

## Resolution of the supreme court regarding the right of access to information

Considering it to be of special interest, ECIJA communicates to its clients and friends, the resolution of the Supreme Court (SCJN) by majority vote, on a very sensitive issue: the constitutional right of access to information.

### I Antecedent

In 2019, the Attorney General's Office (FGR) promoted a constitutional controversy in order to challenge a resolution of the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) of August 28, 2019 (the INAI Resolution), that demanded the FGR to provide a private individual with the name and position of the FGR personnel who carry out the investigation and prosecution of the crimes.

Article 6 of the Constitution establishes the following in its relevant part on the fundamental right of access to information:

"The resolutions of the guarantor agency (INAI) are binding, definitive and unassailable for the regulated entities. The Government Legal Advisor may file an appeal for review before the Supreme Court of Justice of the Nation in the terms established by law, only in the case that said resolutions may endanger national security in accordance with the law of the matter".

### II Sentence of the SCJN

On May 12, 2022, in plenary session, the SCJN resolved said controversy, invalidating the Resolution that ordered the delivery to an individual of the name and position of all the personnel who carry out substantive tasks of investigation and prosecution of crimes, assigned to various deputy attorney general's offices of the FGR, among which Agents of the Public Ministry of the Federation, Federal Ministerial Police and Experts are included.

The SCJN argued that the Resolution affected the exercise of the constitutional powers of the FGR established in articles 21 and 102 of the Mexican Constitution. According to an official statement from the SCJN, the existence of a causal relationship between handing over the names and positions of the aforementioned public servants and the impact that this would bring to public safety, was proven.

### III Comments

Article 6 of the Constitution in its relevant part reproduced above, is very clear: the resolutions of the INAI are unassailable. The Constitution establishes it in the specific article that deals with the matter of said constitutional fundamental right of access to information, one of the pillars of any democratic regime.

Therefore, we respectfully consider that the far-fetched interpretation of the majority of SCJN ministers regarding the scope of said controversy, is not correct at all, as Minister Pérez Dayán argued, and who voted against the draft judgment of the SCJN, since the INAI through its



Resolution, in technical constitutional purity, did not invade any competence of the FGR. It is already recurrent that the courts resolve this type of matter based on political criteria rather than legal-constitutional ones. We hope that in the future this will be corrected so that, the law always prevails against political fluctuations, for the sake of justice.

**ECIJA México, S.C.<sup>1</sup>**

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