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The Unconstitutionality of Article 156 of the Constitution of Tamaulipas

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Abstract

This research aims to highlight the case of the reform of Article 156 of the Political Constitution of the State of Tamaulipas, which contradicts the Federal Pact enshrined in the Political Constitution of the United Mexican States, as it fails to consider representativeness—namely, the exercise of sovereignty—in the order of appointment of a provisional Governor. This omission constitutes a serious constitutional breach, as the Senate of the Republic declares that, in the case of the dissolution of state powers, the provisions of Article 76, Section V, of the Federal Constitution must be followed. After analyzing constitutional reforms, their evolution, and their implications for the country's political and democratic representation, it is concluded that the reform of Article 156 is unconstitutional for failing to adhere to the established order in the appointment of the state Governor.

Keywords

Federative Entity, Representativeness, Sovereignty, Disappearance of Powers, Unconstitutional, Constitution

1. Introduction

The state of Tamaulipas is one of the 32 states of the Mexican Federation, located as follows: it borders to the north with the state of Nuevo León and the United States of America; to the east with the United States of America and the Gulf of Mexico; to the south with the Gulf of Mexico and the state of Veracruz; and to the west with the states of San Luis Potosí and Nuevo León.

The state has constant commercial exchange with the United States of America, as it has three major international bridges (in Nuevo Laredo, Reynosa, and Matamoros). Its main products include tomatoes, lemons, cattle, onions, peppers, and

sugarcane. There is significant tourism activity, mainly in the southern part of the state, with main cities in Tamaulipas being Tampico, Ciudad Victoria (the capital), Nuevo Laredo, Reynosa, Matamoros, San Fernando, Ciudad Madero, and El Mante.

It has two main oil refineries, one located in Reynosa and the other one located in Ciudad Madero, Tamaulipas also has two beaches, one in Matamoros and the other also in Ciudad Madero. There are several higher education institutions, including the Institute of Sciences and Higher Studies of Tamaulipas, A.C., and the Autonomous University of Tamaulipas, with campuses in Nuevo Laredo, Reynosa, Matamoros, Ciudad Victoria (the capital), El Mante, and Tampico. Tamaulipas is the only state in the Mexican Federation that has five international airports, located in Nuevo Laredo, Reynosa, Matamoros, Ciudad Victoria, and Ciudad Mante.

According to the latest census in 2020, the state has a population of 3,527,735 inhabitants, of which 50.8% are women and 49.2% are men, ranking 14th nationally in terms of population size. This information proves that the State of Tamaulipas is of great importance the Federation, and it's crucial when it comes to the analysis of the main issues of this article.

The Political Constitution of the United Mexican States (CPEUM, 1917) mandates that federal entities, such as the State of Tamaulipas, must issue their regulations in mandatory accordance; to this end, it explicitly prescribes what is known as the Federal Pact. Therefore, the Federal Entities must issue their laws in accordance with this Federal agreement. Consequently, the Tamaulipas legislator, when issuing its supreme state norms, must always take the Federal Pact into account beforehand; otherwise, it will be unconstitutional.

Indeed, Article 76, Section V, of the Mexican Political Constitution empowers the Senate to "declare the disappearance of all constitutional powers, and in such case, appoint a provisional Governor" (CPEUM, 1917), when the federal entity falls within the clearly expressed cases in the Regulatory Law of Section V, Article 76 (LRA76FV) of the General Constitution of the Republic (1978). These cases include:

Art. 2. The disappearance of the powers of a State is only configured in the following cases where the holders of the constitutional powers:

I. Violate the principles of the federal system;

II. Abandon the exercise of their functions, *unless there is a force majeure cause*;

III. Are physically unable to exercise the functions inherent to their positions or because of situations or conflicts caused or fostered by themselves, *which affect the life of the State*, *preventing the full validity of the legal order*;

IV. Extend their stay in office after the end of the period for which they were elected or appointed, *and elections have not been held to choose new officeholders*; *and*;

V. Promote or adopt a form of government or political organization different from those established in Articles 40 *and* 115 *of the General Constitution of the*

Republic (*LRA76FV p.* 1).

