

Kluwer Arbitration Blog

First Mexico Arbitration Week: Arbitration and the Judiciary – Conversation with a Mexican Supreme Court Justice

Eduardo Lobaton (Hogan Lovells) and Sofía Vargas (Centro de Arbitraje de México) · Sunday, July 30th, 2023

The first edition of Mexico Arbitration Week took place in Mexico City last May, bringing together over 120 attendees and more than sixty speakers. The primary objective of this event was to connect Spanish-speaking international arbitration professionals, fostering discussions, and promoting Mexico as a prominent seat for international arbitration. The event was jointly organized and co-hosted by two renowned arbitral institutions, the [Mexico Arbitration Center \(“CAM”\)](#) and the [Mediation and Arbitration Commission of the Chamber of Commerce of Mexico City \(“CANACO”\)](#), along with the [Forum of Young People in Arbitration CAM/CANACO](#) (Coordinated by Eduardo Lobatón and Luis Alberto King).

The program encompassed a range of “hot topics” in the field, including the impact of technology on international arbitration, antisuit injunctions by arbitral tribunals, the relationship between the judiciary and arbitration in Mexico, ESG considerations in arbitration, investment arbitration in Latin America, *amici curiae* in arbitral proceedings, diversity in arbitration, and corruption in international arbitration, among others.

The focus of this post is the first fireside chat of the event titled “Arbitration and the Judiciary: Conversation with a Mexican Supreme Court Justice.” Former Supreme Court Justice [Margarita Beatriz Luna Ramos](#) was interviewed by [Eduardo Lobatón Guzmán](#) (Associate, Hogan Lovells) and [Frida Altamirano Jiménez](#) (CAM Secretary General).

The opening statement by Eduardo Lobatón, “[a] *good arbitration needs to have three things: 1) a good arbitration clause, 2) a good arbitral tribunal, and 3) a good Judiciary,*” set the stage for a discussion on the Mexican judiciary’s perspective on alternative dispute resolution (ADR). Dr. Luna Ramos argued that due to Mexico’s legal system and associated traditions, the country was initially relatively slow in embracing all forms of ADR, despite the long-time existence of negotiation and settlement agreements.

A Change in Paradigm: The 2008 Constitutional Reform

A turning point came in 2008 with a constitutional reform that recognized ADR at a constitutional level. The recognition of ADR in Article 17 of the Mexican Constitution propelled its acceptance and usage in Mexico.

Dr. Luna emphasized that there is no divide between the judiciary and ADR mechanisms. ADR not only proves to be efficient but also alleviates the burden on local courts overwhelmed with other cases. She further highlighted the importance of ADR practitioners demonstrating the effectiveness, cost-efficiency, and expediency of these methods.

When asked by Ms. Altamirano about a potential change in the judiciary's perception of arbitration following the constitutional reform, the retired Justice noted that there was initial apprehension among judges, viewing ADR as a means to bypass the judiciary. Over time, however, local judges in Mexico have become more interested in ADR, particularly in arbitration. Dr. Luna attributed this growing interest to factors such as NAFTA, which brought attention to arbitration, and the constitutional reform that further reinforced this interest.

What Is the Role of the Judiciary in Aid of Arbitration?

The role of the judiciary in supporting arbitration was discussed next. Dr. Luna emphasized a fundamental distinction between the judiciary and arbitral tribunals: arbitration derives its authority from party autonomy, whereas the judiciary has a different legal nature. Dr. Luna expressed her understanding of arbitration under the “contractual” theory, as opposed to the “jurisdictional” theory. According to Dr. Luna, the judiciary's role is to ensure the effectiveness of the arbitral procedure in cases where one of the parties fails to comply.

Reflecting on the Mexican judiciary's evolving understanding of arbitration, Dr. Luna acknowledged that there had been some confusion in the past regarding the legal nature of arbitration. Nevertheless, she pointed out that the judiciary has ultimately established positive precedents that position Mexico as an advanced arbitral jurisdiction.

As an example, Dr. Luna cited the case *Infored v. Grupo Radio Centro*, where this confusion was apparent, but that ended with a final decision favorable to arbitration. The case featured a long and complex procedural history. The case attracted much attention, which has made some refer to it as the “[Arbitration Quixote](#).” Dr. Luna explained how lower-court decisions initially displayed a lack of comprehension of arbitration. For instance, a local court in Mexico City initially annulled the award because the arbitrators were not experts in “radio matters,” even though the arbitration agreement did not contain such requirement. Dr. Luna also explained that the annulment decision was challenged through an indirect *amparo* complaint which, in her view, is a mischaracterization of the nature of arbitration.

Nonetheless, the case concluded favorably for arbitration. The award was declared valid the Mexican Supreme Court issued a [decision](#) describing how the judiciary viewed arbitration.¹⁾ The Court's explanation demonstrated its favorable view and support for arbitration.

Mexican jurisprudence on arbitration

The discussion then turned to a recapitulation of several landmark decisions by the Mexican Judiciary that have shaped the understanding of arbitration in the country.

