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Global Perspectives on Freedom of Association: Mexico

José Juan Anzures Gurría

Societās Exploring the Value of Freedom of Association

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Freedom of Association in Mexico

José Juan Anzures Gurría[*]

I. Introduction

Freedom of association was recognised in the mid-19th century in the Charter of 1857, and later in the Constitution of 1917. The text in both documents is very similar. Although the current Constitution has been in force for more than one hundred years, the article referring to freedom of association has not undergone a single modification, nor has a secondary law been issued to regulate the exercise of this right.

The academic scholarship and case law construction that has been made in Mexico with respect to freedom of association has occurred in the last twenty years. Although a considerable effort has been made to define the content of the law, it is still somewhat underdeveloped.

This paper begins with a brief review of the constitutional recognition of the freedom of association and other related concepts included in the 1917 Constitution. It then provides a definition of freedom of association and explains the various dimensions that are protected under the Law. Finally, the freedom is analysed as an instrumental right, that is, as a right through which many other fundamental rights can be exercised and even strengthen the constitutional and democratic rule of law.

To enhance the analysis, two types of associations that have had a more prolific development under Mexican Law, namely labour unions and political parties, are studied. Although the constitutional text has recognised that these are two autonomous fundamental rights, it is undeniable that the basis for their exercise lies in the freedom of association.

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II. Constitutional Recognition of Freedom of Association

Freedom of association was not recognised in Mexico's early constitutions.[1] The first time it was recognised at a constitutional level was in Article 9 of the 1857 Constitution. Its content adheres to the liberal ideology of the time.[2] Although the 1857 Constitution was in force during the *Porfiriato* (the period of Porfirio Diaz's presidency of Mexico), there were several *de facto* restrictions on freedom of association and the right of assembly.

The 1917 Mexican Constitution, in force to date, recognised freedom of association in Article 9, retaining the same wording as the previous Constitution. Only a second paragraph referring to freedom of assembly and demonstration was added. In 2010, a constitutional reform initiative that sought to add a paragraph regarding the right of assembly was presented. In 2018, there was another proposal to reform Article 9, however it did not refer to freedom of association but to the recognition of citizen participation as a human right. For more than one hundred years of the Mexican Constitution, not a single regulation has been drafted to address freedom of association, while its academic scholarship and case law development has been meager.[3]

In correlation with Article 9, the Mexican Constitution recognises other types of associations throughout its text. Article 25 recognises social sector associations such as *ejidos* (an area of communal land mainly used for agriculture), workers' organisations, cooperatives, communities, enterprises that are majority or exclusively owned by workers and all forms of social organisation for the production, distribution and consumption of goods and services. Article 27 establishes the power for different types of associations, depending on the legal nature of the association, to enjoy the right of ownership as required.

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[1] J Hurtado, A Arellano-Ríos, 'El derecho de asociación y reunión en México: una revisión constitucional' (2011) 13(1) Revista Estudios-Socio-Jurídicos 55.

[2] *ibid* 56.

[3] Authors who have addressed the freedom of association in Mexico include: JJ Anzures Gurría, 'Artículo 9 constitucional', in *Constitución Política de los Estado Unidos Mexicanos, comentada*, (21 edn, Jurídicas, UNAM, 2021) 83-88; CG Blanco Rodríguez, 'Articulo 9 constitucional. El derecho de asociación a 100 años de nuestra constitución. El derecho de asociación desde una visión democrática' in A García Sánchez and JJ Anzures Gurría (eds), *100 Años de Vigencia de la Constitución Mexicana* (Tirant lo Blanch, Tecnológico de Monterrey, México, 2017) 57–80. M Carbonell, 'La Libertad de Asociación y de Reunión' in *Anuario de Derecho constitucional latinoamericano* (Vol II, Konrad Adenauer Stiftung, México, 2006) 825-841; I García Garate, 'Artículo 9 Constitucional. Derecho de asociación y reunión' in *Derecho Humanos en la Constitución, Comentarios de Jurisprudencia Constitucional e Interamericana* (Jurídicas, UNAM, Suprema Corte de Justicia de la Nación, Konrad Adenauer Stiftung, México, 2013) 1207-1236; J Hurtado and A Arellano-Ríos (n 1) 51-73; JJ Orozco Henriquez, 'Artículo 9' in *Constitución Política de los Estoados Unidos Mexican.os comentada y concordada* (Vol I, 18th edn, México UNAM, Porrúa, 2004).

