MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

ADMINISTRATIVE. THE FIRST CHAMBER OF THE MEXICAN SUPREME COURT OF JUSTICE ("SCJN") DETERMINED THAT THE PARAMETER OF CONSTITUTIONAL CONTROL TO RESOLVE AN INJUCTION IN AMPARO CLAIM IN ENVIRONMENTAL MATTERS CONSISTS OF THE CONSTITUTIONAL TEXT, AMPARO LAW, THE ESCAZÚ AGREEMENT, AND RELEVANT INTERNATIONAL STANDARDS IN ENVIRONMENTAL MATTERS

More Information...

The First Chamber of the SCJN resolved the appeal 1/2022 and determined that granting the injunction of the challenged act in environmental matters is subject to the fulfillment of the requirements and conditions set forth in provisions 107, Section X, of the Constitution, 128, 131, 136, and 138 of the Amparo Law. However, the international norms that consecrate the principles of environmental law, such as *in dubio pro natura, precautionary* and access to environmental justice, contained in different international instruments, especially in the Escazu Agreement, must also be integrated to the parameter that regulates such institution. Thus, the injunction must serve as an authentic mechanism to prevent, mitigate, and repair damages to the environment.

This decision is based on the ground that injunction in environmental matters, within the framework of the amparo claim, goes beyond being a precautionary measure and becomes a central tool for anticipated protection in environmental justice. Additionally, the SCJN emphasized in the importance of environmental justice in the constitutional framework and underscored that the amparo claim must be reinterpreted to comply with international standards.

On the other hand, the SCJN highlighted from the Escazú Agreement, the need to recognize broad legal standing and the possibility of precautionary measures to prevent, cease, mitigate, or repair environmental damages. Consequently, to determine whether the suspension should be granted, the judges must apply the *in dubio pro natura principle -consisting in the obligation to consider that, in case of doubt, the protection and conservation of the environment should be favored-*, the prevention principle *-which obliges the judicial authority to give priority to the attention of the causes and sources of possible environmental damage, in order to avoid the consummation of the damage-*, as well as the precautionary principle *-that obliges the authority to observein case of environmental danger, the absence of information or scientific certainty is not a reason to avoid a decision to prevent such possible environmental damage-*. In summary, in the review of an injunction, the applied motivation in relation with these principles must be evaluated in each specific case.

ADMINISTRATIVE. A CIRCUIT COURT ("CC") RULED THAT THE DEFINITIVENESS PRINCIPLE IN THE FEDERAL LAW OF ADMINISTRATIVE CLAIMS DOES NOT REQUIRE ADDITIONAL CONDITIONS TO GRANT SUSPENSION OF CHALLENGED ACTS THAN THOSE PROVIDED IN THE AMPARO LAW

More Information...

The Twentieth Circuit Court of Administrative Matters in Mexico City ("20 CC"), resolved the constitutional appeal number 215/2023 and determined that although the Amparo Law does not literally stipulate the need to prove damages that are difficult to repair for the granting of an injunction, this condition is implicit in the simultaneous consideration of the probability of success on the merits, danger in delay, respect of public order and social interest as provided in provisions 128, 138, and 139 of the Amparo Law and in constitutional jurisprudential criteria. Therefore, it is necessary to exhaust the nullity claim prior to filing the amparo claim, unless a different exception to the definitiveness principle is met.

The CC based its decision in the comparison between the "damages of difficult reparation" requirement established in provision 28, section I, of the Federal Law of Administrative Procedure Law and its absence in the Amparo Law, and pointed out that although such requirement is not expressly stated in the Amparo Law, it is argued that is implicit regulation derives from provisions 128, 138, and 139 of such law, as well as in general principles and jurisprudential criteria related to the consideration of the appearance of likelihood of success on the merits, respect of public order and social interest, and danger in delay when resolving precautionary measures. Therefore, the 20 CC declared that the jurisprudential criteria that establishes the need to exhaust nullity claim before resorting to amparo claim must continue applying, arguing that the scope of the injunction of the challenged act is essentially the same in both laws and that legal reforms have not significantly changed the applicable legal framework.

CRIMINAL . THE FIRST CHAMBER OF THE SCJN DETERMINED THAT WOMEN OR INDIVIDUALS WITH PREGNANCY CAPACITY AUTOMATICALLY HAVE LEGITIMATE INTEREST TO CHALLENGE PROVISIONS REGARDING THE CRIMINALIZATION OF ABORTION TROUGH AMPARO CLAIM, AS LONG AS THEY DEMONSTRATE A PHYSICAL OR GEOGRAPHICAL PROXIMITY TO THE NORM, WITHOUT THE NEED FOR AN ACT OF APPLICATION OF SUCH PROVISIONS

More Information...

The First Chamber of the SCJN, resolved the contradiction of criteria 412/2022, and determined that the status of being a woman or a person with pregnancy capacity is sufficient to have the right to challenge norms that regulates the crime of abortion through amparo claim, without the need for a specific act of such provisions, as long as the person demonstrates a physical or geographical proximity to the scope of validity of the norm, meaning that such norms would be applicable territorially.

The SCJN based its resolution on the cultural and social impact on the rights of women and individuals with pregnancy capacity, as indicated by the Plenary of the SCJN in precedents. These norms contribute to building an adverse social imaginary for the exercise of their rights, generating stigma, fear in healthcare professionals, and limiting access to proper protection of fundamental rights.

Likewise, it is argued that these norms can be challenged as self-applying, as they contain a perceptible discriminatory message that negatively affects these individuals, allowing them to obtain a legal benefit by suppressing the discriminatory message. However, while the norms directly affect pregnant women, it is argued that the discriminatory message justifies the admissibility of challenging them, without requiring a specific pregnancy situation. Nevertheless, it is emphasized that it is necessary to demonstrate a physical or geographical proximity to the scope of validity of the norm to consider that it projects a detriment to the plaintiff that challenges it.

CIVIL / COMMERCIAL. THE FIRST CHAMBER OF THE SCJN RULED THAT AMPARO CLAIMS ARE INADMISSIBLES AGAINST RULINGS ISSUED BY FEDERAL COURTS DECLARING THE EXCEPTION OF INCOMPETENCE IN FAVOR OF FEDERAL JUDGES

More Information...

The First Chamber of the SCJN, resolved the contradiction of criteria 146/2023, and determined that in commercial matters, rulings declaring the exception of incompetence by declination issued by a Federal Court in favor of a Federal Judge from a different jurisdiction as well-founded, do not constitute definitive acts for the admissibility of a amparo claim.

In this regard, the aforementioned contradiction of criteria derived from the interpretation of article 1100 of the Commercial Code, which a Federal Judge can or cannot maintain jurisdiction over a Federal Tribunal, and consequently, if the ruling declaring the exception of incompetence by declination as founded correctly and can or cannot be an act susceptible to challenge in amparo claim.

In this sense, the decision is based on the interpretation of Article 1100 of the Commercial Code, which indicates that, in the local and federal jurisdictional scope, a Judge can maintain jurisdiction with another Court, even if the latter is superior in its category but does not exercise jurisdiction over it. Consequently, the ruling declaring the exception of incompetence by declination was grounded and does not constitute a definitive act that currently affects the interested party, as the Federal Judge who received the jurisdiction could maintain it against the original Court. Therefore, to proceed with an amparo claim, the challengeable act would be the one in which the Federal Judge, to whom the jurisdiction was declined, and then accepted.

CONTACT

esteban.gorches@mgps.com.mx
juan.blanco@mgps.com.mx
fernando.sanchez@mgps.com.mx
maria.castro@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