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AMPARO CLAIM / CONSTITUTIONAL. THE PLENARY OF THE NINETEENTH CIRCUIT RESOLVES THAT THE INITIAL RULING IN AN AMPARO CLAIM IS AN OPPORTUNE PROCEDURAL RESOLUTION TO ANALYZE THE GROUNDS FOR INADMISSIBILITY OF THE CLAIM DUE TO *"LIS PENDENS"* AND *"RES JUDICATA"* More Information...

The Plenary of the Nineteenth Circuit resolved the criteria contradiction 2/2022, where the contending Collegiate Circuit Courts, when dealing with complaint appeals, reached different conclusions regarding the feasibility of examining the grounds for inadmissibility of the claim due to *"lis pendens"* and *"res judicata"* in the initial proceeding order of an amparo claim, as provided in Article 61, sections X and XI, of the Amparo Law, since one of the Courts considered it valid to outright dismiss the claim, while the other determined that its analysis required an exhaustive exercise of interpretation, which was not feasible in said initial proceeding order.

In this regard, the Plenary determined that the initial proceeding order of the amparo claim is an opportune procedural action to analyze the grounds for inadmissibility due to *"lis pendens"* and *"res judicata"*, if they do not involve complex situations, and for the particular case of *"lis pendens"*, it can only be studied in the initial proceeding order if both claims are filed before the same judicial authority.

The above is based on Articles 112 and 113 of the Amparo Law, which states that the judicial authority handling the amparo claim may dismiss the claim if the grounds for inadmissibility are manifest and undeniable.

In this context, there are cases where *"lis pendens"* and *"res judicata"* can be determined from the initial ruling if the matter is not highly complex; this is, that with the information and evidence available at that procedural stage, it can be established that these grounds for inadmissibility are manifest and undeniable if it becomes evident that there is a pending claim or a claim with an enforceable final ruling, and the second or subsequent claim is filed by the same petitioner against the same responsible authorities, challenging the same act or general norm, wherein there would be no legal impediment to dismiss the amparo claim.

Considering the above, a jurisprudential thesis was issued under registration number 2026791 and the title: *"INITIAL PROCEEDING ORDER IN THE AMPARO CLAIM. AN OPPORTUNE PROCEDURAL ACTION TO ANALYZE THE GROUNDS FOR INADMISSIBILITY ESTABLISHED IN ARTICLE 61, SECTIONS X AND XI, OF THE AMPARO LAW (LIS PENDENS AND RES JUDICATA)."*

AMPARO. THE FIRST CHAMBER OF THE SCJN RULES THAT THE GENERAL LAW OF SOCIAL COMMUNICATION SUFFERS FROM A LEGISLATIVE OMISSION THAT VIOLATES FREEDOM OF EXPRESSION More Information...

A civil association filed an amparo claim against the General Law of Social Communication, based on the essential premise that there is a relative legislative omission due to the lack of clear and transparent rules for allocating social communication expenses in different branches of the Mexican government, contravening the principles set forth in Article 134 of the Constitution, which the District Court determined to dismiss the case for lack of legal standing of the plaintiff association, which was appealed, and the SCJN resolved this case in second instance.

Thus, the First Chamber of the SCJN ruled that the challenged General Law of Social Communication suffers from a relative legislative omission that contravenes the right to freedom of expression, because it fails to clarify or detail the criteria to which social communication expenses must adhere, nor does it establish concrete procedures and specific rules aimed at ensuring that the exercise of such expenses complies with the criteria provided in Article 134 of the Constitution, and consequently, the law results in a wide discretion for government agents to exercise censorship when allocating expenses for official propaganda.

This situation arose from the constitutional reform of February 10th, 2014, which obligated the Mexican Congress to enact a regulatory law for the eighth paragraph of Article 134 of the Constitution, which was meant to establish social communication rules to be followed by government entities to ensure that expenses comply with efficiency, efficacy, economy, transparency, and honesty criteria, while respecting budgetary limits and conditions of use based on the expenditure budgets.

However, the challenged law does not fully comply with the aforementioned obligations as it does not clarify or detail the criteria to which social communication expenses should adhere, nor does it establish concrete procedures and specific rules to guarantee compliance with the indicated criteria, thus reducing the discretion of the government agents involved.