Article 35 recognises the right to create associations for political purposes, but does not refer to political parties. Political parties are recognised in Article 41, and are considered public interest entities. The right of political association has been recognised in Mexico as a fundamental right with a more specific normative content, with its own characteristics, with greater specificity than freedom of association and is even guaranteed through a system of specific means of challenge.[4] It is regulated by the General Law of Political Parties.

Article 123 recognises the power of workers and employers to defend their interests through labour unions. Trade union freedom is a fundamental right that, although is based on the freedom of association, enjoys its own autonomy. Its regulation is contained in the Federal Labour Law.

Finally, Article 130 recognises churches and religious groups as associations with their own legal personality. It is expressly established that state authorities may not intervene in the internal life of these groups. Its secondary regulation is contained in the Law of Religious Associations and Public Worship.

Article 2, in correlation with Article 115, recognises the right of indigenous communities to associate freely. They are not a constitutionally recognised type of association like labour unions or political parties, but adopt the legal nature contemplated by civil legislation. The existence of these groups has become a means through which indigenous and tribal peoples assert their rights, their customs and traditions, and their own way of coexistence and political, social and cultural organisation. There are two norms that regulate the rights of indigenous peoples and communities, but neither refers to their freedom of association.[5]

Article 28 of the Constitution expressly limits monopolies or any other entities whose purpose is to obtain price increases and agreements to prevent free competition or competition among themselves. This is due to the protection of the free market and the stakeholders participating in the national economy under a neoliberal economic model.

[4] Higher Courtroom of the TEPJ SUP-JDC-514/2018, judgment of July 31, 2008.
[5] Law of the National Institute of Indigenous Peoples and the General Law of Linguistic Rights of Indigenous Peoples.

In addition to its constitutional recognition, freedom of association has been recognised in various international treaties signed and ratified by Mexico, such as the Universal Declaration of Human Rights of December 10, 1948, the International Covenant on Civil and Political Rights of December 19, 1966, the American Convention on Human Rights of 1969, and the Protocol of San Salvador, among others. The Supreme Court has pointed out that international treaties on human rights are in the same hierarchical level as the Mexican Constitution.

III. Definition and Content of Freedom of Association

Article 9 of the Mexican Constitution recognises freedom of association and freedom of assembly but does not contain a definition of either right. With respect to association, the wording of the law only refers to the prohibition of restricting the right to peacefully associate for any lawful purpose.

Most commentators agree in defining freedom of association as the power of any individual or legal entity to create entities with their own legal personality and distinct from that of their associates, with the intention of pursuing common and lawful purposes[6]. The main difference between freedom of association and freedom of assembly is that the former has a vocation of permanence through the creation of a legal entity, while the latter is characterised by its transitory existence and physical link; once a meeting concludes, the members are not related to each other[7].

The concept of unlawfulness should be understood as the achievement of conduct that is typified as a crime, so that an unlawful purpose would be the commission of a crime by the association.[8] These types of associations cannot be born into legal life and furthermore, their existence constitutes in itself, an autonomous crime recognised in article 164 of the Federal Criminal Code called *criminal association*. According to a Supreme Court criterion from 1945, lawfulness is a *rebuttable* presumption, i.e., that the purpose of any association is in fact lawful, and that the burden of proof rests on the responsible authority.[9]

[6] Orozco Henriquez (n 3) 48; Carbonell (n 3) 829; Supreme Court P./J. 28/95.
[7] Supreme Court [TA] 1a. LIV/2010. Also see Orozco Henriquez (n 3) 48.
[8] Carbonell (n 3) 829.
[9] Administrative Amparo under Review 7514/39. Sun Federico and injured parties; February 26, 1941. Judicial Weekly of the Federation. Volume LXVII, p 2096.

