

MGPS

MÜGGENBURG,
GORCHES Y PEÑALOSA**CONSTITUTIONAL. THE PLENARY SESSION OF THE SCJN WITHDREW THE DRAFT RULINGS REGARDING THE CONSTITUTIONALITY AND CONVENTIONALITY OF THE AUTOMATIC PREVENTIVE DETENTION (“PRISIÓN PREVENTIVA OFICIOSA”)**[More information...](#)

In a Plenary Session of the SCJN held on September 8th, 2022, the Justices who prepared the draft of rulings related to the unconstitutionality action 130/2019 -and its accumulated 136/2019-, and the amparo appeal R.A. 355/2021, decided to withdraw such drafts, through which the unconstitutionality and unconventionality of the automatic preventive detention would be resolved.

Regarding the unconstitutionality action 130/2019 -and its accumulated 136/2019-, the draft was prepared by the Justice Aguilar Morales, who proposed to declare the invalidity of the seventh paragraph of article 167 of the National Code of Criminal Procedures (“CNPP”) -after the non-application of the second paragraph of article 19 of the Federal Constitution-, since it allows the admissibility of the automatic preventive detention in an *ex officio*, absolute, disproportionate, and automatic manner, which contravenes the constitutional principles of pretrial detention, presumption of innocence and the principle of proportionality.

During the discussion of the Plenary Session, Justice González Alcántara Carrancá stated that although he agreed with the project/draft insofar as the challenged articles violate/infringe -among others- the rights of presumption of innocence and personal liberty, he did not agree with the considerations regarding the non-application of article 19 of the Constitution, since it is a norm that is part of the parameter of control of constitutional regularity.

However, the Justice proposed a solution, in accordance with the structure of the constitutional text itself, that consists of doing an interpretation of the term “*ex officio*” of article 19 of the Constitution, as if it referred to “without the request of the party”; derived from that interpretation, the challenged articles in the various laws would be unconstitutional, by converting the automatic preventive detention into an automatic imprisonment.

As a result, Justice Aguilar withdrew his original draft ruling, to include the positions and proposals from the other Justices of the Mexican Supreme Court of Justice in a new draft.

Now, in relation to the amparo appeal R.A. 355/2021, the draft was prepared by the Justice Piña Hernández, who originally proposed to grant the amparo protection to the plaintiff against the third paragraph of article 167 of the CNPP, for considering it **unconstitutional**, as it replicates the content of the second paragraph of article 19 of the Federal Constitution -which in the specific case the non-application was determined-, since it disproportionately affected the rights to personal liberty and presumption of innocence.

In this regard, considering the relation between the arguments set forth in said project and the considerations of the unconstitutionality action 130/2019 -and its accumulated 136/2019- that was previously withdrawn, Justice Piña decided to withdraw her project as well, to formulate a new one that includes the points of view of the other Justices of the Mexican Supreme Court of Justice.

CIVIL LITIGATION. THE VALIDITY OF THE COMPENSATION FOR NON-MATERIAL DAMAGES WHEN CHALLENGED ON THE GROUNDS OF OBJECTIVE CIVIL LIABILITY[More information...](#)

The First Chamber of the SCJN resolved the amparo appeal 538/2021, derived from an objective civil liability claim derived from the death of the plaintiff’s brother.

In this respect, in the ordinary civil claim, the defendants -father and mother of the minor offender, and the insurance company- were ordered to compensate for the pecuniary and non-material/moral damages caused. Unsatisfied with this ruling, the plaintiff and defendants filed appeals and amparo claims, where the Circuit Court finally granted the amparo protection only to the defendants, under the consideration that in terms of the Civil Code for the State of Sonora, in matters of extra-contractual liability it is not appropriate to condemn for non-material damages, since there is no wrongful act.

Against such resolution, the third interested party -the plaintiff in the ordinary civil claim- filed an amparo appeal, in which the First Chamber of the SCJN decided to revoke the ruling, under the consideration that although objective civil liability regulates a risky but lawful conduct, this does not imply that it should be considered as a limitation in order to compensate for damages/detriments done -in particular, moral damages/non-material damages-.

Furthermore, said Chamber resolved that the article 2086, 2087, 2088, 2109 and 2112 of the Civil Code for the State of Sonora, only would pass a proportionality test in light of the right to fair compensation, if they are interpreted in accordance with the Constitution.

In this sense, the SCJN pointed out that a regime of objective extra-contractual liability that includes both material and non-material damages, affects the rights of the persons who caused the damage, who, if convicted, would have to integrally compensate such damage -which may include monetary compensations that reduce their economic capacity and their property rights-, however, such incidence in the legal sphere of the infringer is fully justified in view of the reparation of the rights of the person who was affected -since such incidence is not more burdensome than what it would be to leave untouched the affectation produced in the different rights of a person who suffered a material or immaterial damage that does not have the duty to bear-.

