

# Can Mexico Learn from the European Austerity? Legal Considerations about the *Ley Federal de Austeridad Republicana*

By Gerardo Centeno Garcia\*

*Throughout his campaign, the current President of Mexico, Andres Manuel Lopez Obrador, made two main promises (with its due adjacent topics) regarding the country's public administration: stop corruption and conduct his government with austerity. After months of debate on what the mandatory meant with the concept "Republican Austerity," the decree that enacts the Federal Law of Republican Austerity was published in the Official Gazette of the Federation. With it, the framework for the application of this thought materialises, allowing the public to raise legal debates on the matter. This paper aims at analysing the newly created Federal Law of Republic Austerity, pinpointing the main aspects of this juridical instrument. Looking at the most important austerity exercise in contemporary history (i.e., the Euro Crisis) and its most relevant legal devices (for example, Greece's Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010); the author aims at identifying similarities between it and the Mexican Federal Law of Republic Austerity. Moreover, and taking the case of Koufaki and Adedy v. Greece, it is the mission of this article is to assess if the Federal Law of Republic Austerity might represent possible judicial controversies (including the presented by the judges of the Mexican National Supreme Court of Justice) or human rights violations (due to the heavy financial cuts made to the health and science sector in 2019). As a conclusion, the writer will determine if the Federal Law of Republic Austerity is in strict adherence to the Mexican Constitution and international human rights treaties to which the Mexican government is subscribed.*

**Keywords:** *Austerity; Human Rights; Federal Law of Republic Austerity.*

## Introduction

On 2 July 2018, Mexicans went to the polls to elect their new president. The results came in on that same night, declaring that the candidate Andres Manuel Lopez Obrador (AMLO) was the winner. The current mandatory assumed power on December 1st, 2018, and will be in office until 2024.

The political paradigm shift brought by President Lopez Obrador is an interesting one, composed by several policies and legal reforms that would have been unthinkable under previous presidential administrations. The most interesting one (at least for the purposes set by this paper) is called the *Austeridad*

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*Republicana* (in English, Republican Austerity); which comprises a handful of financial cuts on public spending.

However, austerity has been a controversial but popular solution among indebted governments throughout the world. Whereas governments have decided that this is one of the best economical (nay, political) solutions possible to their financial deficits, academics all around the globe have pointed austerity out as a mischievous and dangerous idea. Nevertheless, it is important to define the type of austerity that the Mexican president is purporting and if it is similar to the ones criticised by academia. This paper is divided into three major parts. In the first part, the author presents a literature review on austerity, presenting the main arguments against and in favour of the idea. The second section of this article contains a legal analysis of the *Ley Federal de Austeridad Republicana* (Federal Law of Republican Austerity – hereinafter LFAR), pinpointing the main rules set up by it; comparing it with the legal framework used in the posterior years of the 2008's Euro Crisis. The last section will be dedicated to analyse the recent complaints presented before Mexico's National Supreme Court of Justice, contrasting it with the case of *Koufaki and Adedy v. Greece*; assessing their differences and similarities while applying Human Rights Law. The objective of this paper is to determine if the *Austeridad Republicana* holds similarities with the failed austerity policies of the Euro Crisis of 2008.

## Literature Review

### *On Austerity*

When it comes to austerity, there is no better researcher to read than Mark Blyth. He defines austerity as

*“a form of voluntary deflation in which the economy adjusts through the reduction of wages, prices, and public spending to restore competitiveness, which is (supposedly) best achieved by cutting the state's budget, debts, and deficits.”<sup>1</sup>*

Konzelman states that Austerity measures, therefore, include some combination of public expenditure reductions and increased taxes.<sup>2</sup> Andor is straight while asserting that the concept of austerity is unhelpful in the analysis of economic policy. He abounds by stating that

*“one needs to decide whether austerity is (A) deficit reduction in general, or (B) deficit reduction by public expenditure cuts, or perhaps both (A and B). Similarly, we need to decide whether we call all deficit or expenditure reduction austerity (1), or only if it causes a fall in the GDP growth rate (2), or we reserve this word for situations when the cuts result in real economic contraction, i.e. negative growth.”<sup>3</sup>*

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<sup>1</sup>Blyth (2013) at 2.

<sup>2</sup>Konzelman (2012) at 2.

<sup>3</sup>Andor (2018).

It is worth to mention that the concept has existed for over 2000 years, but it was only until the 1950s that economists and historians started using the word to describe periods of restricted consumption and other spending, especially during periods of war.<sup>4</sup> Anderson and Minneman state that, in practice, the majority of OECD countries have applied austerity measures by cutting government expenditures and increasing taxes; aiming at reducing deficits.<sup>5</sup>

### *Austerity's History*

Much of Blyth's book comprises ideas on why austerity is not the best solution to financial crisis. However, the most relevant part (at least for this paper's objective) resides in the historical analysis made in Part Two of the piece. Establishing Smith, Locke and Hume's ideas as the foundations of austerity, Blyth summarises the most relevant policies issued by countries from 1914 all the way to 2012. Here are the most important thoughts:

Hume postulated that governments are tempted to recur to public credit (government debt), which has no limits (until the interest rates arrive) and is easy to levy (due to its intergenerationality and hiding capability).<sup>6</sup> After the initiation of public debt, governments will enter into a vicious debt cycle, which will force them into "*mortgage [...] all its revenues, sink [in] into a state of languor, inactivity and impotence.*"<sup>7</sup> However, and despite Hume's warnings, public credit is still a highly profitable solution in the field of politics.<sup>8</sup>

Differently from Hume, Adam Smith proposed the parsimony of the scots (in other words, austerity) to tackle public debt. The economist Adam Smith acknowledged the necessity of a State, for which he believed taxes were the best option to fund it. Under the principle of progressivity,<sup>9</sup> Smith proposed the taxation of consumption of luxuries, which Blyth deems insufficient to fund any state; leading him to public debt as the answer for this question.<sup>10</sup>

Blyth refers that, although none of the economists mentioned until now directly utters austerity as the solution to finance a state, the genesis of the concept resides in the deep fear of governments to issue public debt.<sup>11</sup> In the nineteenth century, the idea of public debt debilitating the state persisted, in the texts of David Ricardo and John Stuart Mill. However, the latter contested Hume's and Smith's ideas of the

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<sup>4</sup>Anderson & Minneman (2014) at 110.

<sup>5</sup>Anderson & Minneman (2014) at 112.

<sup>6</sup>Blyth (2013) at 107-8.

<sup>7</sup>*Ibid.*

<sup>8</sup>Blyth (2013) at 110.