In stating that "every" person has the right to associate, it should be clarified that the Mexican Constitution prohibits the exercise of freedom of association by certain persons. According to Article 130 of the *Constitución Política de los Estados Unidos Mexicanos* (CPEUM), ministers of worship may not associate for religious purposes, members of the armed forces may not associate or be part of religious associations and be a minister of worship, and foreigners may not associate for political purposes.

According to the Supreme Court, this last restriction is intended to prevent foreigners from making decisions on political matters in the country, but not to hinder their ability to participate in citizen assemblies of a given neighborhood or district, since the intention of these entities is to decide on the most immediate issues within the territorial community to which they belong.[10]

In the case of minors, the Supreme Court has indicated that children and adolescents are entitled to this right, but that its exercise will depend on their level of maturity and that it is the parents or other caregivers who must ensure its exercise in accordance with the best interests of the child.[11]

The Supreme Court has understood that freedom of association is a right of freedom that requires non-actions from the State.[12] It has also been recognised by lower courts that, with respect to certain types of associations such as labour unions, political parties and peasant and indigenous associations, the State is under the obligation to take action in order to guarantee the full exercise of the right of access to information.[13]

Regarding the constitutionally protected content of freedom of association, the Supreme Court has not followed a traditional or dogmatic division of the freedom between a positive scope such as creating, joining, and remaining an association, and a negative one that includes the right to not create, not join or leave an association. Instead, with no apparent reason, the Supreme Court has lumped associational conduct into three different facets: the first refers to the right to associate, which includes the right to create an association or join an existing one; the second refers to the right to remain in or leave an association; and the third refers to the

[10] Supreme Court P./J. 138/2005 (9a.).
[11] Supreme Court 2a. VII/2018 (10a.).
[12] Supreme Court P./J. 28/95. (9a.).
[13] TCC, [TA]: I.18o.A.11 CS (10a.).

right not to associate.[14] With respect to trade union freedom, the Supreme Court has indeed recognised that there is a positive dimension consisting of the right to create a labour union or join an existing one;[15] a negative dimension that refers to the right not to join an existing union and the right to leave or resign from the association.[16]

The Supreme Court has stated that trade union freedom includes the power of each labour union to form federations of labour unions and the power of each federation to create confederations.[17] In the case of political parties, the right includes the power of parties to participate in electoral processes[18] and the possibility of resorting to certain associative forms such as coalition, front and merger, in order to fulfill their constitutional purposes.[19]

The following lines are intended to explain in greater depth the facets or dimensions of freedom of association based on the existing scholarship and court decisions in Mexico, but also with reference to the dogmatic construction that has been carried out in other countries.

(i) The Right to Create an Association

The right to create associations consists of the right of every person to create a legal entity without any interference from third parties, mainly from the public power; this implies the omission of any type of reprisal, prejudice, threat, or sanction. The Supreme Court has pointed out that an authority cannot prohibit or limit the creation of new associations due to the prior existence of others that pursue the same purposes.[20]

Associations wishing to become legally constituted and be born to legal life must comply with an act of formality, which is registration before the corresponding registry, for which they must meet the requirements established by secondary legislation, according to the type of association.[21] The registration authority is obliged to register associations that meet the requirements and request it.[22] In other words, the registration authority cannot refuse to register

