The Federal Judiciary does not allow Judges or legal clerks to perform official work or hearings on private computers. Usually, every judicial functionary is assigned a working laptop, which is mandatory to perform remote work. Only an official laptop may activate the internal informatics systems and databases of the Federal Judiciary (a Judge or Law Clerk would not be capable of accessing any files or legal documents if not in possession of an official laptop with the updated permits). The Federal Judiciary employs a VPN system that provides an encrypted connection to the judicial network (Commonly through "Global Protect").

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- 16 Regulation 4/2020, "Acuerdo general de la Sala Superior del Tribunal Electoral del Poder Judicial de la Federación Número 4/2020, por el que se emiten los lineamientos aplicables para la resolución de los medios de impugnación a través del sistema de videoconferencias", (DOF 22/04/2020).
- 17 Regulation 12/2020, "Acuerdo General del Pleno del Consejo de la Judicatura Federal, que regula la integración y trámite de expediente electrónico y el uso de videoconferencias en todos los asuntos competencia de los órganos jurisdiccionales a cargo del propio Consejo", (DOF 12/06/2020).

5. *AI in the justice system.*

AI is not employed in the judicial system for decision-making. However, the Supreme Court recently (2019<sup>18</sup>) created a unit dedicated to legal knowledge administration (Unidad General de Administración del Conocimiento Jurídico). Among its functions, the Unit must implement open government policies concerning the Supreme Court, develop systems of data management, and propose appropriate tools for the use of technology to strengthen the justice system (article 3 of the XIII/2019 Regulation).

The Unit developed a search tool ("Buscador Jurídico") that relies on artificial intelligence algorithms to search for information in a matrix that combines all the databases available to the Federal Judiciary (rulings, decisions, precedents, dissenting opinions, legal doctrine). The system can analyze legal text (such as a plaintiff's argument) and suggest applicable precedents to the argument or binding case law regarding the legal topic described. Currently, the Federal Judiciary is working on improving the "Buscador Jurídico" to enable searches to comprehend even Zoom oral hearings and Zoom public deliberations by the Court.

6. *Future plans and challenges.*

The challenges for the future are clear. The Federal Judiciary must make a full transition to online procedures as this would enable addressing the backlog of cases, especially under the current circumstances in which a return to normality seems rather a distant possibility. Amparo's electronic procedure was designed before the pandemic, allowing for a careful configuration. However, the Federal Judiciary took the remaining measures in direct reaction to the pandemic through administrative regulation of the Supreme Court of the Council of the Judiciary. Therefore, in front of the legal system lies the challenge of creating a further comprehensive regulation that stays ahead of procedural needs and one which is not a mere reaction to the complex circumstances of 2020-2021. Despite a

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18 See the General Regulation XIII/2019, "Acuerdo General de Administración número XIII/2019 del Presidente de la Suprema Corte de Justicia de la Nación, de doce de noviembre de dos mil diecinueve, por el que se establece la denominación de la Dirección General de Justicia TV Canal del Poder Judicial de la Federación y de la Dirección General de Derechos Humanos y se crea la Unidad General de Administración del Conocimiento Jurídico" (DOF 21/11/2019).



few states having implemented similar measures even before the Federal Judiciary<sup>19</sup>, local justice must also notably increase its efforts.

In summary, the success of online procedures lies in the transition from "digitalizing" the existing trials to creating unique online procedures with their own specifications and distinctive dynamics. Further challenges lie ahead in terms of extending the usage of LegalTech to process, analyze and locate legal precedents (a challenge in which the brand new "Unidad General del Conocimiento Jurídico" might play a key role). The 2021 constitutional amendment introduced a complex new system of binding legal precedents, and therefore developing the proper technological tools to be able to track, identify and analyze thousands of rulings and legal precedents is paramount to its functioning.

Furthermore, it is worth noting that most technological developments have centered on administration tasks and not on decision-making tools: a clear opportunity area. In the legal market, the consolidation of a solid LegalTech ecosystem may happen in the foreseeable future, despite resistance from traditional lawyers. Finally, 2021-2023 may feature legislative discussions on the potential usage of Blockchain by governmental bodies.

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19 A notable case is Nuevo León. See García Myrna, 'Juzgado sin papel, un paso más de la justicia electrónica' (2018) 12, 41 *Revista Ius*133-154.