<sup>9</sup>"The subjects of every state ought to contribute [...] in proportion to the revenue which they respectively enjoy under the protection of government."- Blyth (2013) at 114.

<sup>10</sup>*Ibid.*

<sup>11</sup>Blyth (2013) at 115.

*“inevitable enfeeblement of the state through debt”* by stating that as *“long as government borrowing did not compete for capital and thus drive up the rate of interest, debt issuance was acceptable, even if taxes would be preferable.”*<sup>12</sup>

Later on, Blyth identifies two types of austerity: the American and the Austrian. The American approach, which Blyth defines as Liquidationism,<sup>13</sup> was summarised in Hebert Hoover’s treasury secretary Andrew Mellon’s words:

*“Liquidate labour, liquidate stocks, liquidate the farmers, and liquidate real estate.”*<sup>14</sup>

This, Blyth argues, means:

*“Liquidationism therefore argues for inevitability—the slump must happen—and also for intervention’s unintended consequences —if you get in the way of that inevitability you will end up making it worse. The consequence of this line of thinking is austerity—purging the system and cutting spending—which becomes the essence of recovery. Austerity may be painful, but it is unavoidable since undergoing such emetic periods is the essence of capitalism’s process of investment and discovery. There was, therefore, no alternative.”*<sup>15</sup>

The Austrian strain of this theory purported the idea that government idea does nothing more than harming the free market.<sup>16</sup> Blyth states that this approach rejected mathematisation and preferred an historical lenses. Finding itself defeated in Europe, this doctrine flew all the way to the United States; in the voice of Joseph Schumpeter.<sup>17</sup>

### *Mexico’s Austerity History*

Mexico has an interesting history in terms of austerity. However, one may ask: Was the Mexican experience influenced by what Blyth stated in the previous paragraphs? Luckily, Moreno-Brid, Benitez & Villareal might have the answer. According to these authors, austerity in Mexico can be traced back to the 1970s. The austerity policies tend to reduce the size of the public sector to give the market a bigger decision-making action in resource allocation.<sup>18</sup> After the 2<sup>nd</sup> World War, Mexico had a period of stable public finances and bonanza. However, the country was not well prepared to receive external financial shocks, which led to a fiscal deficit that

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<sup>12</sup>Blyth (2013) at 118.

<sup>13</sup>Blyth (2013) at 121-4.

<sup>14</sup>Blyth (2013) at 121.

<sup>15</sup>Blyth (2013) at 123.

<sup>16</sup>Blyth (2013) 147.

<sup>17</sup>*Ibid.*

<sup>18</sup>Moreno-Brid, Benitez & Villareal (2016) at 57.

*“climbed from 0.5% to 6.4% of GDP between 1971 and 1975, and the financial deficit of the consolidated public sector soared from 2.5% to 10% of GDP.”<sup>19</sup>*

In the coming years, two main measures were applied to face this situation: The depreciation of its nominal exchange against the dollar; the personal income tax was adjusted for inflation, and a value-added tax along with a new corporate income tax were established.<sup>20</sup> However, as Moreno, *et. al.*, point out, Mexico was still (and still is) highly dependent on oil revenues. Rivero Casas mention this characteristic as well.<sup>21</sup> After the discovery of the giant oil field of Cantarell, the last three years of the 1970s were kind to the nation’s coffers. However, the oil industry suffered a debacle during the 1980s, causing a fiscal deficit of 14% of the GDP in 1981.<sup>22</sup> Moreno-Brid, Benitez & Villareal argue that since the oil bust, all of the Mexican public administrations established austerity as a *sine qua non* tool. As a result, Mexico attained, between 1991 and 1996, more revenues than expenditures; inverting scenarios again between 1997 and 2005, generating an average of 0.7% of the GDP in deficits.<sup>23</sup>

As summary, these authors state:

*“[T]he evolution of the investment ratio and of the pace of economic expansion in 1960-2015 follow three, perhaps four, phases. From 1960 to 1981, the Mexican economy expanded rapidly (averaging an annual rate of growth of 6.6%) while the investment ratio climbed from 15.6% of GDP to 23%. Its surge was the product mainly of the dynamism of public investment, which jumped 5 points to reach 10.2% of GDP, as private investment rose merely two percentage points up to a level equivalent to 12.8% of GDP. By then 44% of total investment was carried out by the public sector, boosted in the last years of this period by the oil bonanza and the state-led industrialisation strategy. In 1982-87, the oil bust, the decline of economic activity and the macroeconomic stabilisation programs implemented were associated with a contraction of the investment ratio (in 9.1 percentage points of GDP). Its public component shrunk six percentage points of GDP, and its private one three points. A third phase, of recovery, began in 1988 and ran up to 2008. In these 20 years the Mexican economy finally left behind the years of stagnation. It managed to expand but at an annual average of 2.5%; much more slowly than in the 1960s or 1970s. The investment ratio increased nine points, and rose to 23.1% of GDP. This figure was similar to that of 1981, but the composition was drastically different: 24% public and 76% private, as the public investment ratio barely expanded by 1.7 percentage points of GDP. The international financial crisis of 2008 apparently opened a new phase of economic slowdown and contraction in the investment ratio due to the reduction of public investment in real terms in each of the last five years. Today, the public investment ratio is 3.7% of GDP; one of the lowest registered in many years.”<sup>24</sup>*

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<sup>19</sup>Moreno-Brid, Benitez & Villareal (2016) at 58.

<sup>20</sup>*Ibid.*

<sup>21</sup>Rivero Casas (2019) at 6.

<sup>22</sup>Moreno-Brid, Benitez & Villareal (2016) at 58-9.

<sup>23</sup>*Ibid.*

<sup>24</sup>Moreno-Brid, Benitez & Villareal (2016) at 59-60.

With this data, Moreno-Brid, Benitez & Villareal assure that

*“that the decline in public investment – by itself and ignoring its impact on private investment through crowding-in effects – has had a major and most adverse impact on the rate of growth of GDP in Mexico.”<sup>25</sup>*

With their investigation we can, therefore, state the idea of austerity is not new in the country.

The 2008’s crisis affected Mexican finances severely, Moreno-Brid, Benitez & Villareal argue. Although the country faced this financial bump with a strong fiscal stance, it could not avoid a deficit high of 3.5% of the GDP in 2015. However, the data collected by these authors point that these deficits were caused by increases in spending, not by reductions in revenues.<sup>26</sup> Although the legislative initiative from which the LFAR originated does not explicitly mention it,<sup>27</sup> this disbursements pattern motivated AMLO’s government to look at austerity as a viable policy.