[14] Supreme Court P./J. 28/95. Also, with respect to the right of political association, see ACTION OF UNCONSTITUTIONALITY 6/2004 AND ITS ACCUMULATED 9/2004.
[15] Likewise, see A Sánchez Castañeda, 'Las transformaciones del Derecho del Trabajo' (UNAM, México, 2006).
[16] Supreme Court P/J. 43/99.
[17] Amparo under review 1878/2004. Final Judgment March 4, 2005.
[18] Electoral Court, S3ELJ 25/2002.
[19] Supreme Court P./J. 43/2010.
[20] Amparo under Review 505/2007. Final judgment: September 19, 2007.
[21] Supreme Court 2a./J. 56/2004, (9a.).
[22] Amparo under Review 505/2007. Final Judgment of September 19, 2007.

an association. In the case of political parties, it is necessary to obtain registration in order to obtain legal personality and certain prerogatives such as public financing and access to the media.[23]

The freedom to create associations is a manifestation of the individual dimension, but its exercise is collective; that is, it requires the concurrence of the wills of other persons.[24] Until 2007, when the Constitution was reformed, trade associations were common and allowed, which means that by being part of an association, be it a company, labour union or chamber of commerce, one was automatically part of a political party, which was the party in power.

The right to create an association also includes certain sub-guarantees of collective exercise,[25] which refer to the powers of the founding partners to decide beforehand and freely on the matters of the association they wish to create, such as its purposes, its name and its headquarters. At the moment the association comes into being, all the matters decided freely by the founders become part of the association itself and rights or attributes of the association.[26]

(ii) The Right of Entry

The right to join an already constituted association is a right held before the State. The right protects the individual against any conduct of the authority that would prevent him/her from joining a specific association,[27] but this does not mean that the individual has a subjective right to join a specific entity.[28] A person's claim to join a particular association is opposed by the

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[23] JJ Orozco Henriquez and C Vargas Baca, 'Regulación Jurídica de los Partido Políticos en México' (n 3) 586.
[24] JJ Santamaría Ibeas, 'El Estado Constitucional, el Derecho de Asociación y la "Eficacia Horizontal" de los Derechos Fundamentales' in C Vattier Fuenzalida (ed), *Las Entidades sin Fin de Lucro: Estudio y Problemas* (Universidad de Burgos, Burgos, 1999) 75.
[25] See, in German scholarship, HD Jarass, 'Art. 9, Vereinigungs- und Koalitionfreiheit' in HD Jarass and B Pieroth, *Grundgesetz für die Bundesrepublik Deutschland, Kommentar* (CH Beck, München, 2007) 271; see Aksi I Von Münch, 'Artikel 9' in *Bonner Kommnetar zum Grundgesetz* (CF Müller, Heidelberg, 1966) 19 and 20; M Kemper., 'Kommentar zu Art. 9 GG' in HV Mangoldt, F Klein and CH Starck (eds), *Das Bonner Grundgesetz Kommentar* (Vol I, München, 2005) 850; In Mexico, J Barrera Graf distinguishes two phases in the creation of a corporation (which after all is a partnership); in the first phase, the author refers to the convergences and divergences (of the future partners), in the second phase he refers to the preliminary partnership contract which arises on the occasion of the negotiations and which is the epigraph of the definitive contract to be executed before the notary public: J Barrera Graf, 'Instituciones de Derecho mercantil' (Generalidades. Derecho de la Empresa. Sociedades) (4th edn, Porrúa, Mexico, 2000) 318-319.
[26] Cf AJ Gómez Montoro, *Asociación, Constitución, Ley: Sobre el Contenido Constitucional del Derecho de Asociación* (Centro de Estudios Políticos y Constitucionales, Madrid, 2004) 80.
[27] Von Münch (n 25) 20.
[28] Gómez Montoro (n 26) 198-199.

right of the association itself.[29] The right protects the possibility of the individual to choose to join the association of their choice from a wide range of associations,[30] but if an association does not admit an applicant, they must have the possibility to turn to the other existing associations.

