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AMPARO CLAIM: THE FIRST CHAMBER OF THE MEXICAN SUPREME COURT OF JUSTICE (“SCJN”) DETERMINED THAT IT IS ENOUGH FOR CIVIL ASSOCIATIONS TO PROVE THAT ITS BYLAWS / CORPORATE PURPOSE IS RELATED TO THE PROTECTION AND/OR DEFENSE OF A COLLECTIVE HUMAN RIGHT IN ORDER TO CLAIM THE UNCONSTITUTIONALITY OF GENERAL REGULATIONS IN AMPARO CLAIM [More Information...](#)

The First Chamber of the SCJN resolve the constitutional appeal number 79/2023, to determine that to evidence the legitimate interest of civil associations to challenge the unconstitutionality of general regulations in an amparo claim, is enough for them to demonstrate that their corporate purpose / bylaws include the promotion, protection, and/or defense of a collective human right, without the obligation to demonstrate an individualized harm.

Additionally, they must comply with the following requirements: **a)** the existence of a constitutional regulation that recognizes the protection of a diffuse interest for the benefit of a collectivity, whether specific or determinable, **b)** that the challenged act violates such diffuse interest, whether individually or collectively, **c)** the demonstration of its belonging to such collectivity through appropriate evidence, **d)** that their corporate purpose includes the promotion, protection, and/or defense of a collective human right; and **e)** that the challenged act violates the aforementioned collective human right, which promotion, protection, and/or defense is within their corporate purpose, implying that the alleged violation has actually affected or continues to affect their legal sphere, hindering the exercise or practice of their corporate purpose.

This constitutional appeal derived from an amparo claim filed by several civil associations against the unconstitutionality of articles 101, 102, and 103 of the Penal Code for the State of Aguascalientes, in which the District Judge in charge ruled to dismiss the case, considering that the plaintiffs did not have legitimate interest to challenge such general regulations.

As justification, the First Chamber emphasized on the need to allow civil associations to access amparo claim and defend collective human rights, even if they are not holders of subjective rights. This decision expands the interpretation of legitimate interest and acknowledges the crucial role that civil society organizations can play in the protection of fundamental rights and in promoting broader access to justice.

For more information:

<https://sjf2.scjn.gob.mx/detalle/tesis/2027534>
<https://sjf2.scjn.gob.mx/detalle/tesis/2027535>
<https://sjf2.scjn.gob.mx/detalle/tesis/2027536>

AMPARO CLAIM: FIRST CHAMBER OF SCJN RULED THAT THE LEGISLATIVE OMISSION TO COMPLY WITH OBLIGATIONS ESTABLISHED IN A CONVENTIONAL OR INTERNATIONAL PROVISION ON HUMAN RIGHTS CAN BE CHALLENGED THROUGH AN AMPARO CLAIM [More Information...](#)

The First Chamber of the SCJN resolve the constitutional appeal number 439/2023, determined that the legislative omission to comply with obligations established in a conventional or international provision on human rights can be challenged in amparo claim.

In this regard, such matter derived from an amparo claim submitted against final ruling issued by District Judge in which he dismissed the amparo claim writ, considering that there was no express constitutional mandate to the Congress of Michoacán to legislate, and therefore, the legislative omission did not exist.

As justification, the First Chamber pointed out that in accordance with Article 1 and 103 of the Federal Constitution, all state actions must be in line with the constitutionality block and, in addition, focus on promoting, respecting, protecting, and guaranteeing human rights. Therefore, the omission of a legislative authority to act in accordance with international human rights standards also constitutes a violation of these rights.

CONSTITUTIONAL/MANDATORY PREVENTIVE DETENTION: CIRCUIT COURT (“CC”) DETERMINED THAT ARTICLE 167 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES IN THE SECTION THAT REGULATES MANDATORY PREVENTIVE DETENTION IS UNCONVENTIONAL, IN ACCORDANCE WITH THE FINAL RULING ISSUED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS [More Information...](#)

The Circuit Court in Criminal Matters in Mexico City (“CC”) resolve constitutional appeals numbers 76/2023, 29/2022, 142/2023, 151/2023, and 182/2023 and determined that Article 167 of the National Code of Criminal Procedures which regulates the measure of mandatory preventive detention is unconventional since it does not comply with the guidelines established by the Inter-American Court of Human Rights (“IACHR”), particularly what was decided in the case García Rodríguez and others Vs. Mexico, which is binding on the Mexican Government.

Such case derived from an amparo claim filed by a defendant against the imposition of mandatory preventive detention, in which the constitutional protection was denied by the Judge, on the grounds that the imposition of that measure was correct, since the crime committed was included in the catalog listed in Article 167 of the National Code of Criminal Procedures.

As justification, the CC pointed out that in terms of the final ruling issued by the IACHR, the unconstitutionality of Article 19 of the Federal Constitution was declared unconventional as it contradicts the rights established in the American Convention on Human Rights (“ACHR”).

Consequently, the CC stated that in accordance with the final ruling issued by IACHR, Mexico must **(i)** adjust its legal system to be compatible with ACHR, and **(ii)** judicial authorities must carry out a conventionality control between mexican regulation and the ACHR. Therefore, the application of mandatory preventive detention is only valid if an analysis of the need for such a measure in specific circumstances is carried out. Otherwise, it violates the rights to personal freedom, presumption of innocence, and the principle of equality and non-discrimination.

CONSTITUTIONAL: PLENARY COURT RULED THAT ACTS BASED ON A REGULATION PREVIOUSLY DECLARED UNCONSTITUTIONAL WITH GENERAL EFFECTS CAN BE CHALLENGED, AT THE DISCRETION OF THE AFFECTED PARTY [More Information...](#)

The Plenary of the Thirtieth Cour resolve the contradiction of criteria 136/2022, by stating that both, amparo claim and complaint for non-compliance with the general declaration of unconstitutionality, are admissible in order to challenge an act based on a regulation previously declared unconstitutional with general effects by the Plenary Court, under Chapter VI of Title Four of the Amparo law or the Regulatory Law of Sections I and II of Article 105 of the Federal Constitution.

In this regard, this contradiction derived from differing conclusions between the Plenary Court and a Circuit Court when examining a legal issue consisting of determining whether the amparo claim is admissible when the challenged acts are based on regulations of which the Plenary Court had issued a general declaration of unconstitutionality.

As justification, the Plenary Court stated that deeming the amparo claim inadmissible could violate the principle of equality before the law, therefore, the Plenary Court decision was based on a pro-person and pro-action interpretation, and in accordance with the right to judicial protection principle, aiming to ensure that unconstitutional acts do not prevail.

Therefore, the affected party can choose the preferred mechanism to challenge the act, and if the plaintiffs choose the amparo claim it must be processed promptly.

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