#### *On Republican Austerity*

On paper, the concept of “Republican Austerity” is defined by the legislative initiative of the LFAR, which states the following points as the pillars of the concept:

- *The reduction of current expenditure regarding the salaries and benefits of senior public officials of the powers, autonomous bodies and their public entities;*
- *The incorporation of all civil servants to public social security systems and the consequent prohibition of establishing privileged retirement, pension or retirement benefits, as well as hiring public resources, private insurance of medical expenses, life or separation , whatever its denomination;*
- *Avoid the thickening of the bureaucratic apparatus, developing the functions of the State without creating more bureaucracy;*
- *Restrict the use of escorts, security elements, private secretaries and advisors, which may not be entrusted or commissioned to private activities or outside their function;*
- *Limit the use of vehicles owned by the State to the fulfilment of public utility purposes and direct service of the population, may only be used for various purposes in cases whose need is justified by being a direct means of fulfilling a public function;*
- *Restrict spending on official propaganda, reducing the hiring of commercial time to the minimum possible and concentrating its diffusion in a single unit;*

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<sup>25</sup>Moreno-Brid, Benitez & Villareal (2016) at 61.

<sup>26</sup>Moreno-Brid, Benitez & Villareal (2016) at 62.

<sup>27</sup>Chamber of Congress people (2018a) Número 5111-II, martes 11 de septiembre at 3-7.

- Set limits on the number of official trips abroad of each public entity, prohibiting the acquisition of transfers in first class service or equivalent;
- Establish limits so that the amounts paid in the previous fiscal year prior to the expenses for telephone, photocopying and electrical energy services; fuels, leases, per diem, fees, food, furniture, office remodelling, telecommunications equipment, computer goods; are not exceeded, once considered the increases in prices and official rates or inflation;
- The express ban on retirement pensions of former presidents of our country is established; and
- It is established that no trusts, funds, mandate or public or private analogues may be constituted, nor will contributions of any nature be made that are intended to alter the rules of discipline and honest exercise of expenditure.<sup>28</sup>

Mentioning these pillars is quite important when it comes to differentiate the Mexican austerity from the other similar policies. Nevertheless, one might ask: What is the substance behind these specific cuts?

Rivero Casas states that AMLO's Republican Austerity is a "*slight return to Keynesian policies of the twentieth century*," due to the generation of social programmes that foster consumption of poor citizens and accelerate economic development.<sup>29</sup> This point was mentioned by Blyth while discussing the foundations of Keynes' anti-austerity ideas.<sup>30</sup>

Rivero Casas points out that three legal instruments comprise the Mexican Republican Austerity: the aforementioned LFAR, the Federal Law on Compensation of Public Servants (hereinafter LFRSP) and the Federation Expenditure Budget for 2019 (PEF-2019). With these, this researcher points out the partial turn that the Mexican government does towards Keynesian policies of the 20th century, consisting in significant investments in public works and a "fast-track" wealth distribution through the creation of new social programmes.<sup>31</sup> Since the main focus of this paper resides in the legal devices contained in the LFAR, the author wishes to do a summarised explanation of the other two instruments:

#### *The Federal Law on Compensation of Public Servants*

The LFRSP is the result of several constitutional modifications (namely, to articles 75, 115, 116, 122, 123 and 127 of the Mexican Constitution). These adjustments forced the Federation, municipalities, states and Mexico City, to include in their expenditure budgets, the tabulators from the remuneration received by their public servants, subject to the provisions of article 127 of the Constitution.<sup>32</sup>

This later legal device establishes that:

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<sup>28</sup>*Idem* at 4.

<sup>29</sup>Rivero Casas (2019) at 9, 15.

<sup>30</sup>Blyth (2013) at 40, 129-30.

<sup>31</sup>Blyth (2013) at 4.

<sup>32</sup>Chamber of Congress people (2018b) número 5106-IV, martes 4 de septiembre at 103.

*“Article 127. The public servants of the Federation, of the federative entities, of the Municipalities and of the territorial demarcations of Mexico City, of their entities and dependencies, as well as of their parastatal and Para municipal administrations, public trusts, institutions and organisations Self-employed, and any other public entity, will receive adequate and inalienable remuneration for the performance of their function, employment, position or commission, which must be proportional to their responsibilities.*

*Said remuneration shall be determined annually and equitably in the corresponding expenditure budgets, under the following bases:*

*I. Any payment in cash or in kind, including allowances, bonuses, prizes, rewards, incentives, commissions, compensations and any other, is considered a remuneration, with the exception of supports and expenses subject to verification that are proper of a work development and travel expenses in official activities.*

*II. No public servant may receive a remuneration, in terms of the previous section, for the performance of his function, employment, position or commission, greater than that established for the President of the Republic in the corresponding budget.*

*III. No public servant may have a remuneration equal to or greater than his superior; unless the surplus is a consequence of the performance of several public jobs, that their remuneration is a product of the general working conditions, derived from a qualified technical work or by specialisation in their function, the sum of said remuneration should not exceed half of the remuneration established for the President of the Republic in the corresponding budget.*

*IV. Retirements, pensions or retirement assets, or settlements for services rendered, as well as loans or credits, will not be granted or covered, without these being assigned by law, legislative decree, collective agreement or general working conditions.*

*These concepts are not part of a remuneration. The security services required by public servants are excluded due to the position held.*

*V. Remuneration and its tabulators will be public, and must specify and differentiate all of its fixed and variable elements both in cash and in kind.*

*VI. The Congress of the Union and the Legislatures of the federative entities, within the scope of their powers, will issue the laws to enforce the content of this article and the relative constitutional provisions, and to penalise criminally and administratively the behaviours that imply the breach or the circumvention by simulation of what is established in this article.’’<sup>33</sup>*

The law that this article talks about is the LFRSP. This act gives legal life to everything established by articles 75 and 127 of the Mexican Constitution.<sup>34</sup> Its most important mandates are:

<sup>33</sup>Political Constitution of the United Mexican States. Article 127, 144-5.