In addition, the right of entry may be subject to the admission procedures and requirements of each association or the law regulating each type of association. Consequently, the applicant must comply with the requirements established by the statutes or in the laws, and if they do not satisfy them as such, they will not be able to be part of it. In the case of political associations, the law limits the right to be part of a single political party in order to guarantee the ideology and the principles and values pursued by that particular party.[31]

(iii) The Right to Permanence

The right to remain in an association has been commonly identified in a negative sense, i.e. as the right not to be expelled from the association. The Supreme Court has stated that the obligation imposed on an associate to resign from one association to join another constitutes a violation of the exercise of the right.[32] In another decision, the Supreme Court stated that a worker cannot be expelled from a labour union for having retired; the fact that a union member is no longer an active worker does not mean they cannot remain in the labour union to which they have belonged.[33] Of course, a member can be expelled from any association if he or she has violated the internal statutes and it is considered a type of sanction. In that case the elementary guarantees of sanctioning law have been observed.[34]

(iv) The Right not to Create Associations, to Leave an Association or not to Associate

Freedom of association also includes the right not to associate. This dimension, in turn, includes several behaviors, such as the power not to create an association, not to join an existing association, or to leave the association of which one is a member.[35] The power not to create an

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[29] J González Pérez and G Fernández Farreres, *Derecho de asociación, Comentarios a la ley orgánica 1/2002, de 22 de marzo* (Civitas, Madrid, 2002) 85.
[30] Thus, with respect to right of entry, see E Guerrero, *Manual del Derecho del Trabajo* (Porrúa, México, 1996) 316.
[31] TEPJF XIX/2019.
[32] AMPARO UNDER REVIEW 2186/2009.
[33] Supreme Court 2a./J. 26/97, (9a.).
[34] JM Bilbao Ubillos, *Libertad de Asociación y Derechos de Los Socios* (Universidad de Valladolid, 1997) 47.
[35] Supreme Court [TA]. CXXXV/2000.

association translates into the prohibition of the State from engaging in any conduct that imposes on the individual the creation of an entity; in other words, no one may be forced to create an association against their will.

The right also protects the right of any person not to join any association already constituted against their will. For many years in Mexico, various legislations contemplated mandatory membership to different associations. In 1995, the Supreme Court recognised that mandatory membership in Chambers of Commerce was contrary to the freedom of association.[36] In 1999, the Supreme Court determined that single unionisation contained in labour laws or statutes violated trade union freedom.[37]

The third of the manifestations of the negative freedom of freedom of association comprises the right of every member to leave the group when they so desire. The act of leaving is usually an action on the part of the member when they are no longer comfortable with or do not share the direction or decisions being made within the association.

The right of withdrawal may be limited by compliance with certain statutory requirements. The partner may leave the association without observing these requirements, but in doing so, they may be in breach of contract and be subject to legal action against them.

In Mexican labour union law, the exclusion clause was in force for a long time, which consisted of the separation of the worker from their job for having resigned or been expelled from the company's labour union.[38] In several of its rulings, the Supreme Court understood that the exclusion clause was constitutional and that the dismissal of the worker did not generate any type of liability for the employer.[39]

At the beginning of this century, the Supreme Court recognised that the exclusion due to a separation clause contained in labour legislation and collective bargaining agreements violated

[36] Supreme Court P/J. 28/95. See also Amparo under review 1122/2006. Final judgment of November 28, (2006).
[37] Supreme Court P/J. 43/99.
[38] This concept had already been questioned for a long time by Sánchez H Azuela, 'Estudios del Derecho Sindical y del Trabajo' (Serie Estudios Doctrinales, Instituto de Investigaciones Jurídicas, UNAM, México, 1987) 107.
[39] Direct Amparo 1535/940 Sec. 1a. Cía de Servicios Públicos de Nogales, S A September 6, (1940). Unanimous vote. Reporter: OM Trigo. Fifth epoch, volume LXV, p 3257. Fifth epoch: Volume LXI, García, Antonio G, p 1187; Volume LXIV; Olguín, Eduardo, p 1593; Volume LXV, Colgate Palmolive Pett, p 2575; Volume LXXV, Aguirre, Luis, p 6545; Volume LXXVI, Cordelería de San Juan, p 99.