In this context, Article 76, Section V, of the Federal Constitution, which, in its last lines, orders: "This provision shall apply whenever the constitutions of the States do not foresee the case" (CPEUM, 1917), a command that is linked or interrelated with Article 156 of the Political Constitution of the State of Tamaulipas (1921), is the subject of this literary work because it anticipates it, by ordering:

Art 156. In the event of the disappearance of Powers provided for in Section V of Article 76 of the Political Constitution of the United Mexican States, the following shall be called upon to temporarily assume the Executive, according to the following order of preference:

I. The last Secretary General of the Government, provided that they are native-born Tamaulipecan;

II. The last President of the Supreme Court of Justice, and in the absence of this, the other Magistrates in numerical order, provided that they are native-born Tamaulipecan;

III. The last President of the Congress, and in the absence of this, the previous ones, giving preference to the closest ones over the farthest ones with the previous requirement (1921).

The three sections of the aforementioned article are contrary to the Federal Pact, that is, they are unconstitutional because they do not comply with the "principles" clearly outlined and established in the supreme law of the country. It seems that the Tamaulipas legislator thinks in a dictatorial manner, clearly going against all democratic principles of a representative, elected, and egalitarian government. In this system, the sovereign power essentially resides in the citizens of Tamaulipas and is transmitted through periodic elections, via a universal, direct, and secret vote.

2. Evolution of the Constitution on Executive Power

The first Federal Constitution of the United Mexican States in 1824 established the foundation of the legal structure we currently have, adopting a democratic, representative republic form of government, with sovereign power divided for its exercise into legislative (in two chambers, the House of Deputies and the Senate), executive, and judicial branches, each with their respective general attributions.

The Constitution of 1857 continued with the same democratic institutions of being a democratic, representative republic, with the exercise of sovereign power in the Executive, Legislative, and Judicial branches. However, it eliminated the Senate and its powers. Under the presidency of Sebastián Lerdo de Tejada, the Permanent Constituent Assembly in 1874 made several reforms to the 1857 Constitution. One fundamental reform was the reinstatement of the Senate and its powers. This reform is transcribed by Tena (1998) in his work on the Fundamental Laws of Mexico:

Art 72. The Congress has the power to:

B. The Senate has the exclusive power to:

V. Declare, when the Legislative and Executive constitutional powers of a State have disappeared, that it is time to appoint a provisional governor, who will call for elections in accordance with the constitutional laws of that State. The appointment of the Governor will be made by the Federal Executive with the approval of the Senate, and during its recesses, with that of the Permanent Commission. This official cannot be elected constitutional Governor in the elections held by virtue of the call he issues. (p. 703).

A special, albeit brief, reference should be made regarding the origin of the institution of the disappearance of state powers as a faculty of the Senate. Its authorship is attributed to Benito Juárez García, who presented a series of constitutional reforms in late 1867. Among these was the Senate's power to dissolve state powers, as noted by Carpizo (2010):

Most of the ideas that Juárez had proposed in the reforms of 1867 were achieved in 1874 and many more. Lerdo de Tejada obtained from the federal and local congresses what had been denied to Juárez. The most important principles of the 1874 constitutional reform were:

a) The restoration of the Senate.

h) New Powers for Congress and each of its chambers, some of which were included in the 1917 *Constitution, such as the exclusive power of the Senate to declare, when the Legislative and Executive powers in a state have disappeared, that it is time to appoint a provisional governor, and the resolution of political issues that arise between the powers of a state when either of the two indicated assumptions are met.* (p. 49)

Thus, Juárez's ideas were embodied in the corresponding reform promoted by Sebastián Lerdo de Tejada. Admiring him, as a collaborator of his government, this attitude deepened, which is why the following is noted: "by accepting the position of minister under Juárez, don Sebastián developed such an intimate relationship that, at a certain point, it became unclear who was influencing whom" (Suñer, 1989: p. 23).