<sup>34</sup>Article 75. The Chamber of Deputies, when approving the [PEF], should not fail to indicate the remuneration corresponding to a job that is established by law; and in case that for any circumstance it is omitted to fix said remuneration, it will be understood as indicated the one that had been fixed in the previous [PEF] or in the law that established the employment. In any case, said statement must respect the bases provided for in article 127 of this Constitution and in the laws issued by the General Congress on the matter. The federal Legislative, Executive and Judicial branches, as well as the agencies with autonomy recognised in this Constitution that exercise resources of the Federal Expenditure Budget, must include within their budget projects, the tabulators of the remunerations of their public servers. These proposals must observe the procedure for the approval of the budget of



- No public servant will receive a remuneration greater than that established for the President of the Republic in the PEF.<sup>35</sup>
- Retirements, pensions, retirement assets or payments of similar nature will not be granted or paid for services rendered in the performance of the public function without these being assigned by law, legislative decree, collective agreement or general working conditions.<sup>36</sup>
- In May 20th, 2019, the Mexican Supreme Court of Justice failed regarding the *Accion de Inconstitucionalidad*<sup>37</sup> trial presented by the National Human Rights Commission and 44 Senators of the Sixty-fourth legislature; which caused the nullification of the following articles:
  - Article 6, first paragraph, sections II, III, and IV, subsections b) and c), and the last paragraph: This provision established the prohibition to any public servant to have a remuneration equal to or greater than their superior.<sup>38-39</sup> The Supreme Court deemed that the constraint violated Article 127 of the Mexican Constitution, since it allowed setting remuneration in a discretionary manner.<sup>40</sup>
  - Article 7, first paragraph, section I, subsection a), sections II and IV: This provision frames how the determination of the public servants' wages will be made. The Supreme Court nullified these sections due to the same reason mentioned above.<sup>41</sup>

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expenditures, provides for article 74 section IV of this Constitution and other applicable legal provisions." See CPEUM, Article 75, 78-9.

<sup>35</sup>LFRSP, Article 6, section I, 3.

<sup>36</sup>LFRSP, Article 10, first paragraph, 7.

<sup>37</sup>Legal remedy that is processed exclusively before the Mexican Supreme Court by means of which the possible contradiction between the Constitution and some norm or provision of a general nature of lower hierarchy is denounced: law, international treaty, regulation or decree, in order to preserve or maintain the supremacy of the Magna Carta and void the rules declared unconstitutional. The actions of unconstitutionality may be promoted by federal or local legislators or legislators or, who form a parliamentary minority that represents at least 33% of the total of those who make up the body that issued the contested rule. They can also promote actions of unconstitutionality: the Attorney General of the Republic; political parties registered with the National Electoral Institute; or parties with local registration, in the case of electoral laws; as well as the National Human Rights Commission and local organisations in the same subject. Such actions may be exercised within thirty calendar days following the date of publication of the standard. In the case of deputies, they may stand against federal laws. For their part, senators may do so in violation of federal laws or international treaties concluded by the Mexican State. If the Supreme Court declares that a rule is contrary to the Supreme Law, it may not be effective again or applied to any person." See Legislative Information System 2019.

<sup>38</sup>LFRSP, Article 6, 6-7.

<sup>39</sup>National Supreme Court of Justice. 2019. *Acción de Inconstitucionalidad 105/2018 y SU Acumulada 108/2018*.

<sup>40</sup>National Supreme Court of Justice. 2019. *SENTENCIA dictada por el Tribunal Pleno de la Suprema Corte de Justicia de la Nación en la Acción de Inconstitucionalidad 105/2018 y su acumulada 108/2018*.

<sup>41</sup>*Ibid.*

*The Federation Expenditure Budget*

In terms of the PEF-2019, Rivero Casas does a clear explanation on what the modifications were, in comparison with the PEF of 2018. He presents the data with the following table:<sup>42</sup>

Dependencia/organismo autónomos	2018	2019	Condición
Poder Legislativo	15,574,572,274	13,002,444,027	Disminuyó
Poder Judicial	71,366,389,337	63,656,725,000	Disminuyó
INE	24,215,327,986	15,363,037,745	Disminuyó
CNDH	2,033,004,229	1,809,405,805	Disminuyó
INAI	1,098,478,640	900,151,692	Disminuyó
INEGI	7,788,876,174	12,129,702,814	Aumentó
Presidencia	1,797,418,247	1,569,844,550	Disminuyó
SEGOB	64,288,166,419	60,783,083,252	Disminuyó
RELEX	9,003,192,028	8,532,283,876	Disminuyó

We can see that, as Rivero Casas mentions, that most of the federal agencies and autonomous constitutional bodies received a significant decrease in their budget. However, those related to the issues of security and social development increased. This is the case of Institute for Social Security and Services for State Workers, Mexican Institute of Social Security, Ministry of Health, Welfare, Labour and Social Welfare and Education.<sup>43</sup>

SHCP	26,458,200,665	22,575,933,039	Disminuyó
SEDENA	81,021,903,813	93,670,187,410	Aumentó
AGRICULTURA	72,125,383,47	65,434,880,164	Disminuyó
FUNCIÓN PÚBLICA	1,191,905,203	901,819,393	Disminuyó
SEP	280,969,302,366	308,000,434,721	Aumentó
SALUD	122,557,337,320	124,266,865,116	Aumentó
STPS	4,036,978,861	43,269,051,026	Aumentó
MARINA	31,305,775,196	32,083,375,192	Aumentó
MEDIO AMBIENTE	37,580,635,702	31,020,459,536	Disminuyó
SENER	2,470,265,318	27,229,831,829	Aumentó
BIENESTAR	106,645,504,028	150,606,037,651	Aumentó
TURISMO	3,916,225,884	8,785,888,223	Aumentó
CONACYT	27,225,876,510	24,764,719,64	Disminuyó
CULTURA	12,916,173,982	12,894,090,259	Disminuyó
ISSSTE	282,632,561,843	323,322,195,097	Aumentó
IMSS	679,284,281,924	746,738,895,682	Aumentó

<sup>42</sup>Rivero Casas (2019) at 12-13.

<sup>43</sup>Rivero Casas (2019) at 13.

*The Federal Law of Republican Austerity*

On May 4th, 2019, the Federal government published a memorandum with guidelines to decrease current expenditure from all the federal institutions. These instructions were enacted in the LFAR on July 2nd.<sup>44</sup>

This law provides us with the legal definition of “Republican Austerity.” In its Article 4, section I, the act establishes:

*“Republican Austerity: Republican conduct and State policy that public entities as well as the Legislative and Judicial Powers, government companies and subsidiaries, and autonomous constitutional bodies; are obliged to comply in accordance with their legal framework, to combat the social inequality, corruption, greed and waste of national assets and resources, managing resources with efficiency, effectiveness, economy, transparency and honesty to meet the objectives to which they are intended.”*<sup>45</sup>

Later on, the LFAR makes clear that the only two types of expenses being reduced by the Republican Austerity are Current<sup>46</sup> and Capital Expenditures.<sup>47-48</sup> There is no mention of both functional and administrative expenditures. The austerity policy under which both types of disbursements should be done are explained in article 7, paragraph three. The provisions states:

*“To apply the policy of republican austerity of the State, public entities must:*  
*I. Refrain from negatively affecting the social rights of Mexicans, provided for in the Political Constitution of the United Mexican States and International Treaties to which Mexico is a party;*  
*II. Focus the preferential republican austerity measures on non-priority current expenditure in the terms of this Law, and*  
*III. Avoid reducing investment in the attention to emergencies and natural disasters or from human activity.”*<sup>49</sup>

During 2019, several public officers (primarily, from the Health sector) complained and denounced heavy financial cuttings that would prevent them to

<sup>44</sup>Rivero Casas (2019) at 11-12.