freedom of association and trade union freedom.[40] On November 30, 2012, a reform to the Federal Labour Law was carried out, which included rulings the Supreme Court had been pronouncing and which expressly prohibited the exclusion clause.[41]

(v) The Collective Dimension

Freedom of association also includes the association itself, which arises from the individual exercise of the right. From the moment an association is created, it is born with its own independent life and has the power to develop and function as a new subject, distinct from the persons who created it.[42] This area of protection has been referred to mainly in Germany and Spain as the *collective dimension of the freedom of association*.[43]

In Mexico, Article 9 of the CPEUM does not expressly recognise the protection of associations as a dimension of the freedom of association. However, other paragraphs do recognise the freedom of certain types of associations. Articles 41, Foundation I, third paragraph and 116, section IV, subsection (f) of the CPEUM provide for the power of self-organisation and self-determination of political parties, by virtue of which the authorities may only intervene in the internal life of such institutions under the terms established by the fundamental regulation itself and the laws. Article 130 of the CPEUM states that the authorities may not intervene in the internal life of religious associations.

In the case law sphere, there are some rulings that recognise this dimension of the freedom of association. A decision of the 7th period of the Supreme Court stated that the autonomy of the association, (referring to the labour unions): '.... is interpreted as the capacity of organisation, of creation of the statute to which its members will be bound, of administration of its patrimony, of operation and of external activity for the achievement of its immediate and mediate purposes'.[44] In another ruling of the 9th epoch, dated May 27, 1999, (decision no. 43/1999), the Supreme Court stated that the workers' right to unionise comprises a right to associate and 'a collective right, once the labour union acquires its own existence and personality'.[45] The

[40] Supreme Court. 2a. LIX/2001 (9a.).
[41] Articles 391 and 395.
[42] Gómez Montoro (n 26) 173.
[43] See JJ Anzures Gurría, *La Protección Constitucional de las Asociaciones. Sobre la Dimensión Colectiva del Derecho de Asociación* (CEPC, Madrid, 2014) 99-118.
[44] [TA]; 7th Epoch; 4th Chamber; S.J.F.; Volume 115-120, Fifth Part; p 77.
[45] Decision No 43/1999.

resolution explains the content of the individual dimension but omits to explain the collective dimension of the right.[46]

In 2010 the Supreme Court recognised in its binding precedent 58/2010, in this case referring to political parties, that they have an institutional guarantee of self-organisation and self-determination derived from Article 41, Foundation I, third paragraph and 116, Section IV, Subsection (f), of the CPEUM, and that it is not violated by the regulation of certain aspects determined by the corresponding laws.[47]

The infra-constitutional legislation has also recognised that associations have freedom of operation. The General Law of Political Parties recognises in its Article 23.1 subsection C that political parties have the right to 'enjoy the faculties to regulate their internal life and determine their internal organisation and the corresponding procedures', and in its Article 34 states that '[f]or the purposes of the provisions of the penultimate paragraph of Article 41, Foundation I of the Constitution, the internal affairs of political parties comprise the set of acts and procedures related to their organisation and operation, based on the provisions set forth in the Constitution, in this Law, as well as in their respective Bylaws and regulations approved by their governing bodies.'

On the other hand, Article 357 of the Federal Labour Law (LFT, for its acronym in Spanish) states that '[a]ny undue interference (in labour unions) will be sanctioned under the terms established by law', and Article 359 states that 'labour unions have the right to draw up their statutes and bylaws, freely elect their representatives, organise their administration and activities and formulate their action plan'. The Federal Civil Code also states that legal entities act and bind themselves through the bodies that represent them, either by provision of the law or in accordance with the provisions of their articles of incorporation and bylaws (Articles 27 and 28), and further on, when regulating civil associations, the Code states that they shall be governed by their bylaws (Article 2673).

