MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

CONSTITUTIONAL LAW. THE MEXICAN SUPREME COURT OF JUSTICE ("SCJN") RESOLVED TO INVALIDATE THE FIRST PACKAGE OF THE ELECTORAL REFORMS THAT CONSTITUTE THE SO-CALLED "PLAN B"

More Information...

The Plenary Session of the SCJN resolved to invalidate the first package of the electoral reforms that constitute the so-called "PLAN B" -*approved by the Mexican Congress at the end of 2022*-, derived from the unconstitutionality action 29/2023 -*and accumulated 30/2023, 31/2023, 37/2023, 38/2023, 43/2023 and 47/2023*- submitted by different political parties and members of the sixty-fifth Legislature of the Mexican Congress.

In this regard, the SCJN ruled that the legislative procedure was infringed, among others, because:

1) There was a lack of knowledge of the initiatives since the legislators knew about them during the session.

2) The criteria defined in the Regulations of the Chambers of Deputies and Senators for the processing of ordinary initiatives in accordance with Article 72 of the Constitution, was breached.

3) The conditions established in the Regulations of the Chamber of Deputies and Senators, as well as in various criteria of the SCJN, were not evidenced to qualify the initiatives as urgent or priority resolution and thereby exempt them from all legislative procedures.

The resolution of the rest of the appeals and unconstitutionality actions filed against the second package of electoral reforms related to Plan B, are still pending.

The publication of this final ruling is still pending.

CONSTITUTIONAL LAW. THE SCJN DECLARED THE INVALIDITY OF THE EXECUTIVE BRANCH AGREEMENT THAT DECLARED CERTAIN "HIGH PRIORITY" PROJECTS OF THE MEXICAN GOVERNMENT AS MATTERS OF PUBLIC INTEREST

More Information...

On May 18th, 2023, the SCJN analyzed the appeals formulated by the Mexican Transparency Institute ("INAI") through the Constitutional Controversy 217/2021 submitted against the so-called "Decretazo" published on November 22, 2021, in the Federal Official Gazette -*Agreement instructing the agencies and entities of the Federal Public Administration to carry out the actions indicated in relation to the projects of the Government of Mexico considered as matters of public interest and national security, as well as priority and strategic for national development*- resolving by a majority of 8 votes that the first article of said Agreement **allowed that all the information related to the Government's priority projects could be considered as reserved**, which implied extending by means of an administrative act the classification of information foreseen in the General Law of Transparency and Access to Public Information.

In this regard, the Plenary Session of the SCJN pointed out that the right of access to public information is ruled by the **principles of maximum disclosure and legal reserve** for the establishment of restrictions, so that the referred "Decretazo" **infringed the INAI's faculty to restrict the scope of national security and public interest for transparency purposes**.

On the other hand, with a majority of 6 votes, the Plenary Session of the SCJN ruled that the second and third articles of said Agreement, which ordered the agencies and entities of the Federal Public Administration to grant provisional authorization to initiate priority projects, were not valid since they **created a regime of administrative authorizations that was exceptional** to the one already provided for by the Federal Public Administration, which **(i)** would make difficult for the authorities to comply with their transparency obligations, **(ii)** would turn transparency obligations into ineffective mechanisms for citizen control, and **(iii)** would restrict the INAI's faculty to ensure the compliance of the transparency obligations.

Finally, the Plenary Session of the SCJN resolved, with 6 votes, that the effects of the unconstitutionality of the "Decretazo" would be total nature because it is an instruction to the agencies and entities of the Federal Public Administration, which would become totally **null**-.

Notwithstanding the above, on May 18, 2023, after the declaration of invalidity of the "Decretazo", the Mexican President published again the referred **"Decretazo" in its version 2.0**, in which it is specified that the priority projects of the Federal Government are the Mayan Train, the Inter-Oceanic Corridor of the Isthmus of Tehuantepec, and the airports of Palenque, Chetumal and Tulum -*with regard to which all relevant information is reserved a priori*-.

In this regard, although disputable, there could be the possibility to challenge such "Decretazo 2. 0" by the Plenary of INAI, either through the filing of a new Constitutional Controversy or the denunciation of the repetition of the invalidated act, since although to date such Institute would not be duly integrated, the truth is that contrary to what is established in the Federal Law of Transparency and Access to Public Information, the General Law on the matter does not require that for the operation of the Plenary of INAI -*entitled to submit such Controversy or denounce the repetition of the act*- the vote of at least 5 Commissioners.