3. Constitutional Reforms

The Constituent Assembly of 1917, upon issuing the Constitution, continued the progressive spirit initiated in 1824, deepening its principles of being a republic, democratic, representative, with sovereign power divided for its exercise into legislative, executive, and judicial branches. It established as the exclusive prerogative of the Senate, in Article 76, Section V, the dissolution of all constitutional powers of a State, to appoint, if necessary, a provisional Governor, this provision, still in force, stipulates:

Art 76. The exclusive powers of the Senate are:

V. Declare, when all the constitutional powers of a State have disappeared, that it is time to appoint a provisional Governor, who will call for elections in accordance with the constitutional laws of the same State. The appointment of the Governor shall be made by the Senate upon a ternary proposal from the President of

the Republic with the approval of two-thirds of the members present, and during recesses, by the Permanent Commission, following the same rules. The official thus appointed shall not be eligible to be elected as the constitutional Governor in the elections held by virtue of the call he issues. This provision shall apply whenever the constitutions of the States do not provide for the case (CPEUM, 1917).

This constitutional article has undergone 15 reforms, the first of which was published in the Official Gazette of the Federation on March 26, 1919. The fifteenth reform, published in the Official Gazette of the Federation on January 29, 2016, innovated Section V under observation. Thus, the latest reform to the precept is the one from January 29, 2016, which is currently in force.

In order to provide greater clarity, the federal legislator issued the Regulatory Law of Section V of Article 76 of the Constitution of the Republic, published in the Official Gazette of the Federation on December 29, 1978, which came into force the next working day after its publication (LRA76FV, 1978).

Consequently, the basis for the declaration of the disappearance of all powers of a State or federal Entity and the designation of a provisional Governor by the Senate is precisely in Article 76, Section V, connected to the regulatory Article 156 of the Political Constitution of the State of Tamaulipas (1921). The latter part of the federal precept mandates that this provision shall apply whenever the constitutions of the federal entities do not provide for the case. Therefore, the norm of the State of Tamaulipas is essentially interrelated with the federal precept, regulating the order of designation, which is transcribed here:

Article 156. In the event of the disappearance of Powers as provided for in Section V of Article 76 of the Political Constitution of the United Mexican States, the following shall be called to take provisional charge of the Executive, in the following order of preference:

I. The last Secretary General of Government, provided they are a native of Tamaulipas by birth;

II. The last President of the Supreme Court of Justice, and in their absence, the other Justices in numerical order, provided they are natives of Tamaulipas by birth;

III. The last President of the Congress, and in their absence, the preceding ones, preferring the most recent over the more distant, with the same requirement (CPET, 2021).

These previous legal provisions form the basis of the reasoning that will be essential to establish the conclusion regarding the proposed reform to Article 156 of the Political Constitution of the State of Tamaulipas.

4. Political Representation and Democracy

Articles 39, 40, and 41 of the CPEUM (1917) refer to the holder of the original sovereignty and their power to exercise it through the Executive, Legislative, and Judicial Powers. These articles establish the institutions of a republic, sovereignty, democracy, representation-electability, and public power as integral components

of the form of government to guide the destinies of its governed, that is, the people, through their legally elected representatives. Therefore, the Constitution calls it, among other things, a Representative, Democratic, and Federal Republic.

It is inferred from the articles that it is the citizens individually who, through elections, "choose their representatives," due to being a representative and democratic republic. Thus, it is necessary to understand these two qualities as the support of sovereign power, of the imperium, of public authority, since this attribute is held by all those who are legitimately elected according to the citizens' will, as the original holder of sovereignty, with the condition of a predetermined time or period.

As Fernández Santillán (2008) refers to representativeness:

"*The peculiarity of political representation is that individuals are represented by deputies or by public officials appointed through suffrage, in their capacity as citizens, that is, as subjects of political rights, as members of a nation regardless of their occupation or profession, religion, race, or membership in any civil association*" (p. 30).

