

# TERRUM

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"



# Why the lack of the service of process is the most important process violation?

by Luis Enrique Butrón.

**T**he right of service of process is the most relevant and important procedural act established in the Mexican legal constitution, because the lack of this formality is a violation of the right of due process of law and it involves all the main defense of all governed to be heard and convicted in any legal proceeding, and do not let in such party defencelessness. The lack of the service of process or defective practice of it, results in a gross violation of the law that produces defencelessness, that is, the procedural violation of greater magnitude and more serious nature given its importance in other procedural stages such as the stage of introduction of evidence and the stage of filing pleadings.

This right is contained in the second paragraph of article 14 of the Mexican constitution which says:

“No one shall be deprived of life, liberty, their possessions, property or rights without a legal proceeding before previously established courts in which the essential due process is observed and according to the issued laws before the fact.”<sup>1</sup>

“The lack of the service of process or defective practice of it, results in a gross violation of the law that produces defencelessness...”

A correct service of process involves a serial of essential formalities, which are the following:

Normally the service of process must be made by personal notification conducted by the clerk of the court (or similar officer), at the premises of the defendant. A copy of the lawsuit, notification or requirement documents must be delivered to the defendant. This document will contain several requirements such as the date and the time when it is delivered, the type of proceeding, name of the parties involved, the judge, court or authority in charge of the case, transcription of the resolution of acceptance of the demand and a set of copies of the lawsuit and the exhibits of the lawsuit in order to respect the right of the defendant of preparing a proper response to the lawsuit.

Serving process on means allow time for the realization of certain procedural activity. The Mexican academic, Jose Ovalle Fabela, defines the service of process as “procedural act ordered by the judge and executed by the notifier (or court clerk) whereby knowledge of the defendant the existence of a demand against him and the agreement who admitted the demand, and granted a term for the answer”

The lack of service of process violates article 14 of the Mexican constitution and also violates the provisions of the applicable law regarding the effects of the citation which are:

I.- Reserves the legal proceeding in favor the court who made the service of process.

1.- Political Constitution of the United Mexican force, 2014, Article 14.

2.- Ovalle Fabela, Jose, General Theory of Process, 6th edition, Mexico, Oxford, 2009, p. 301

- II.- Obligates the defendant to follow the legal proceeding before the court that summoned him.
- III.- Obligates the defendant to answer the lawsuit before the court that summoned him.
- IV.- Produce all the consequences of judicial interpellation.<sup>3</sup>

“Serving process on means allow time for the realization of certain procedural activity.”

As we can analyze reading the mentioned article, none of the effects of the service of process are met when such act is not correctly done, and therefore we do not have legal certainty of who is the plaintiff and what exactly he is demanding and this will resulting a clear violation of the right of the defendant.

In all cases, it is possible to file a remedy by the person who is affected by an incorrect service of the process or even by an inexistent service of process.

Such remedy would be essential to repair the most relevant procedural violation that a person can suffer in a legal proceeding.

*3.- Current Federal Code of Civil Procedure, 2014, article 328 Judicial interpellation: judicial demand of payment or performance of an obligation.*

## **Chinese investment in Mexico won't quit.**

The Chinese railway company that had their tender contract revoked for the construction of the Queretaro - Mexico City has decided to participate again in the bidding. As the tender was revoked subject to apparent irregularities in the attribution of the train construction's tender, the Chinese railway company is pretending to participate on the new tender, which is planned to be re organized in the next months. Despite the situation reaching critical political discussions, the Mexican government has assured absolute certainty and guideline restrictions for the new tender. *El Economista. 01/12/2014.*

## **Mexico assures employment.**

President Enrique Peña Nieto has affirmed that the construction of high speed trains programming to connect Mexico City with the cities of Queretaro and Toluca are the biggest infrastructure plans Mexico has seen in years. Additional to the high-tech ground transportation system; the construction of a new Mexico City Airport additions a third opportunity to create stable jobs for the Mexican economy. This declarations were made at the opening ceremony of a new gas duct system that, as a result of the Energy Reform will accelerate the Mexican economy. *El Economista. 02/12/2014.*

## **Mexico's 2014 Highlights: Oil Reform, Violence, Public Protests, Corruption.**

It was not the best year for Mexico; 2014 will be remembered for violent acts that shook the country, most notably the abduction and likely massacre of 43 teacher-trainees ("Normalistas" in Spanish), the execution of 22 people by the Army and the ongoing killings by powerful criminal groups of thousands of Mexicans, including two journalists and three Catholic priests. The year also witnessed major new corruption scandals and controversies over alleged conflict of interest by government officials, which resulted in a crisis of confidence engulfing President Enrique Peña Nieto, his closest collaborators, major political parties and institutions, such as the Army. *Forbes. 12/12/2014.*

## **Mexico Media Roundup: Another Month of Protests and Violence.**

During December a lot of media outlets focused their attention on the disappearance of 43 student teachers from the town of Iguala in southwestern Guerrero and also on ongoing violence in other parts of the country. Marches such as the one staged in Mexico City on December 1 have helped to attract the world's attention to Mexico's security problems, but even as protesters clamored for justice for the missing students, dozens of residents in Acapulco, Guerrero's biggest city, lost their lives to the ongoing wave of street crime that has characterized life in the city's poor, residential, hillside colonias since 2010. Eleven people were killed in Acapulco on December 17. Four people were murdered on Christmas day and on December 29, seven people were killed. *Forbes. 31/12/2014.*

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