ADMINISTRATIVE LAW. THE LACK OF A DETAILED PROCEDURE IN THE GENERAL HEALTH LAW FOR THE CANCELLATION OF HEALTH REGISTRATIONS UPON THE EXPIRATION OF THEIR VALIDITY, DOES NOT VIOLATE THE PRINCIPLE OF LEGAL CERTAINTY

More Information...

The First Chamber of the SCJN resolved the amparo appeal 47/2021, derived from the request of a biopharmaceutical company for the extension of the validity of a health registration, in which COFEPRIS considered the information provided by the company to be insufficient and dismissed the procedure since the validity of the registration had expired -*and, therefore, cancelled it in the same resolution*-.

Against said dismissal, the petitioner filed an amparo claim in which the unconstitutionality of article 376 of the General Health Law was challenged, since the plaintiff considered that the lack of provisions for canceling expired health registrations breached the principle of legal certainty.

The Federal Judge denied the amparo protection against such dismissal, and therefore, the plaintiff filed an appeal, in which the First Chamber of the SCJN determined that the lack of exhaustive or specific regulation in the law regarding the procedure for canceling expired health registrations would not violate the principle of legal certainty, since such procedure is addressed in the "Health Inputs Regulations".

The forgoing, in accordance with the principle of statutory reserve, which allows lower-ranking regulations to develop the general bases and parameters outlined by laws, thus Article 376 of the General Health Law validly refers to the applicable regulatory provisions to describe the procedure to be followed for requests to extend Health Registrations.

In this regard, since Articles 190 Bis 1 to 190 Bis 6 of the "Health Inputs Regulations" established the conditions under which the declaration of cancellation of a sanitary registration must be issued, the First Chamber of the SCJN determined that the lack of a procedure to cancel sanitary registrations that lost their validity in the General Health Law does not violate the principle of legal certainty.

CIVIL LAW. THE FIRST CHAMBER OF THE SCJN RESOLVED THAT THE HUMAN RIGHT TO FULL REPARATION OF DAMAGES CONSTITUTES A STATE GUARANTEE AND A MATTER OF PUBLIC INTEREST AND ITS CLAIM THROUGH A CIVIL LIABILITY ACTION IS AUTONOMOUS IN NATURE FROM THE REPARATION DERIVED FROM A CRIMINAL PROCEEDING.

More Information...

The First Chamber of the SCJN resolved the amparo appeal 1329/2020, which derived from a civil liability claim for the integral reparation of the damage derived from an accident that generated the death of another individual, as well as the fulfillment of the defendant's insurance contract, where the Judge determined the civil liability condemning the defendant and their insurer to pay a compensation, from which the amount covered in the compensation agreement that concluded the criminal claim should be deducted, which was later confirmed in the appeal.

The insurance company filed an amparo claim against said ruling, which was granted by the Circuit Court, on the grounds that the plaintiff lacked legitimation, since this right had not been expressly reserved in the compensation agreement.

As a result of the foregoing, the third party filed an appeal by which the First Chamber of the SCJN ruled that the right to full reparation is an inalienable human right that can be requested through tort liability/non-contractual civil liability, since it consists of an essential figure of a compensatory nature for anyone who has suffered a wrongful or unlawful act, and which constitutes an autonomous action separate from the reparation of damages derived from a crime.

Likewise, it resolved that in the conclusion of compensation agreements, the Prosecutor's Office and the Judges have the obligation to ensure that the parties reach a solution to the conflict in an adequate and proportional manner -*taking into account the personal conditions, the nature of the offense, and the reparation of the damage*-. This because, even in the case of self-compositive means, the right to full reparation of damages implies a state guarantee that results in the duty of the authorities to diligently verify the proportionality and reparative effect of the agreed obligations and their compliance, in which the greatest possible compensation for the human dignity of the injured party must prevail.

Therefore, the damages compensation derived from a criminal sanction and civil liability are separate and independent actions that, although they may result from the same unlawful act, constitute autonomous claims regulated by different legislation and evidentiary standards. As a result, the SCJN abandoned the jurisprudence criterion 1a./J. 43/2014 (10a.), titled: "OBJECTIVE CIVIL LIABILITY. AS A GENERAL RULE IT IS INADMISSIBLE IF THE COMPENSATION DETERMINED IN A CRIMINAL PROCEEDING TO REPAIR THE DAMAGE HAS ALREADY BEEN COVERED."

CONTACT

esteban.gorches@mgps.com.mx
juan.blanco@mgps.com.mx
fernando.sanchez@mgps.com.mx
jose.navarro@mgps.com.mx
bernardo.lopez@mgps.com.mx

+52 (55) 52 46 34 00
Info@mgps.com.mx
www.mgps.com.mx

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