Furthermore, the challenged law improperly grants administrative authorities the authority to define these rules to ensure compliance with the principles applicable to the exercise of social communication expenses, and therefore constitutes an omission that affects freedom of expression and must be rectified by the Mexican Congress.

Based on the above, a jurisprudential thesis was issued under registration number 2026835, with the title: *"SOCIAL COMMUNICATION. THE GENERAL LAW ON THE MATTER, PUBLISHED IN THE FEDERAL OFFICIAL GAZETTE ON MAY ELEVENTH, TWO THOUSAND EIGHTEEN, ENTAILS A LEGISLATIVE OMISSION OF A RELATIVE NATURE THAT VIOLATES FREEDOM OF EXPRESSION."*

AMPARO. THE ACTS RELATED TO THE FAILURE TO PROCESS AND DELIVER A PROFESSIONAL DEGREE BY PRIVATE UNIVERSITIES ARE CONSIDERED EQUIVALENT TO AN ACT OF AUTHORITY FOR AMPARO CLAIMS More Information...

The Second Chamber of the SCJN resolved the criteria contradiction 330/2022, in which contending Collegiate Circuit Courts disagreed on whether the failure of private universities to process and deliver a professional degree would be considered an act of authority for the admissibility of an amparo claim. One Court determined that the issuance of the degree is a faculty exercised within their attributions under Article 3 of the Constitution, and thus, this faculty to issue certificates and professional degrees is equivalent to an act of authority for the admissibility of the amparo claim. On the other hand, the other Court stated that the fact that private universities have official recognition is part of the activities they can carry out in the exercise of the authorization granted by the State to provide educational services, and it does not constitute an act of authority since it is not a function unilaterally and mandatorily entrusted to them because its effectiveness is subject to the review carried out by the educational authorities.

In this regard, the Second Chamber of the SCJN ruled that private universities, by failing to process and deliver a professional degree, indeed become equivalent to an authority for the purposes of the amparo claim.

The Chamber established the following criteria to consider a private entity equivalent to an authority for the purposes of the amparo claim: **a)** the private entity issues, orders, executes, or attempts to execute an act that creates, modifies, or extinguishes legal situations unilaterally and mandatorily; **b)** it omits acts that, if carried out, would create, modify, or extinguish such legal situations; **c)** the functions performed by the private entity are determined by a general norm; and **d)** its actions are situated within a relationship of supra-subordination concerning the governed.

Therefore, when private universities fail to process and deliver a professional degree, they perform acts equivalent to those of an authority for the admissibility of an amparo claim, since the omitted acts create legal situations since they allow the individuals in whose favor the professional degree is issued to exercise a profession, process their professional license, and register such documents for validity, enabling them to exercise their right to work; furthermore, the function of issuing professional degrees is specified in the General Law of Education and the General Law of Higher Education, and their actions can be challenged through amparo claims.

CONSTITUTIONAL. THE MEXICAN SUPREME COURT OF JUSTICE ("SCJN") RULES THAT THE MEXICAN SENATE INCURRED IN AN OMISSION DUE TO THE LACK OF APPOINTMENT OF COMMISSIONERS OF THE NATIONAL INSTITUTE OF TRANSPARENCY, ACCESS TO INFORMATION, AND PERSONAL DATA PROTECTION ("INAI") More Information...

The Plenary Session of the SCJN resolved Constitutional Controversy 280/2023, filed by the INAI against the Mexican Senate, demanding the invalidity of such authority's failure to appoint individuals to fill the three vacancies of commissioners at the INAI, in accordance with Article 6 of the Constitution.

In this regard, such Plenary Session, by a majority of eight votes, rejected the proposed resolution that aimed to declare the non-existence of said omission, based on the following terms:

1. The Senate's actions to initiate the appointment process, which did not result in the actual appointment of individuals, do not imply the non-existence of the alleged constitutional omission.

2. The constitutional mandate requiring the INAI to be composed of seven commissioners implies an obligation for the responsible bodies to make the corresponding appointments within a reasonable period.

3. The lack of such appointments has affected the proper composition and function of the autonomous constitutional entity, which serves as the guarantor of transparency, access to public information, and personal data protection.

Therefore, the proposed resolution suggesting the determination of the non-existence of the omission regarding the appointments was discarded, and the matter will be referred to a Justice from the majority who voted against it to issue a new resolution, which will be determined in the following session of the SCJN.

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