<sup>45</sup>LFAR, Article 4, section I, 2.

<sup>46</sup> “[A]n expenditure that the public sector makes and that does not have as counterpart the creation of an asset, but rather constitutes an act of consumption; that is, the expenses that are destined to the hiring of the human resources and to the purchase of the goods and services necessary for the proper development of the administrative functions. This type of expense is used to carry out ordinary activities or to provide services on a regular and permanent nature, of conservation and minor maintenance. In addition, it includes expenditures destined to research and development, because they do not produce concrete benefits and are generally not incorporated in the physical assets of the agencies and entities.” See Anibal & Gutierrez (2015) at 16.

<sup>47</sup> “[A]llocations for the creation of capital goods and conservation of existing ones, the acquisition of real estate and securities, as well as resources transferred to other sectors for the same purposes, which contribute to increasing and preserving the physical or financial assets of the nation.” See *Ibid.*

<sup>48</sup>LFAR. Article 6, 3.

<sup>49</sup>LFAR, Article 7, paragraph three, 3.

develop their activities. This situation went as far as provoking the resignation of German Garcia Cazares, AMLO's first President of the Mexican Social Security Institute.<sup>50</sup> However, as Rivero Casas stated, the case is totally the opposite since the Health sector received generous resources for that year's fiscal exercise. What was the point of the grievances? The answer might be in Article 16 and 17. The first states:

*“Article 16. The following are measures of republican austerity, in an denunciative and non-limiting manner:*

*I. The purchase or lease of luxury vehicles (...);*

*II. Official vehicles may only be used for activities that allow the fulfilment of the functions of the Federal Public Administration. Any private use of such vehicles is prohibited;*

*III. Acquisitions and leases of computer equipment and systems will be carried out after justification, based on modernisation plans and prioritizing the use of free software, provided it meets the characteristics required for the exercise of public functions;*

*IV. Savings insurance contracts for the benefit of public servants with state resources, such as Individual Separation Insurance, or special savings banks are prohibited; (...)*

*V. Air vehicles owned by the Federal Executive Power, taking into account the particularities of the corresponding asset will be used for security, defence, marine, air force, civil protection, as well as the transfer of patients. [...]*

*VI. No unnecessary office expenses will be incurred. [...];*

*VII. Remodelling offices for aesthetic reasons or buying luxury furniture is prohibited, and*

*VIII. Waste of electricity, water, fixed and mobile telephone services, gasoline and supplies financed by the treasury is prohibited.*

*The Secretariat and the Ministry of Finance and Public Credit will jointly prepare and issue the necessary guidelines to regulate the provisions of this article, in accordance with its powers and considering the provisions of the Law, and may extend the assumptions regulated in this article, in case it is considered convenient.*

*It will be the responsibility of the Ministry of Finance and Public Credit within the scope of the Executive Power, to issue the provisions that, in matters of budgetary control, will govern the implementation of this Law.”<sup>51</sup>*

In his resignation letter, former President of the Mexican Social Security Institute German Garcia Cazares stated an intense and pernicious interference in the institute's activities, carried out through a strict budget control.<sup>52</sup> The last paragraph of Article 16 might be the cause of this intervention which, remembering the *Accion de Inconstitucionalidad* against the LFRSP and attending to the text of the disposition brings the argument of discretion back on the table. Moreover, this was not the only article that caused controversy among the ranks of the Mexican public administration.

<sup>50</sup>Mexican Social Security Institute (2019).

<sup>51</sup>LFAR, Article 16, 5-6.

<sup>52</sup>Mexican Social Security Institute (2019).

On October 8th, 2019, the Chamber of Congress people approved the LFAR. However, 124 of the Congress people voted against it. Subsequently, most of these people expressed their wish to present an *Accion de Inconstitucionalidad* against articles 13, 16, 22 and 24. The first prohibits all duplication of functions in the units of the Federal Public Administration;<sup>53</sup> the second, as we have discussed, abolished the contracting, with the resources of the State, of insurance of saving for the civil servants;<sup>54</sup> the third rules out to hire retirement, pensions and life insurance or private medical expenses for officials;<sup>55</sup> and the last article sets that the officials cannot work 10 years after completing their functions, if they had supervised it, regulated their activity or had privileged information regarding the branch of government in which they were.<sup>56</sup> On January 3rd, 2020, under file number 139/2019, the Plenary of the National Supreme Court of Justice opened the trial against the latter constraint.<sup>57</sup> The sentence is still pending.

In sum, these are the rest of the prohibitions set by this new law:

- The nullification of public contracts awarded to private companies through the usage of influence peddling, corruption or that causes damage to the Public Treasury;<sup>58</sup>
- Expenses for telephony, cell phone, photocopying, fuels, leases, per diem, food, furniture, office remodelling, telecommunications equipment, computer goods, stationery, tickets, congresses, conventions, exhibitions and seminars, necessary to fulfil the function of each agency and agency, may not exceed the amounts disbursed in the immediately preceding budget year;<sup>59</sup>
- Only the heads of office or secretariat will get a particular assistant; only undersecretaries of State, and superiors, as well as holders of direct control entities; posts with the level of Deputy General Management that do not exercise powers expressly provided by law or regulation are prohibited; union representatives will only hold honorary positions, which means that they will not receive any remuneration; consulting services provided by private parties that the public administration can procure itself are forbidden;<sup>60</sup>
- Severe cuts and control on public propaganda resources;<sup>61</sup>
- The international representatives bodies that do not belong to the Foreign Relationships Secretariat are strictly banned;<sup>62</sup>

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<sup>53</sup>LFAR, Article 13, 5.

<sup>54</sup>LFAR, Article 16, section IV, 5.

<sup>55</sup>LFAR, Article 22, 8.

<sup>56</sup>LFAR, Article 24, 8.

<sup>57</sup>National Supreme Court of Justice. 2020. *Lista Extraordinaria de Notificaciones Sección de Támite de Controversias Constitucionales y de Acciones de Inconstitucionalidad*,

<sup>58</sup>LFAR, Article 9, 3.

<sup>59</sup>LFAR, Article 10, 4.