In regard with the foregoing, to case-laws were published (i) with registration number: [2025152](#), under the following heading: “RIGHT TO FULL COMPENSATION OF DAMAGES. INTERPRETATION OF ARTICLES 2109 AND 2112, IN RELATION TO ARTICLES 2086, 2087 AND 2088 OF THE CIVIL CODE FOR THE STATE OF SONORA” and (ii) [2025166](#), under the following title: and “OBJECTIVE CIVIL LIABILITY. THE FACT THAT IT REGULATES RISKY BUT LAWFUL CONDUCTS DOES NOT IMPLY A LIMITATION TO REPAIR NON-MATERIAL DAMAGES.”

AMPARO CLAIM. THE FEDERAL INSTITUTE OF PUBLIC DEFENSE (“IFDP”) HAS A LEGITIMATE INTEREST TO CHALLENGE THE FAILURE OF THE GENERAL PROSECUTOR’S OFFICE (“FGR”) TO INVESTIGATE POSSIBLE ACTS OF TORTURE COMMITTED AGAINST PEOPLE DEPRIVED OF THEIR LIBERTY[More information...](#)

The First Chamber of the SCJN resolved the thesis contradiction 356/2021 that arose between different Circuit Courts, that analyzed whether the representative of the Technical Secretary to Combat Torture, Cruel and Inhuman Treatment of the IFDP has a legitimate interest to file an amparo claim, in the event that the authorities of the FGR fail to conduct an investigation -with due diligence and within a reasonable period of time- for possible acts of torture and/or mistreatment committed against people deprived of their liberty.

Some Circuit Courts held that such authority did have a legitimate interest to file an amparo claim, while others determined the contrary, since it constituted a notorious and a manifest cause of inadmissibility for the amparo claim.

In this regard, the Chamber resolved that the referred authority has a legitimate interest to submit the amparo claim in order to challenge acts related to the lack of due diligence in the investigation of possible acts of torture committed against persons deprived of their liberty -who were represented by public defenders of the IFDP during the respective criminal process-, since it challenges acts and omissions that violate the right to an adequate defense in criminal matters, and impede the full compliance of its attributions/functions -among others, to identify and document possible acts of torture, cruel, inhuman or degrading, as well as to promote their investigation and eventual sanction and compensation, according to the highest national and international human rights standards-.

The foregoing proves that there is an actual harm to the legal sphere of the Technical Secretary for Combating Torture, Cruel and Inhuman Treatment, by its special/particular situation in relation to the Law.

In this sense, an eventual amparo judgement would generate a specific benefit for the Secretary since it would give it the possibility to freely exercise and fulfill its purpose of preventing and combating torture.

Therefore, the SCJN determined that in the specific case, the lack of legitimate interest of the authority cannot be invoked as a manifest and undoubted cause of inadmissibility, so the amparo claims filed by said authority cannot be dismissed.

CIVIL LITIGATION. INJUNCTIONS OR PRECAUTIONARY MEASURES ARE ESSENTIAL TO SAFEGUARD THE RIGHT OF ACCESS TO FULL AND EFFECTIVE JUSTICE[More information...](#)

A Federal Court of the First Circuit (Mexico City) resolved the appeal submitted against the dismissal of an amparo claim which challenged the decision of the judge to deny the request for precautionary measures in an ordinary civil claim.

In this regard, the Circuit Court determined that the precautionary measures or injunctions are essential instruments to safeguard the right of access to justice, and for it to be full and effective, as well as for the subject matter of the litigation to be preserved.

Such precautionary measures may be requested at any time until the final ruling has been issued, and for the judge to order them, certain conditions must be met: **a)** the plaintiff must proof that it has a presumable right -which is intended to be secured by means of the precautionary measures-; **b)** that there is an actual or imminent danger that if the precautionary measure is not granted, it could cause an irreparable damage or one that would be difficult to repair, which would violate the rights of the requesting party; **c)** when the right inferred or to be inferred by the plaintiff cannot be immediately protected in any other way; and **d)** the request must be filed before the competent jurisdictional body, and in compliance with the formalities set forth in the respective law.

Finally, the Circuit Court pointed out that the purpose of these measures is to avoid causing a serious and an irreparable damage to one of the parties or to the social interest, while the respective proceeding and/or the claim is being resolved -in order for the ruling to become effective in due time-.

CONTACTesteban.gorches@mgps.com.mxjuan.blanco@mgps.com.mxfernando.sanchez@mgps.com.mxjose.navarro@mgps.com.mxbernardo.lopez@mgps.com.mx

+52 (55) 52 46 34 00

Info@mgps.com.mxwww.mgps.com.mx

Paseo de los Tamarindos 90 Torre I
Piso 8, Bosques de las Lomas
C.P. 05120
Mexico City, Mexico