Dr. Luna discussed *Amparo Directo 71/2014*, a landmark decision where the Supreme Court first

laid down the foundations of what constitutes “public policy” as grounds to set aside or refuse recognition and enforcement of an arbitral award under Mexican law. The Court held that “public policy” is an abstract and undetermined legal concept (“*concepto jurídico indeterminado*”). The content of public policy, the Court reasoned, is for the judges and courts to determine on a case-by-case basis depending on the time and place of the situation. Public policy, therefore, is a legal concept in constant motion and evolution. Nevertheless, the Supreme Court continued explaining that, despite its changing nature, there is a hard core to public policy. This core is comprised by the essence of fundamental legal substantive and procedural institutions as these both are the underlying and unifying elements of the Mexican legal framework as a whole.

To shed some more light on the concept of “public policy,” the former Supreme Court Justice highlighted that the case was relevant in ruling that the Judiciary cannot and should not reexamine the merits of the case in the annulment stage. The merits of the arbitration decision are not subject to judicial review and the assessment and evaluation of evidence remain within the arbitral tribunal’s discretion. The authors note that this principle was recently confirmed by the Mexican Supreme Court in *Amparo Directo en Revisión 7790/2019*.

Dr. Luna mentioned another significant precedent relating to the authentication of awards. Article 1461 of the Mexican [Commerce Code](#) sets forth that the party interested in enforcing an award must file the original arbitration award “duly authenticated.” The constitutionality of such provision was discussed in the *Amparo Directo en Revisión 7856/2019*, which was recently discussed in this [blog](#). Following conflicting lower-courts decisions regarding the meaning of “authentication” of awards, the Supreme Court ruled that the authentication requirement was disproportionate, unnecessary, and therefore, unconstitutional.

Dr. Luna Ramos concluded by emphasizing that while the arbitration agreement is a contract and norm between the parties, arbitration relies on the judiciary to ensure its effectiveness. She stressed the importance of the Mexican judiciary understanding when it can intervene to support arbitration. According to the retired Justice, through significant strides and pivotal precedents, the Mexican judiciary has played a crucial role in establishing Mexico as a prominent hub for arbitration, bolstering the growth of ADR in the country.

Conclusion

Dr. Luna Ramos provided valuable insights into the Mexican judiciary’s perspective on ADR and its evolving understanding of arbitration. Despite initial apprehension among judges, ADR, particularly arbitration, has gained traction over time. In addition to benefits such as effectiveness, cost-efficiency, and expediency, arbitration offers a particular benefit in Mexico, that is to help the judiciary with the overload of cases.

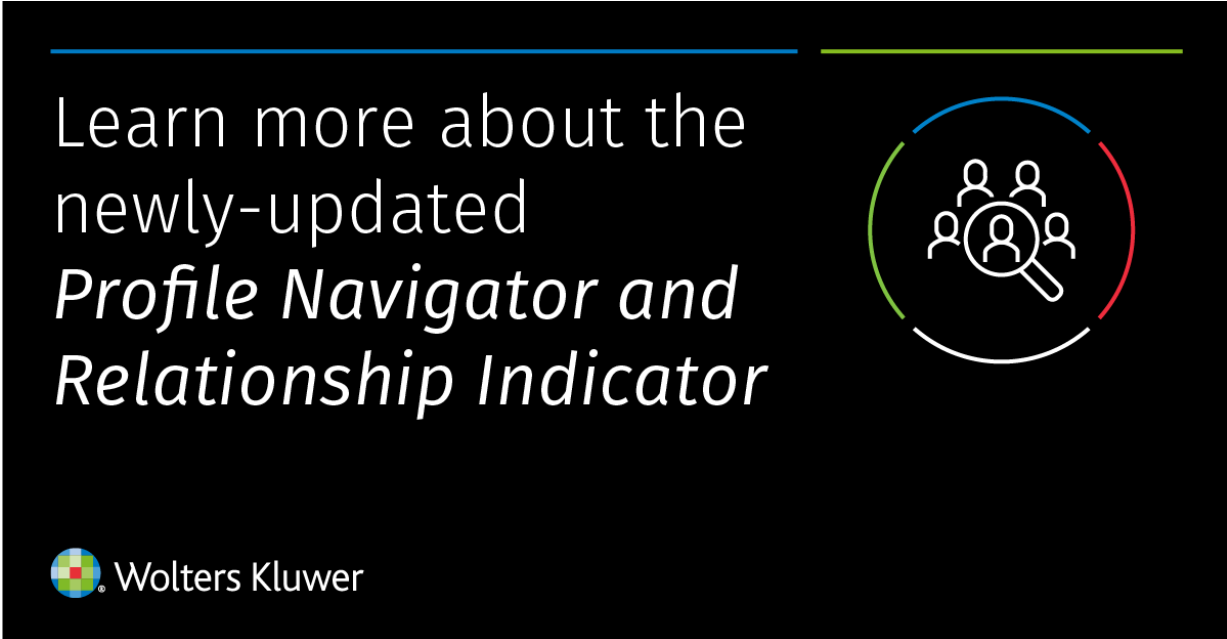
Overall, the discussion showcased Mexico’s progress as an advanced arbitral jurisdiction, with the judiciary playing a crucial role in establishing the country as a prominent hub for arbitration. The Mexican judiciary’s favorable view of arbitration, coupled with landmark decisions have contributed to the growth of ADR and reinforced Mexico’s position in the international arbitration landscape. The judiciary now understands better its role in aid of arbitration, promotes, and assists in the arbitration procedures, turning old ways into a much more promising future for arbitration in Mexico.

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References

- ¹ Amparo en Revisión 2160/2009, First Chamber, Mexican Supreme Court of Justice, 8 September 2010, pp. 35-38.

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