In the same vein regarding representativeness, Rodríguez (1993) states:

"*The constitution stipulates that Mexico be a representative republic, which means that the people will appoint, through established political-electoral instruments, a group of people who will be their representatives, who will make state decisions on their behalf, create legal norms, and represent them in public management; that is, through the phenomenon of representation, they will be present when forming the state will*" (*p*. 169).

Therefore, establishing a Representative Republic as a form of government in the Federal Constitution is based on the fact that the citizenry, through universal suffrage, "chooses its representatives". These representatives, once elected, make decisions to guide the nation's destiny as the sole means of transmitting sovereign power, the imperium, or public authority. This process is carried out through the established electoral mechanisms; only in this way is sovereignty exercised, ensuring it is both legal and constitutional.

Zamudio and Valencia (1999) clarify the difference between the State and the form of government by referring to the latter institution as follows:

"*The State is a very generic term that designates the entirety of the political community; in other words, a set of institutions and individuals that form a legally organized society over a specific geographical space. The term government, on the other hand, is much more restricted and comprises only the specific organization of the constituted powers serving the State, which are mainly the Legislative, Executive, and Judicial bodies*" (p. 243).

Another quality of the republic is being a democracy, a term that comes from two Greek words, demos, meaning people, and cracy-cratos, meaning government. Thus, etymologically, it refers to the government by the people. Salazar and Woldenberg (2008) describe it as follows:

"*The term democracy and its derivatives indeed come from the Greek words*

demos (*people*) *and cratos* (*power or government*). *Democracy is therefore a form of government, a way of organizing political power where the decisive factor is that the people are not only the object of the government—what is to be governed—but also the subject that governs. It thus distinguishes itself from and opposes the government of one—the monarchy or monocracy—or the government of a few—the aristocracy and oligarchy. In modern terms, democracy is commonly opposed to dictatorship, and more generally, to authoritarian governments. In any case, the constitutive principle of democracy is popular sovereignty, or in other terms, that the only legitimate sovereign is the people*" (pp. 15-16).

The elements of democracy are: 1) it is a form of government; 2) it involves the original holders of sovereignty, which is the people, or in our time, the citizenry; 3) to relate government and people-citizenry, it requires a legal and political structure; 4) the legal structure regulates the procedure to establish those who govern, that is, the authority, its attributions, and limitations.

The institution in question, according to doctrine, participates in two systems: direct democracy and representative democracy. The first is one in which citizen participation directly influences, impacts, elects, and orders in an immediate manner, without any intermediaries in the decision-making process of the government. In direct democracy, the citizen elects their authorities in a direct and immediate manner in an assembly, as happened in Ancient Greece.

Representative democracy, as its name suggests, refers to the citizenry electing those who will make governmental decisions, that is, their representatives. These representatives will hold office in both the Executive and Legislative branches, as in the Mexican case, but for a clear and strictly defined period, while the Judicial Power has a different procedure for its appointments.

Representative democracy is more complex, which Mexicans adopted from the beginnings of their independent nation. This can be seen in the 1824 Constitution in Article 4 (Valadés & Barceló, 2005: p. 359); in the 1857 Constitution in Article 40 (Dublán & Lozano, 2019: p. 8); and in the current 1917 Constitution in Article 40 (CPEUM). It must be duly regulated by law, and this is referred to as a constitutional democratic state, given the large number of Mexican citizen voters.

Such is the degree of complexity that, in addition to setting its guidelines in the Federal Constitution, it requires an Electoral Code (General Law of Electoral Institutions and Procedures, 2020) to regulate the participation of citizens and political parties. It also requires electoral institutions to manage the entire process and, above all, to regulate the terms and deadlines for citizens and political parties to participate during electoral periods, especially on election day, when citizens express their will through universal, secret, and direct voting. Sanctions are also established, requiring compliance with the aforementioned regulations for acts and resolutions to be legitimate and constitutional.

