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MÜGGENBURG,
GORCHES Y PEÑALOSA**CONSTITUTIONAL LAW. A CIRCUIT COURT DETERMINED THAT WHEN A PRECAUTIONARY MEASURE WAS GRANTED IN A CONSTITUTIONAL CONTROVERSY COMPLETELY SUSPENDING THE ENFORCEMENT OF THE CHALLENGED ACT, IT IS NOT ADMISSIBLE TO GRANT AN INJUNCTION AGAINST THE SAME CHALLENGED ACT IN AMPARO CLAIM PROCEEDING**[More Information...](#)

A public official of the National Electoral Institute ("NEI") filed an amparo claim challenging the "Decree amending, adding, and derogating several provisions of the General Law on Electoral Institutions and Procedures, the General Law on Political Parties, the Organic Law of the Federal Judicial Branch, and the General Law on Electoral Claims," published in the Official Federal Gazette on March 2, 2023.

The District Judge granted the requested provisional injunction for the purpose of maintaining the status quo prior to the challenged resolution issuance. As a result, the plaintiff would remain in the position it held within the Institute until the resolution on the definitive injunction was notified.

Derived from such injunction the defendant authority filed an appeal whereby the Circuit Court determined that granting the requested injunction in the amparo claim proceeding was inadmissible and unnecessary. This was since Justice Aguilar, instructor of the Mexican Supreme Court of Justice ("MSCJ"), previously granted the injunction/suspension against the entire said decree.

Therefore, derived from the injunction granted in the constitutional controversy, the defendant authorities are not allowed to apply the articles of the challenged decree, at least until the constitutional controversy is definitively resolved.

This, since Article 145 of the amparo Law establishes a legal consequence of public order, whose analysis must be carried out ex officio by the District Judge and by the reviewing Court in order to avoid the issuance of contradictory resolutions as to the validity of the injunction and/or the terms in which the injunction measure must operate with regard to the same challenged act, even to avoid suspending the effects of an act whose constitutionality or unconstitutionality was previously decided.

LITIGATION. THE FIRST CHAMBER OF THE "MSCJ" ESTABLISHES THE DIRECT EFFECTS, DIFFERENCES, AND REQUIREMENTS TO ENFORCE A RES JUDICATA RESOLUTION[More Information...](#)

The First Chamber of the MSCJ resolved the amparo claim 5/2021, derived from a claim where the Mexican State was ordered to pay a compensation to an individual for engaging in irregular administrative activity.

Against that resolution, the defendant authority filed a constitutional appeal, which was resolved by a Circuit Court that determined to revoke relevant ruling under the considerations that there were no elements to establish the State's financial liability.

The petitioner, considering that the Circuit Court incurred in a judicial error by disregarding criterion held by the MSCJ, challenged through several means the compensation from the members of the Judicial Branch.

In one of such claims, the plaintiff challenged the State's financial liability, which was thereafter considered as inadmissible by the Federal Judiciary Council. Against such dismissal, the plaintiff filed a nullity claim, which was also dismissed on the grounds that compensation for financial liability was not applicable to jurisdictional actions. Against such dismissal, the plaintiff then filed an appeal, which was resolved as ungrounded by the Second Chamber of the MSCJ under the consideration that compensations for judicial error would only apply in matters of criminal nature, whereas this relevant matter was essentially of an administrative nature.

On the other hand, the plaintiff also filed a federal ordinary civil claim, in which the Federal Magistrates were absolved from paying damages for judicial error. Against such resolution, the plaintiff filed an amparo claim, which was resolved by the First Chamber of the MSCJ denying the amparo protection under the consideration that prior decision that established that compensations for judicial error would only apply in matters of criminal nature, would constitute *res judicata* in its reflex strand.

In this sense, the First Chamber of the MSCJ pointed out that in order for the *res judicata* institution to be applicable, it is necessary that there has been a previous claim/procedure already resolved, and that both cases coincide in three aspects: **a)** the subject matter of the litigation, **b)** the causes, and **c)** the individuals who participated or intervened in the same capacity, and then, when the three aforementioned aspects are met, there is a "direct effect" of *res judicata*, which implies that the issue submitted the new claim has already been judged. On the other hand, there is a "reflex effect" when the three aspects do not coincide, but what was resolved in one proceeding has an impact on a subsequent proceeding to the extent that disregarding the decision of the first case would compromise the parties' legal certainty.

The foregoing, as *res judicata* is a legal institution that prevents judicial bodies from conducting new proceedings when the same claims already raised in prior processes are being brought again. This, in order to avoid double condemnments or the issuance of contradictory rulings, which would lead to a state of legal uncertainty for the plaintiff.