<sup>60</sup>LFAR, Article 12, 4-5.

<sup>61</sup>LFAR, Article 14, 5.

<sup>62</sup>LFAR, Article 15, 5.

- All trusts, funds, mandates or similar contracts that receive public resources in the Centralised Federal Public Administration, without exception must be approved by the Ministry of Finance and Public Credit. The existing ones have to be registered in the Ministry's register;<sup>63</sup>
- All the public servants will be subjected to the adequate and proportional remuneration that according to their responsibilities is determined in the budgets of expenditures, considering what is established in articles 75 and 127 of the Political Constitution of the United Mexican States and other applicable provisions;<sup>64</sup>
- No public servant may use institutional human, material or financial resources for purposes other than those related to their functions;<sup>65</sup> and
- It is prohibited to any natural or legal person to use their legal personality to avoid compliance with obligations and harm public or private interests.<sup>66</sup>

### *2008's Euro Crisis: The Main Legal Instruments applied in Greece*

The causes of the Euro Crisis are, more or less, well-known. Same coin, but different fiscal policies. Sharing the currency allow countries like Spain and Greece to borrow money from the banks as the exact same interest rate as Germany, which allowed these countries to create programs that caused huge deficit spending; payable due to the enormous quantities available to them. Unfortunately, the American housing market crisis caused the banks all around the globe halted their borrowing; which provoked Greece to have no resources to finance its newly enacted programs. As a response, Germany recurred to a 500 billion euro bank-bailout in late 2008.<sup>67</sup> Moreover, the European Union, the European Central Bank and the International Monetary Fund (as well as other bilateral loans) lend Greece 110 billion euro loan in exchange for a 20 percent cut in public-sector pay, a 10 percent pension cut, and tax increases.<sup>68</sup> The most important laws (at least for the purposes of this paper) governing this austerity pack are Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010.

### *Koufaki and Adedy v. Greece*

On August 31st, 2012, Ioanna Koufaki (who used to work as a part of the scientific staff of the Greek Ombudsman's Office) and the Confederation of Public-Sector Trade Unions (ADEDY) presented a complaint before the European Court of Human Rights,<sup>69</sup> arguing that the enactment of Laws no. 3833/2010, no.

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<sup>63</sup>LFAR, Articles 18 and 19, 6-7.

<sup>64</sup>LFAR, Article 20, 7.

<sup>65</sup>LFAR, Article 23, 8.

<sup>66</sup>LFAR, Article 25, 8-9.

<sup>67</sup>Blyth (2018) at 53-67.

<sup>68</sup>Anibal & Gutierrez (2015) at 16.

<sup>69</sup>European Court of Human Rights. 2012. *Koufaki and ADEDY v. Greece* [hereinafter Koufaki and ADEDY v. Greece]

3845/2010 and no. 3847/2010, consisted in a violation of Article 1 of Protocol No. 1 of the European Convention on Human Rights. Said legal disposition establishes the protection of the Protection of Property.<sup>70</sup> What do these laws establish?

Law no. 3833/2010, entitled “Protection of the National Economy - Urgent Measures to respond to the Financial Crisis”, reduced the wages of every person working in the public sector by a range between 12% and 30%; per its section 1. Moreover, in section 2, the new act set a new salary ceiling for all public servants.<sup>71</sup> This reduction is increased 8% more if we take into account Section 3 of Law no. 3845/2010.<sup>72</sup> Finally, Law no. 3847/2010 reduced the amount for public-sector retirees and abolished them altogether for those under the age of sixty.<sup>73</sup> These three laws were enforced in accordance with the Memorandum of Understanding of Greece with its lenders;<sup>74</sup> a document that establishes the economics “how-and-why” of the crisis and the conditions that Greece agreed to before receiving those funds.<sup>75</sup> All of these reductions, Koufaki and the Adedy stated, were done in clear violation of Article 1 of Protocol No. 1 of the European Convention on Human Rights; since the deprivation of possessions should be considered only as a measure of last resort.<sup>76</sup> However, the European Court of Human Rights deemed that these cuts were not a direct “deprivation of possessions,” but rather as interference with the right to peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1.<sup>77</sup> In sum, and after taking into consideration previous case law on the topic of public interest,<sup>78</sup> the Court estimated that Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010; were not transgressive of Article 1 of Protocol No. 1 of the European Convention on Human Rights.<sup>79</sup>

## Methodology

To the extent possible, the past pages were a summary of the main circumstances surrounding the austerity policies in both Mexico and Greece. The following section consists in a comparative exercise of both scenarios, aiming at identifying the following:

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<sup>70</sup>Council of Europe. 2020. .

<sup>71</sup>Buffa (2017) at 454.

<sup>72</sup>Buffa (2017) at 455.

<sup>73</sup>Buffa (2017) at 456.

<sup>74</sup>Pervou (2016) at 115.

<sup>75</sup>Directorate-General for Economic and Financial Affairs. (2010).

<sup>76</sup>Koufaki and Adedy v. *Greece*, paragraph 23, 4.

<sup>77</sup>*Idem*, paragraph 34, 7.

<sup>78</sup>The Court cited the following cases to raise the argument that the laws in the Koufaki and Adedy v. *Greece* case were indeed in protection of “public interest”: *Jahn and Others v. Germany* [GC], nos. 46720/99, § 91; *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 67; *Mihaieş and Senteş v. Romania* (dec.), nos. 44232/11 and 44605/11, § 19. See *Koufaki and Adedy v. Greece*, paragraph 39, 7-8.

<sup>79</sup>Koufaki and Adedy v. *Greece*, paragraphs 41-49, 8-10.

- Economic scenarios;
- Main legal instruments; and
- Judicial decisions.

### *Economic Scenarios*

As discussed, Mexico is not a newbie when it comes to austerity policies. Moreover, the country implemented these types of measure both in crisis conditions and in non-crisis periods.