Representative democracy is a form of government where citizens exercise political power through their representatives, elected through universal suffrage in free and periodic elections. It operates based on political representation because

citizens delegate political power and sovereignty to their representatives. This is outlined in Article 40 of the Constitution, which among other things states: "The people exercise their sovereignty through the Powers of the Union, and the renewal of the Legislative and Executive powers will be carried out through free, authentic, and periodic elections" (p. 50).

In the case of the State of Tamaulipas, in accordance with the Federal Pact, its institutions are similar to those of the Federation, in accordance with the Federal Constitution. Therefore, sovereignty resides in the Tamaulipas people according to Article 20 of the Political Constitution of the State of Tamaulipas (CPET, 2021). It adopts a republican and representative form of government (CPET, Article 21), divided into legislative, executive, and judicial branches (CPET, Article 22). Thus, Tamaulipas citizens directly elect their representatives for the executive and legislative branches in accordance with the state Constitution and its electoral laws.

5. Conclusions

Article 156 of the Political Constitution of the State of Tamaulipas, as established by the state constitutional legislator, sets out an order for the appointment of a Provisional Governor when the Senate of the Republic declares the disappearance of powers. According to this, the last Secretary General of Government, provided they are a native of Tamaulipas by birth, shall be appointed (Section I, p. 70). If they are unavailable or deceased, the last President of the Supreme Court of Justice shall be called, and in their absence, the other Magistrates in numerical order, provided they are natives of Tamaulipas by birth (Section II, p. 70). If none are available or deceased, the last President of the Congress shall be called, and in their absence, the preceding ones, preferring the closest over the farthest with the same requirement (Section III, p. 70).

However, this order regulated by Article 156 lacks the doctrinal, constitutional, and legal foundation necessary for compliance. The Tamaulipas legislator seems to think in a dictatorial manner, as part of an absolutist government, when what is being decided is of vital importance—the transmission of sovereign power, the titular ship of the State Executive (without going through the electoral process), which was granted by all Tamaulipas citizens.

The designations mentioned in Article 156 of the Political Constitution of the State of Tamaulipas lack logical-juridical basis. In the first scenario, appointing the last Secretary General of Government means appointing a citizen who does not enjoy any representativity. Similarly, in the second scenario, former magistrates lack representativity; they are merely citizens. The last section of the article, like the preceding ones, refers to former legislators who no longer have any representativity; they are purely and simply citizens.

In this regard, it is important to consider that the Head of the Executive Power is the legitimate representative, having been legally and constitutionally elected. They are the holder of the internal sovereignty of the State of Tamaulipas. While it is true that upon the Senate's declaration of the disappearance of all powers,

they lose the titular power of the state's sovereignty due to the extraordinary circumstance, leaving the holder of sovereign power vacant. "Whoever must replace them must possess very special and similar qualities" given the significance of the act.

The Tamaulipas legislator, in their authoritarian stance, overlooks another legal-political institution that also holds Tamaulipas's sovereign power: all the mayors. Through universal and direct suffrage, they were elected just like the Head of the State Executive. Applying Article 76, Section V, of the Federal Constitution to this situation, the only ones who possess sovereign power in the state are collectively all the mayors. In this extraordinary circumstance, the mayors are the only ones constitutionally holding the internal sovereignty, preserving order and peace throughout the State of Tamaulipas, albeit individually preserving it in each of their political constituencies.

The Federal Constitution lays the foundation for the Free Municipality in its Article 115, which prescribes, among other things, the following:

Article 115. The states shall adopt, for their internal regime, a republican, representative, democratic, secular, and popular form of government, with the municipality as the basis of their territorial division and political and administrative organization, in accordance with the following principles:

I. Each Municipality shall be governed by a directly elected Municipal Council, composed of a Mayor and the number of councilors and syndics determined by law, in accordance with the principle of parity. The powers granted to municipal government by this Constitution shall be exercised exclusively by the Municipal Council, and there shall be no intermediate authority between it and the state government (CPEUM, 1917).