Therefore, the jurisprudential precedent was issued under registration number 2026918, titled: "RES JUDICATA AND ITS DIRECT AND REFLECTIVE EFFECTS. DIFFERENCES AND REQUIREMENTS FOR ITS ENFORCEMENT."

AMPARO. REGIONAL PLENARY DETERMINES THAT IN AMPARO CLAIMS, IT IS ADMISSIBLE TO GRANT THE INJUNCTION/SUSPENSION AGAINST THE REGULATIONS OF THE GENERAL LAW FOR TOBACCO CONTROL[More Information...](#)

The Regional Plenary in Administrative Matters of the Central-North Region resolved the criteria contradiction 111/2023 and related 115/2023, regarding the criterion held by several Circuit Courts concerning the admissibility of granting the suspension of the "Decree reforming, adding, and derogating various provisions of the Regulations of the General Law for Tobacco Control," which prohibits the direct and indirect display, as well as advertising of tobacco products inside establishments and stores.

In the amparo claim, the plaintiffs argued violations of the rights of freedom of trade, free competition, and consumer rights, as well as constitutional principles of legal certainty and legality.

In that regard, the Plenary determined to grant an injunction for the purpose of not applying the prohibitions established in articles 2, subsections VI Bis, VI Ter, XVII and XVIII, 33, subsection II Bis, 40, subsections IX and XII, and 50 Bis, as well as the first, second, third, and fourth transitory provisions of said Decree, regardless of the fact that the purpose of relevant provisions is to safeguard the rights to health and a healthy environment, as well as the principles of efficiency and budgetary effectiveness in health matters, since there are no objective elements to affirm the urgency of enforcing such prohibitions.

Furthermore, based on the analysis of the appearance of good law and public order and social interest, in accordance with articles 128 and 138 of the amparo Law, it must prevail the valid claim asserted by the plaintiffs that requested the injunction/suspension over the purposes pursued by the challenged regulations.

On the contrary, denying the injunction/suspension could lead to serious repercussions by disrupting the market's operation, impeding the trade of tobacco products, and preventing smokers from obtaining information that enables them to exercise their rights as consumers.

In view of the above, the jurisprudential precedent with registration number 2026996 was issued, titled: "SUSPENSION/INJUNCTION IN AMPARO CLAIM. IT IS APPROPRIATE TO GRANT IT AGAINST THE PROVISIONS OF THE REGULATIONS OF THE GENERAL LAW FOR TOBACCO CONTROL THAT ESTABLISH THE PROHIBITIONS OF DIRECT AND INDIRECT DISPLAY AND ADVERTISING OF SUCH PRODUCTS WITHIN ESTABLISHMENTS AND STORES."

AMPARO. A CIRCUIT COURT DETERMINED THAT THE AMPARO CLAIM CAN BE FILED WITHOUT PRIORLY EXHAUSTING THE NULLITY CLAIM, AS AN EXCEPTION TO THE PRINCIPLE OF DEFINITIVENESS[More Information...](#)

An individual challenged through an amparo claim a resolution that denied the processing of a work visa based on a job offer, which was summarily dismissed due to the failure to consume the principle of definitiveness, since the plaintiff was bound to challenge the resolution through a nullity claim prior to the amparo claim.

Against this dismissal, the plaintiff filed an appeal which was favorably resolved by a Circuit Court, as the inadmissibility cause established in Section XX of Article 61 of the amparo Law was not applicable.

The Court determined that, in order to grant the suspension/injunction of the administrative act in the nullity claim, the following requirements must be met: **i)** not to affect the social interest or contravene public order provisions, and **ii)** the damages or harm caused to the plaintiff by the execution of the challenged act must be of difficult reparation, as stated in Section I of Article 28 of the Federal Law of Administrative Proceedings.

In the amparo claim, the injunction/suspension is granted when: **i)** requested by the plaintiff, and **ii)** it does not cause harm to the social interest nor goes against public order provisions, in accordance with Article 128 of the amparo Law.

In this regard, to grant the injunction/suspension in the nullity claim, an additional requirement is provided that is not required within the amparo proceeding, this is, that the damages or harm caused to the plaintiff by the execution of the challenged act being difficult to repair.

According to that, the Federal Law of Administrative Proceedings is requiring more restrictions to grant suspension than those provided in the amparo Law, establishing an exception to the principle of definitiveness, then resulting unnecessary to exhaust the nullity claim before filing an amparo claim.

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