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CONSTITUTIONAL. THE PLENARY SESSION OF THE MEXICAN SUPREME COURT OF JUSTICE WILL DISCUSS AGAIN ONE OF THE DRAFT RULINGS REGARDING THE CONSTITUTIONALITY AND CONVENTIONALITY OF THE PREVENTIVE DETENTION ("PRISIÓN PREVENTIVA OFICIOSA")

More Information...

The Plenary Session of the Mexican Supreme Court of Justice will again discuss the new draft of ruling, regarding the unconstitutionality action 130/2019 -*and its accumulated 136/2019*- through which the unconstitutionality and unconventionality of the preventive detention would be resolved.

It is important to recall that on September 8th, 2022, the Justices in charge of proposing the ruling decided to withdraw their drafts regarding this matter and the amparo appeal R.A. 355/2021, in order to include all the points of view of the other Justices of the Mexican Supreme Court of Justice, due to the discussion of the original projects.

In this regard, the draft of ruling of the unconstitutionality action intends to declare the invalidity of Articles 167, seventh paragraph, sections I, II and III, of the National Code of Criminal Procedures, and 5 section XIII, of the National Security Law; and Article 2°, first paragraph, sections VIII, VIII Bis and VIII Ter, of the Federal Law against Organized Crime -*where the automatic preventive detention is regulated*-.

However, regarding Article 19 of the Constitution, the Justice in charge of this matter, proposes an interpretation in accordance with the same, to interpret the preventive detention as a precautionary measure of extraordinary character, which can only be issued by the Control Judge, when there is a founded cause -*with the purpose that the legal problem of the possible unconventionality of the same ceases to exist*-.

In other words, the preventive detention cannot be interpreted as a measure that works automatically, because said textual and isolated interpretation, contravenes the constitutional principles / the human rights of personal liberty and presumption of innocence -*among others*-, which would be incompatible with the Mexican legal system.

Said draft ruling will be discussed in the upcoming weeks. We will keep you updated.

CIVIL LITIGATION. POSSIBILITY OF CONCURRENCE OF THE VICTIM'S RESPONSIBILITY, IN CASES OF SUBJECTIVE CIVIL LIABILITY

More Information...

Derived from a subjective civil liability claim, a provider of lodging and use of a recreational mechanism, was held liable for damages for not having complied with the sufficient safety measures to protect the integrity of a guest/user, which led to an accident occurring in the hotel facilities.

In this regard, in the amparo claim, the plaintiff/service provider argued that the blame should lie on the guest/user, since he did not perform the necessary acts to avoid the accident, despite having been instructed on how to use said recreational mechanism.

In this sense, the Federal Circuit Court that resolved the amparo appeal in question, determined that, in cases of subjective civil liability, a concurrence of the victim's responsibility might exist, if the victim contributed to cause his/her own damage.

The foregoing, notwithstanding that in the Civil Code for the State of Mexico there is no article that in matters of civil liability expressly contemplates the concurrence of the responsibility of the victim with the damage, the text of Article 7.161 of Civil Code for the State of Mexico states: *"Article 7.161. The persons who have jointly caused a damage, are jointly and severally liable towards the victim for the reparation to which they are obliged, in accordance with the provisions of this chapter."*

Based on said article, the liability is attributed to all those who participate in the production of a damage and, although it does not literally indicate that the victim of the damage might be co-perpetrator, the solution contemplated in said article would be applicable to when the victim's negligent action contributes to causing the damage, with the only difference being that, in this case, the consequence will be to reduce the liability of the other party and therefore influence the quantification of the compensation payable by the latter.

In this sense, in the case that both parties are found to have engaged in conduct that, together, caused damage, this must be taken into account when determining the extent to which each can be considered to have contributed to the production of the damage in order to compensate for the damage, since it justifies the concurrence of liability, which determines not a displacement of liability, but an attenuation of the same.

ADMINISTRATIVE AMPARO CLAIM. ARTICLES 61 AND 62 OF THE REGULATIONS OF THE NATIONAL SYSTEM OF INVESTIGATORS, ARE SELF-ACTIVATING PROVISIONS VIOLATE THE EQUALITY AND NON-DISCRIMINATION PRINCIPLES

More Information...

A Federal Circuit Court in Administrative Matters, located in the State of Puebla published two case-laws, registration number 2025289 and 2025290, determining that Articles 61 and 62 of the Regulations of the National System of Researchers -*amended by an official communication published in the Federal Official Gazette on April 20th, 2021*- are self-activating and unconstitutional provisions, since they are contrary to the principles of equality and non-discrimination.

In this regard, the First Federal Court in Administrative Matters of the Sixth Circuit reached such conclusions, since:

i) based on the jurisprudence entitled: *"SELF-EXECUTING AND MULTI-EXECUTING LAWS. DISTINCTION BASED ON THE CONCEPT OF UNCONDITIONAL INDIVIDUALIZATION"*, the national system researchers who work in the private and/or social sectors, are excluded from the possibility of being beneficiaries of the economic support, without the need of a specific act of legal application; and

ii) the First Chamber of the Mexican Supreme Court of Justice when resolving the amparo appeal 131/2021, determined that in order for a challenged provision to be considered in accordance with the Constitutional text, it is sufficient that the differentiated treatment found in the provision has a legitimate objective, that it is potentially adequate to achieve it, and that it is not prohibited constitutionally or conventionally, which was not the hypothesis in this particular case.

AMPARO CLAIM. THE OMISSION TO FORMALIZE A PUBLIC WORKS CONTRACT THROUGH DIRECT AWARD ATTRIBUTED TO A STATE-OWNED COMPANY CONSTITUTES AN AUTHORITY ACT, IN ORDER TO SUBMIT AN AMPARO CLAIM

More Information...

The Second Chamber of the Mexican Supreme Court of Justice resolved the thesis contradiction 4/2022 that arose between different Circuit Courts, that analyzed whether or not the acts related to the omission to formalize a public works contract through direct award constitutes an authority act in order to submit an amparo claim.

In this regard, the Chamber resolved that the acts related to the omission to formalize a public works contract by direct award, attributed to Mexican Petroleum ("PEMEX"), or any of its subsidiaries, do constitute an authority act to submit an amparo claim.

The foregoing, since according to Article 80 of the PEMEX Law, everything related to the process of bidding, tendering and awarding of contracts for acquisitions, leases, services and works, has an administrative nature; however, once the contracts are signed, they become private law and are governed by the applicable commercial or common law.

In this sense, the omission to formalize a public works contract by direct award must be considered an act of authority for purposes of the amparo claim, since: **a)** it cannot be considered as part of a coordination relationship, since such contracts must be formalized in accordance with different legal provisions, and the lack of this formality cannot be attributed to both parties under equal conditions, since it occurs on a supra-subordination level regulated by public law, since such formalization is in compliance with the powers established in a legal provision; and **b)** these state owned entities impose their will on individuals since they have the power to determine whether or not to formalize a works or services contract unilaterally, being able to create or extinguish on their own legal situations that affect the sphere of the individual/particular, without the need to resort to the courts/judicial organs nor to the consensus of the affected party.

In regard with the foregoing, a jurisprudence criterion was published, with registration number 2025259, under the following title: *"AUTHORITY ACT FOR PURPOSES OF THE AMPARO CLAIM. IS CONSTITUTED BY THE OMISSION TO FORMALIZE A PUBLIC WORKS CONTRACT THROUGH DIRECT AWARD, ATTRIBUTED TO MEXICAN PETROLEUM (PEMEX) OR TO ANY OF ITS SUBSIDIARY COMPANIES."*

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