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[46] Single unionisation. The laws or statutes that provide for it violate the freedom of association enshrined in Article 123, section 'B', subsection X, of the Constitution. Article 123 of the Constitution enshrines freedom of association with a full sense of universality, starting from the personal right of each worker to associate and recognising a collective right, once the union acquires its own existence and personality. This freedom must be understood in its three fundamental aspects: 1. A positive aspect that consists of the worker's faculty to join a union already integrated or to constitute a new one; 2. A negative aspect, which implies the possibility of not joining a particular union and not joining any union; and 3. The freedom of separation or withdrawal from joining the association.

[47] Supreme Court P[J], 58/2010 (9a.).

It is not a matter of interpreting the constitutional text in the light of secondary laws, but of making it clear that the freedom of operation of associations, whatever the type, is a recognised and legally protected matter. But also, that it is not only a legal right but mainly, a manifestation of the freedom of association.

The power of self-organisation of associations does not mean that they can act outside or against the rule of law. Organisational autonomy may be limited by the type of association in question, or by any particular condition it may have. In the case of political parties, for example, their internal organisation must be democratic.[48] The Electoral Court has pointed out that political parties must be governed entirely by the principles of representativeness and permanence, since they are entities that have a lasting political influence in the heart of society. Political parties must conduct themselves according to a principle of honorability, as far as the management of resources is concerned.[49]

Any association that submits itself to a specific type must observe the legal provisions provided for it, which does not mean the infringement of its associative autonomy by the legislator, but rather the configuration of the type of association in accordance with the purposes it pursues.[50] In the area of political parties, freedom of association is limited to the provisions of secondary laws.[51] in order to harmonise them with other fundamental rights and essential principles of the constitutional and democratic rule of law.[52]

In addition, the internal decisions of the associations are also subject to a control of legality and constitutionality. This has been recognised by the Electoral Court with respect to political parties[53].

IV. Freedom of Association as an Instrumental Right

Freedom of association is an instrumental right, that is, it serves as a means for the exercise of other rights. There is no area of human life today in which associations do not play a prominent

[48] Electoral Court S3EL 008/2003.
[49] Electoral Court S3ELJ 25/2002.S.
[50] Supreme Court P./J. 40/2004.
[51] Supreme Court P/J 40/2004.
[52] Electoral Court SUP-JRC-61/2010 Judgment of June 16, 2010.
[53] Electoral Court S3ELJ 55/2002.

role, from the creation and promotion of culture or sports, to politics or the economy. The free creation of associations through which society is organised guarantees political, social, cultural, economic and religious pluralism, social peace, economic programming,[54] the existence of democracy and the dynamism of society, principles and values that the social and democratic rule of law advocates.[55] It is through the free creation of associations that the differences of thought and action of a pluralistic society are channeled. Thus, while the various associations form the parts of this *structured global plural society*,[56] the State is consolidated and legitimised through them.[57]

In political-electoral matters, freedom of association promotes political pluralism and citizen participation in the formation of government.[58] Political parties are the means by which citizens participate in the democratic life of the country, organise the population, contribute to popular representation, make the exercise of political rights possible and consolidate the State of parties.[59] The right to join political parties is of particular importance, since its violation prevents not only the formation of the party but also the very principle of universal suffrage.[60] The purpose of political parties is to achieve the participation of people in democratic life, contribute to the integration of national representation and grant access to citizens to exercise public power.

Participation of people within a constitutional and democratic rule of law does not occur only and exclusively through political parties. Associations *in genere* play an essential role in shaping modern democracies.[61] The existence of different associations plays an important role as a factor of social self-organisation. Through the creation of different associative groups, the community organises itself in a free and orderly manner,[62] whether in the smallest entities, such as sports clubs, gastronomic associations, or through large companies or capital, financial, labour unions, political parties or religious groups.[63]