Currently, Mexico does not have a generalised insolvency problem.<sup>80</sup> Since this paper talks about the similarities between the Republican Austerity (that is, the current presidential administration policy) and the Euro Crisis' one, I will limit myself to talk about the economic scenario present since AMLO took power. This law aims at, as discussed, reduce Current and Capital Expenditures; whichever these might come from. However, as we saw, the LFAR chose 17 aspects of the public administration to reduce expenses.<sup>81</sup> In the explanatory statement of the LFAR, the Congress people of Morena (AMLO's political party) stated that austerity has to be inserted as a guiding principle of the Mexican public administration, and as a method that "*will allow to eradicate the set of excesses that the political class had been organised and to realise the constitutional principles of economy, rationality, honesty and transparency in the allocation and the exercise of public resources.*"<sup>82</sup> In other words, the country was polluted by corruption and an abusive political class that exploited public resources as their own. Therefore, the LFAR aims at making public disbursements be made under the premises of good government.<sup>83</sup>

On the other hand, and as stated by the European Directorate-General for Economic and Financial Affairs, Greece had an unsustainable pension system which was running the risk of becoming insolvent.<sup>84</sup> Furthermore, public servants' wages and "*pension bills amounted to around three-quarters of total primary expenditure, and these were the most dynamic components of expenditure over the past decade.*"<sup>85</sup> Therefore, Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010 were directly intended to cut down funds from those two aspects, aiming to restore confidence and maintain financial stability (short-term programme); improve competitiveness and alter the economy's structure towards a more investment- and export-led growth model (mid-term); and restore Greece's credibility for private investors (overarching objective).<sup>86</sup>

<sup>80</sup>The Institute for Social Security and Services for State Workers "has yet to settle its debts with distributors, also, there is no budget to pay and hire contracted services." See, El Universal (2019).

<sup>81</sup>LFAR, Articles 9-10, 12, 14-15, 18-20, 23, and 25, 3-9.

<sup>82</sup>Chamber of Congress people (2018a) at 3.

<sup>83</sup>UNDP defines good governance as "the exercise of economic, political and administrative authority to handle the affairs of a country at all levels. Good governance is among many things, participatory, transparent, and responsible. It is also effective and equitable. Promotes the Rule of Law." See Instituto Interamericano de Derechos Humanos (2004).

<sup>84</sup>Directorate-General for Economic and Financial Affairs. (2010).

<sup>85</sup>Directorate-General for Economic and Financial Affairs. (2010) at 15.

<sup>86</sup>Directorate-General for Economic and Financial Affairs. (2010) at 10-11.



The economic scenarios that provoked austerity measures to be implemented in both Mexico and Greece are totally different, which led to different types of austerities. The Republican Austerity is a policy that aims at cutting unnecessary spending. The Greek Austerity was a set of conditions established by the European Central Bank to help Greece restore its financial stability. One responds to inner activities conducted by previous governments that created a perverted public spending tradition, and the other reacts at a chain of financial misadventures caused by international private actors and a devious monetary policy.

### **Main Legal Instruments**

As stated, the motives behind each country's austerity policies are different. As a consequence, the drafting and the conditions established by their laws are quite disparate.

#### *The Republican Austerity's Main Laws*

Putting aside the PEF, the two main legislative outcomes regulating Republican Austerity are both the LFAR and the LFRSP. As I have discussed before, the explanatory statement of the LFAR mentions that one of its objectives is to cut down the excessive expenses incurred by the Mexican Federal Public Administration.<sup>87</sup> The LFRSP's explanatory statement indicates that the law is necessary since it is:

*“unacceptable, when news are released every day that denounces the excessive income of public servants, in particular, the privileged one of the high bureaucracy of both the federal government and local governments, which allocate large portions of public resources that should be used for truly legitimate purposes, and not to sustain the privileges of public servants who have unduly become an elite.”<sup>88</sup>*

Again, none of these laws purport the idea or declare a financial crisis in the country. In reality, both acts have the sole purpose of decreasing unnecessary disbursements and Current Expenditure by establishing a limit of what a public servant might receive. With the enactment of both laws, the Ministry of Public Function, Irma Erendira Sandoval, expects savings up to 11,000 million Mexican pesos.<sup>89</sup>

Another main characteristic of the Republic Austerity is its origin. Although we have commented that the excessive expenses of past administrations motivated the legislation of both the LFAR and the LFRSP, by origin I mean the body that created both acts: the Mexican Congress. This means that the austerity policies are

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<sup>87</sup>Chamber of Congress people (2018a) at 3.

<sup>88</sup>Chamber of Congress people (2018b) at 103.

<sup>89</sup>Expansion (2019).

a sovereign decision made by Mexico; instead of a set of conditions imposed by external institutions.

### *Greek Austerity's Main Laws*

The main laws regulating Greece's austerity policies are the Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010. These acts were a response to the conditions imposed by the European Union, the European Central Bank and the International Monetary Fund, after lending 110 billion euros to the country.<sup>90</sup> In fact, as Blyth stated, the crisis was generated by the wrongdoings of external actors, which caused banks to stop the cash flow going into Greece's arks to finance their social programmes.<sup>91</sup> This austerity is everything but a sovereign decision.

The purposes of these laws are stated in the European Directorate-General for Economic and Financial Affairs' Economic Adjustment Programme for Greece, stating that the cuts on public servants' wages and pensions were more than necessary to stabilise the country's financial system. By accepting these considerations, Greece compromised itself to the objectives established in said document if it wanted to receive the 110 billion loan offered by the European Union, the European Central Bank and the International Monetary Fund. Therefore, there is not such a thing as an eruption of Greek's financial sovereignty, since the country agreed to the conditions purported by the aforementioned three institutions.

## **Main Judicial Decisions**

### *Mexico*

Since the *Accion de Inconstitucionalidad* of the LFAR was recently admitted by the National Supreme Court of Justice, this section is solely focused on analysing the outcomes of the *Accion de Inconstitucionalidad* against the LFRSP.

As we have discussed, the result of this judicial process was the declaration of unconstitutionality of the following articles under the following premises:

- Article 6, first paragraph, sections II, III, and IV, subsections b) and c), and the last paragraph: This provision established the prohibition to any public servant to have a remuneration equal to or greater than their superior.<sup>92-93</sup>

The Supreme Court deemed that the constraint violated Article 127 of the

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<sup>90</sup>Blyth (2013) at 74.

<sup>91</sup>Blyth (2013) at 53-67.

<sup>92</sup>LFRSP, Article 6, 6-7.

<sup>93</sup>National Supreme Court of Justice. 2019. *Acción de Inconstitucionalidad 105/2018 y Su Acumulada 108/2018*.

Mexican Constitution, since it allowed setting remunerations in a discretionary manner.<sup>94</sup>

- Article 7, first paragraph, section I, subsection a), sections II and IV: This provision frames how the determination of the public servants' wages will be made. The Supreme Court nullified these sections due to the same reason mentioned above.<sup>95</sup>

At the time of this paper being written, no *Amparo* trial<sup>96</sup> has been started before any constitutional tribunals in Mexico. Unlikely, we will not see any arguments stating human rights violations against any of the Republican Austerity's laws since, as it is stated in both acts' explanatory statements, they are intended to reduce the excesses incurred by the elite public servants.<sup>97</sup> The Supreme Court did not purport a position regarding this concept, which leaves the possibility to discuss the reach of the "excesses" in further trials; however, this would be in reason of the discretionarily used by the legislators while determining what is an excess and what is not, as it happened with the two nullified articles of the LFRSP.