This constitutional provision grants the Municipality and its head, the mayor, the qualities of being republican, representative, democratic, free, and sovereign. Therefore, with the sovereign power of the entity vested in all municipal mayors, who were legitimately elected and represent the entire population of Tamaulipas, it is within their authority to appoint the Provisional Governor. Since they are the only ones who enjoy sovereign power in the federative entity at the moment when the titular executive loses it, it is logical and juridical that the Provisional Governor be appointed from among the municipal mayors who possess internal sovereignty.

Understanding the Free Municipality as a public and constitutional institution that embodies a legal entity with its own personality and assets, democratic, representative, autonomous, and popularly elected with predetermined terms of office, aimed at the common good of its inhabitants (the basic institution of sovereignty), as Rocha (1983) aptly describes:

"*The concept of freedom cannot be understood without the notions of autonomy and duty; autonomy, in its etymological connotation, as the capacity for self-regulation; duty, as the order of being, which sees itself and locates itself in relation to others. This is the concept of freedom that befits the municipality. The faculty*

to self-determine, the capacity to establish its own norms; recognition of the natural and historical conditions surrounding it; a positive response to its responsibility towards the social whole; motivation based on the highest values in which one believes and desires to see them fully realized" (p. 273).

It is entirely authoritarian and contrary to all legal and constitutional order in our time, the Tamaulipas constitutional provision, which is contested, as it fundamentally violates the Federal Pact. Most importantly, it blatantly deprives the citizens of Tamaulipas of their rights, as they constitutionally and legally elected their representatives. By declaring the disappearance of state powers, the Senate, the constituent body, should have first recognized that collectively, all the mayors also hold Tamaulipas's sovereign power, a very special and extraordinary quality. Therefore, the decision should have been made by consensus among any of them to appoint the provisional Governor.

The mayors were elected and are in office, collectively holding the title of sovereign power in the state. In this special and extraordinary situation, they safeguard public peace and legal order throughout the state profoundly, each of them exercising it municipally within their territorial jurisdiction. Consequently, it is imperative to appeal to the will of each of them who possess state sovereignty, so that they determine among themselves, through election or consensus, who will be the provisional Governor of the Tamaulipas entity.

To this end, Article 156 should be reformed as follows:

Article 156. In the event of the disappearance of Powers provided for in Section V of Article 76 of the Political Constitution of the United Mexican States, all Mayors shall be called upon to choose the Provisional Governor from among themselves, in accordance with the following:

I. Within the next three natural days following the declaration of the disappearance of state powers by the Senate, they shall be convened for a meeting in the Council Chamber of the Municipal Palace of Ciudad Victoria to elect the Provisional Governor.

II. Within the next fifteen days, the chosen individual must take their oath before this collegiate body of mayors, to govern the State of Tamaulipas solely for the purpose of calling for state constitutional elections within the following six months.

III. The respective regulatory law shall be enacted in due course (p. 65).

As with any constitutional norm, such as that of Tamaulipas, for its better appreciation and interpretation, it requires clarification, explicitness for better and proper interpretation. This regulatory body of law is referred to as secondary or regulatory law. Therefore, this regulatory body of law shall be referred to as the Regulatory Law of Article 156 of the Political Constitution of the State of Tamaulipas.

Regulatory legislation will clarify the terms or principles established in the constitutional norm for their correct interpretation. This includes making necessary references to process the precept, such as the legal-procedural means of

communication, the solution in case the Mayors cannot reach an agreement, the term of governance of the Provisional Governor, the deadline for issuing the call for Governor elections, whether the appointed Provisional Governor can participate in the election, and the qualities the Mayor must possess regarding their appointment as Provisional Governor, such as age, residency, but above all, honesty, honorability, and probity. The issuance of the Regulatory Law will be essential for the full and total validity of the constitutional precept.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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