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[54] M García-Pelayo, *Las transformaciones del Estado contemporáneo* (3rd edn, Alianza, Madrid, 1982) 117.
[55] In that sense, refer to HD Jarass (n 25) 270.
[56] R Scholz, 'Art. 9' in T Maunz and G Dürig,, *Grundgesetz Kommentar* (CH Beck, München, 1999) 57.
[57] ACTION OF UNCONSTITUTIONALITY 28/2006 AND ITS ACCUMULATED 29/2006 AND 30/2006. Final judgment on October 15, 2010.
[58] Electoral Court. J 25/2002.
[59] Orozco Henriquez (n 3) 48; ACTION OF UNCONSTITUTIONALITY 28/2006 AND ITS ACCUMULATED 29/2006 AND 30/2006. Final judgment on October 15, 2010.
[60] TEPJF, S3ELJ 25/2002.
[61] Carbonell (n 3) 829.
[62] ibid.
[63] Orozco Henriquez (n 3) 48.

Labour unions guarantee the protection of workers' rights and freedom of labour; religious associations guarantee a facet of religious freedom. Civil associations devoted to the provision of education are a means through which the right to education is also exercised.

Regarding the right to equality and non-discrimination, the Supreme Court has not had the opportunity to rule on acts of discrimination within associations. Typical cases in other jurisdictions regarding the expulsion of a person because of their sexual preference or the inadmissibility of a member because of their gender or race are not cases that have reached the Supreme Court. In part, this is due to the fact that conflicts between associations and partners are still understood as conflicts between private parties, as a breach or infraction of the partnership agreement and their conflicts are dealt with in the ordinary civil or commercial courts.

Where there has been a pronouncement on the issue of equality has been in the case of political parties. The Mexican Constitution expressly establishes that one of the purposes of political parties is the promotion of gender parity. In this regard, the Electoral Court has instructed political parties to ensure that their governing bodies have a composition that guarantees gender equality.[64]

Referring to peasant and indigenous associations, the Supreme Court pointed out that these entities are a means to end the social exclusion and economic poverty that have characterised the members of these groups. Consequently, it is up to the state to take action to achieve this association and therefore material equality. Note that the case does not refer to the protection of equality within the association, but to protect a historically disadvantaged sector through a certain type of association in order to achieve material equality among Mexican society.[65] In the same vein, the Electoral Court has recognised that freedom of association fulfills a complementary function to the rights of indigenous peoples and communities and their members, which is necessary and indispensable in a system of rights.[66]

[64] TEPJ J 20/2018.
[65] Supreme Court: I.18o.A.11 CS (10a.).
[66] SUP-JDC9167/2011; November 2011.

Freedom of association also protects other constitutionally protected principles and values. Influenced by the European *iusfundamental* case law of the second post-war period, the Supreme Court has pointed out that human dignity is the foundation of fundamental rights and of the entire legal system.[67] Therefore, although the Supreme Court has not expressly recognised it, it is possible to interpret that freedom of association is an expression of human dignity.

The Supreme Court has also recognised the free development of personality as the faculty of every person to be individually as they want to be in accordance with their values, ideas, expectations, tastes, etc.[68] Consequently, it should also be interpreted that by guaranteeing freedom of association, the free development of personality is protected. The freedom of association grants the holder of the right the possibility that in exercising their freedom and in accordance with their life project, his way of thinking, being and acting, they may create - or join - various associations for the pursuit of different objectives according to their own interests. Thus, associations constitute the means or guarantee of the free development of the individual's personality.[69]

Finally, freedom of association provides an undeniable condition of human nature, which is sociability.[70] through associations people add an important role to their coexistence and can expand the horizon of their lives by participating with others in the pursuit of common goals.[71]

[67] 1a./J. 37/2016 (10a.).
[68] 1a./J. 4/2019 (10a.).
[69] AJ Gómez Montoro, *Veinticinco años de derecho de asociación* (UNEC, 2004) 241-268.
[70] JJ Solozábal Echavarría, *Asociación y Constitución* in Eduardo Garcíá de Enterría Martinez-Caarande (ed), *Constitucíon y Constituconalismo Hoy* (Fundación Manuel García-Pelayo, Venezuela, 2000) 478.
[71] Carbonell (n 3) 829.