### Greece

In Koufaki and the Adedy, the plaintiffs adduced human rights violations caused by the enactment of Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010, deemed unfounded by the European Court of Human Rights. As stated by the Court in its judgment:

*"The first applicant submitted in particular that despite the fact that her pay had been reduced permanently she had received no compensation for that deprivation of possessions or any promise of compensation in another form, such as a reduction in working hours, a lowering of interest rates or a reduction in loan repayments. Nor had any measure been taken to allow her to compensate for the deprivation of her possessions, for instance by practising as a lawyer in addition to her duties in the Ombudsman's Office. On the contrary, her financial situation had been made worse by the imposition of intolerable taxation measures: a professional tax of EUR 753.43, a special property tax, and a supplementary tax of EUR 1,731 on 2012 income. These were compounded by the rise in the price of basic essentials, fuel and public service charges. All those measures taken together had led to a drastic fall in her standard of living."*<sup>98</sup>

<sup>94</sup>National Supreme Court of Justice. 2019. *Sentencia dictada por el Tribunal Pleno de la Suprema Corte de Justicia de la Nación en la Acción de Inconstitucionalidad 105/2018 y Su Acumulada 108/2018.*,

<sup>95</sup>*Ibid.*

<sup>96</sup>"The Amparo protects the fundamental rights of a person -holder of those rights- who urges the amparo court to restore him/her of the enjoyment of them when an authority has transgressed them." See Martinez Andreu (2011) at 685.

<sup>97</sup>Chamber of Congress people (2018a) at 3 and Chamber of Congress people (2018b) at 103.

<sup>98</sup>*Koufaki and Adedy v. Greece*, paragraph 26, 5.

As we remember, the European Court of Human Rights deemed that these cuts were not a direct “deprivation of possessions,” but rather as interference with the right to peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1.<sup>99</sup> This interference was justified under the following considerations:

*“34. The Court considers that the restrictions introduced by the impugned legislation should not be considered as a “deprivation of possessions” as the applicants claim, but rather as interference with the right to the peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1*  
*35. The Court notes that the interference was provided for by law, namely Laws nos. 3833/2010 and 3845/2010. 36. In assessing the public interest of the measures in question, the Court attaches particular weight to the report accompanying Law no. 3833/2010 and to the reasoning of judgment no. 668/2012 of the Supreme Administrative Court. 37. The Court notes first of all that the adoption of the impugned measures was justified by the existence of an exceptional crisis without precedent in recent Greek history. As stressed by the report accompanying Law no. 3833/2010, this was “the worst crisis in the public finances for decades”, which “[had] undermined the country’s credibility, thwarted efforts to meet the country’s lending needs and pose[d] a serious threat to the national economy”. The report stated that finding a way out of the crisis represented “a historic responsibility and a national duty” and that Greece had undertaken to “achieve fiscal consolidation on the basis of precise targets and a precise timetable”... 38. The Supreme Administrative Court further noted, in judgment no. 668/2012, that the reduction in the salaries, allowances, bonuses and retirement pensions of persons working in the public service, as a result of the above-mentioned laws, formed part of a wider programme of public finance adjustment and structural reform of the Greek economy which, taken as a whole, was designed to meet the country’s pressing financing needs and to improve its future economic and financial prospects. Those aims were in the general interest and also coincided with those of the euro area Member States, in view of the requirement under European Union legislation to ensure budgetary discipline and preserve the stability of the euro area. By their very nature, the measures in question therefore contributed to an immediate reduction in public spending ... 39. In that connection the Court reiterates that the notion of “public interest” is necessarily extensive. As it has already noted, the decision to enact laws to balance State expenditure and revenue will commonly involve consideration of political, economic and social issues, and the margin of appreciation available to the legislature in implementing social and economic policies is a wide one. The Court will thus respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation 40. The Court also notes that, in addition to the salary-related measures laid down in Laws nos. 3833/2010 and 3845/2010, other measures had been introduced under different legislation aimed, among other things, at restoring tax equity and tackling tax evasion, reforming the social-security system and the public servants’ retirement scheme, reviewing the procedures for checking and auditing the public finances, opening up certain closed occupations and placing State-owned companies on a sounder footing. 41. In view of the above considerations, the Court has no reason to*

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<sup>99</sup>*Idem*, paragraph 34, 7.

*doubt that, in deciding to cut public servants' wages and pensions, the legislature was acting in the public interest.*"<sup>100</sup>

In this case, we can see that the European Directorate-General for Economic and Financial Affairs' Economic Adjustment Programme for Greece serves as definite background information to clearly define how the cuts suffered by Mrs. Koufaki and the Adedy were of public interest, since Greece was going through "*the worst crisis in the public finances for decades.*"<sup>101</sup> This case law is highly important to determine the legitimacy of Greece's austerity policies; and it should be assessed by any country interested in applying similar methods.

## Conclusions

Although AMLO's Republican Austerity does not happen in the same economic conditions suffered by Greece during the Euro Crisis of 2008, we can extract certain lessons learned from what happened in the Hellenic country.

The case of Koufaki and the Adedy v. Greece is highly relevant to understand how to give legitimacy to the austerity measures applied. As we remember, in the "*Accion de Inconstitucionalidad*" filed against the LFRSP before the Supreme Court of Justice of the Nation, the court declared the invalidity of articles 6 and 7 of said norm, since they had a broad discretion for allocate austere remuneration for all public servants at the federal level. This was not the case of Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010, because this legal triad was accompanied by the European Directorate-General for Economic and Financial Affairs' Economic Adjustment Programme for Greece; a document which stated the financial background, necessities and conditions for the austerity measures that affected Mrs. Koufaki and the Adedy.

At last, the austerity measures prevailed in Greece. Yes, the European Court of Human Rights deemed that there was an intrusion with the right to peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1.<sup>102</sup> However, public interest was at stake if the financial cuts were not inserted by the enactment of Laws no. 3833/2010, no. 3845/2010 and no. 3847/2010. In Mexico, the lack of an explanation on how or why (and, if there were any, they were vague and highly discretionary) the Republican Austerity would be applied. The difference lies there and it should be worth discussing next time the Mexican government plans to issue policies under the austerity wings.

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<sup>100</sup> *Koufaki and Adedy v. Greece*, paragraphs 34-41, 7-8.

<sup>101</sup> *Idem*, paragraph 37, 7.

<sup>102</sup> *Koufaki and Adedy v. Greece*, paragraph 34, 7.

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