

# MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

**CRIMINAL. A CIRCUIT COURT (“CC”) RULED THAT THERE MUST BE A PRIOR DEBATE BETWEEN THE PARTIES FOR THE IMPOSITION OF PREVENTIVE DETENTION, AND MOREOVER, IT MUST ADJUST TO THE CONSTITUTIONAL REGULARITY PARAMETER IN ORDER TO PROTECT THE RIGHTS TO PERSONAL FREEDOM, PRESUMPTION OF INNOCENCE, AND EQUALITY BEFORE THE LAW** [More Information...](#)

The Fourth Circuit Court of Criminal Matters in Mexico City (“4 CC”), resolved the constitutional appeal 7/2023 and determined that amparo claim is pertinent when the imposition of preventive detention does not comply with the parameter of constitutional regularity. The effects of the granting of the amparo must be that a new hearing and a comprehensive examination be carried out by the responsible Control Judge to allow for a proper debate and to rule on the request for the corresponding precautionary measure. In case of issuing any measure, it must be recorded in writing.

This decision is based on the fact that the constitutional regularity parameter includes the interpretation of the Constitution and the American Convention on Human Rights, allowing the adoption of interpretations by High Courts to ensure broad protection of human rights, emphasizing the pro persona and harmonization principles.

Likewise, it ruled that the imposition of preventive detention without prior debate constitutes a violation of fundamental rights to personal freedom, presumption of innocence, and equality before the law, as it must be preceded by a ruling of proportionality. This is because, in the final ruling of the case “*García Rodríguez and others Vs. Mexico*”, the Inter-American Court of Human Rights (“CIDH”) has condemned the Mexican State for automated restrictions in the instruction of criminal proceedings related to preventive detention, emphasizing the importance of ensuring a fair and equitable process.

**LABOR. THE SECOND CHAMBER OF THE MEXICAN SUPREME COURT OF JUSTICE (“SCJN”) DETERMINED THAT THE AGREEMENT FOR THE REGISTRATION OF INDIVIDUALS PROVIDING SPECIALIZED SERVICES OR PERFORMING SPECIALIZED WORK DOES NOT VIOLATE THE PRINCIPLE OF LEGAL CERTAINTY, AND ALSO DETERMINED THAT ARTICLE 12 OF THE FEDERAL LABOR LAW, WHICH PROHIBITS PERSONNEL OUTSOURCING, DOES NOT CONTRAVENE THE PRINCIPLE OF LEGAL CERTAINTY, THE RIGHT TO A HEARING, NOR DOES IT TRANSGRESS THE RIGHT TO FREEDOM OF COMMERCE** [More Information...](#)

The Second Chamber of the SCJN, by resolving constitutional appeals 564/2022, 687/2022 and 81/2023, determined: **(i)** that the Agreement on the registration of individuals providing specialized services or performing specialized work *-linked to Article 15 of the Federal Labor Law-* does establish the necessary information to register in the Public Registry of Contractors of Specialized Services or Specialized Works, and therefore, the legal certainty of those who must register in the registry is not violated, **(ii)** that the requirement of being in compliance with tax and social security obligations in order to request registration in terms of Article 15 of the Federal Labor Law does not contravene the principles of legality and legal certainty since it is intended to ensure that the employers guarantee compliance with their obligations on time, **(iii)** that Article 12 of the Federal Labor Law does not violate the principles of legality, legal certainty, the right to a hearing, the right to freedom of commerce, since it does not absolutely prohibit subcontracting, but rather regulates it, furthermore, it is not possible to grant the opportunity to grade or review specific cases to determine whether or not the rights of the workers are respected in any case of subcontracting of personnel, and **(iv)** Articles 12 and 13 of the Federal Labor Law do not violate the principle of non-retroactivity of the law, since they do not affect past situations of fact.

These decisions are based on the fact that the subcontracting reform was supported by several initiatives that warned of the deficiency of the existing regulation in this matter, which did not prevent abuses among which tax evasion, unfair competition and the affectation of workers labor and social security rights, which led to the prohibition of subcontracting of personnel; In addition, since this prohibition is general, it is not necessary to establish specific cases in which the subcontracting of personnel is not allowed, since this activity is expressly prohibited.

For more information: Digital Record [2027934](#), [2027935](#), [2027936](#) y [2027948](#)

**ADMINISTRATIVE. THE REGIONAL PLENARY RULED THAT AMPARO CLAIM IS ADMISSIBLE AGAINST THE RESOLUTION ISSUED BY THE FEDERAL ADMINISTRATIVE COURT (“FAC”) THAT DECIDES THE APPEAL OF COMPLAINT FOR FAILURE TO COMPLY WITH A FAC RULING FILED BY THE PLAINTIFF** [More Information...](#)

The Regional Plenary in Administrative Matters of the North-Central Region resolved the contradiction of criteria 159/2023, and determined that amparo claim is admissible, in terms section IV of article 107 of the Amparo Law, against the resolution issued by the FAC that resolves appeal of complaint for defect in the compliance of a FAC ruling filed by the plaintiff.

In this regard, this issue arose from conflicting criteria regarding whether, in accordance with Article 107, section IV, of the Amparo Law, the amparo claim filed against the FAC’s resolution that decides the appeal in the compliance of a ruling is admissible or not. While one judgment determined that it is not admissible because the challenged resolution is not the final act that definitively qualifies such compliance, the other resolution determined that the amparo claim is admissible because it is an autonomous act that affects the substantive right arising from the ruling in nullity claim.

In this sense, the decision is based on the jurisprudential criteria of the SCJN with respect to the admissibility of the amparo claim against acts subsequent to trial, which distinguishes between acts of execution and those autonomous with respect to the execution. The resolution that resolves the appeal of complaint due to a defect in the nullity claim is considered an act after the conclusion of the trial. That is to say, it is not strictly speaking, an act of execution, because it has certain autonomy and determines the conformity of the authority with the ruling, being admissible its immediate claim through the constitutional action of amparo claim *-in accordance with section IV of Article 107 of the Amparo Law-*, without the need of waiting for the issuance of the final ruling of the execution proceeding.

**CIVIL. THE REGIONAL PLENARY DETERMINED THAT AMPARO CLAIM IS ADMISSIBLE AGAINST THE RESOLUTION THAT ORDERS REDIRECTING THE ORAL MERCANTILE EXECUTIVE PROCEDURE TO THE ORAL MERCANTILE PROCEDURE AND REVOKES THE ORDER OF PAYMENT REQUEST AND SEIZURE NOTICE AGAINST THE DEBTOR** [More Information...](#)

The Regional Plenary in Civil Matters of the North-Central Region resolved the contradiction of criteria 159/2023 and determined that amparo claim is admissible against the resolution that orders redirecting the oral mercantile executive procedure to the oral mercantile procedure and revokes the order of payment request and seizure notice against the debtor because it is an act that produces immediate and irreparable effects.

The Plenary based its resolution on the jurisprudential criteria P./J. 37/2014 of the Plenary of the SCJN, considering that acts of authority producing irreparable effects must meet two conditions: **(i)** they must materially affect rights, preventing their free exercise before the issuing of the final ruling, and **(ii)** the affected rights must be substantive.

In this sense, the challenged act that orders redirecting the oral mercantile executive procedure to the oral mercantile procedure and revokes the order of payment request and seizure notice meets these conditions. This is because it prevents the creditor from immediately and subsequently possibilities to request seizures that affect their patrimonial rights immediately and irreparably. Therefore, the District Judge must admit the amparo claim considering that the dismissal is not supported in the amparo Law and , given to the fact that the challenged acts produce immediate and irreparable effects.

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