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MÜGGENBURG,
GORCHES Y PEÑALOSA**AMPARO. THE PERSON WHO CLAIMS IN AN AMPARO CLAIM PROCEDURE THE LACK OF PERSONAL NOTIFICATION OF THE RESUMPTION OF THE PROCEEDING DUE TO PROCEDURAL INACTIVITY HAS THE CHARACTER OF A THIRD-PARTY PLAINTIFF STRANGER TO THE CLAIM**[More Information...](#)

A person filed an amparo claim in which he claimed *-among others-* the lack of personal notification of the resumption of the proceeding, alleging that such lack of being served prevented him from defending himself against the final ruling issued against him. In this regard, the District Court dismissed the amparo claim on the grounds that, the interested party should have filed a motion of nullity of notifications against the resumption of the proceeding.

Against such dismissal, the plaintiff filed an appeal which was resolved by the Second Circuit Court of the State of Veracruz, who resolved that the person who claims in amparo claim the lack of personal notification of the resumption of the proceeding due to procedural inactivity *-and who, therefore, was unable to challenge the final ruling issued against him-*, must be considered as a third-party plaintiff stranger to the claim by assimilation.

This, since when there is a prolonged period of inactivity in the process, the procedural dissociation of the parties is generated, as recognized in Article 81 of the Code of Civil Proceedings for the State of Veracruz, which states that the resumption of the process must be personally notified after 90 days of inactivity. Consequently, the plaintiff must be considered as a third-party plaintiff stranger to the claim because is deprived of one of the substantial elements of the due defense, which consists in the possibility to challenge jurisdictional resolutions.

ADMINISTRATIVE LITIGATION. THE CONSTITUTIONAL APPEAL FILED BY THE DEFENDANT AUTHORITIES IS INADMISSIBLE AGAINST A FINAL RULING ISSUED IN NULLITY CLAIMS PROCESSED IN SUMMARY PROCEEDINGS[More Information...](#)

Derived from the thesis contradiction 15/2021, sustained between the Sixth, Twenty-first and Twenty-second Circuit Courts in Administrative Matters of the First Circuit, it was determined that the authorities' constitutional appeal filed against a ruling issued in a summary proceeding *-provided in Articles 58-1 to 58-15 of the Federal Law of Administrative Claims-* in which it has been resolved to declare the nullity due to the non-application of a legal precept, in exercise of the diffuse control of constitutionality, is inadmissible and must be dismissed since the hypothesis contained in the first paragraph of Article 63 of the Federal Law of Administrative Claims is not fulfilled.

The foregoing since the authorities' constitutional appeal is an exceptional mechanism, its admissibility is strictly limited to the cases expressly established by the legislator.

In this regard, the referred Article 63, first paragraph of the Federal Law of Administrative Claims, establishes that in order for relevant appeal to be admissible, it should be filed against final rulings issued by the Plenary, the Sections of the Superior Chamber or by the Regional Chambers of the Federal Administrative Court. This immediately excludes final rulings issued in summary proceedings, since these are issued in a unitary manner by the instructing magistrates of the Regional Chambers of the Federal Administrative Court, which was even previously resolved by the Mexican Supreme Court through jurisprudential criteria number 2a./J. 152/2012 (10a.).

Therefore, if a ruling was issued in a summary proceeding, any of the sections contained in the referred article 63 cannot be applicable, notwithstanding that section X was added after the issuance of the mentioned jurisprudential criteria, for the cases in which the nullity has been declared due to the non-application of a general rule *-in the exercise of the diffuse control of constitutionality-*, since this in no way makes such appeal admissible against final rulings issued in the summary proceeding.

ADMINISTRATIVE LITIGATION. THE CAUSE OF INADMISSIBILITY PROVIDED IN ARTICLE 8, SECTION XVI, OF THE FEDERAL LAW OF ADMINISTRATIVE CLAIMS IS NOT FULFILLED WHEN THE FIRST NULLITY CLAIM WAS DISMISSED AND CONSIDERED AS NOT FILED[More Information...](#)

Derived from the thesis contradiction 46/2022, the Second Chamber of the Mexican Supreme Court of Justice stated that the ground of inadmissibility set forth in section XVI of Article 8 of the Federal Law of Administrative Claims, which establishes the inadmissibility of the nullity claim when the claim has been filed by the same party and against the same challenged act, on two or more occasions, would not be applicable when relevant nullity claim was dismissed and considered as not filed.

The foregoing, since such cause of inadmissibility only arises if the first claim had been deemed to have been filed, since the legal consequence of considering it as not having been filed is precisely that it never existed, which did not generate any legal effect and therefore there is no double filing.

In this regard, it was resolved that it is necessary for the Chamber or the Magistrate to make sure that the first claim was deemed to have been filed, otherwise the plaintiff would be deprived from defending his interests, leaving him in a state of defenselessness.

CIVIL LITIGATION. IN ORDER TO DETERMINE WHETHER THE SUPPLEMENTATION OF THE CLAIM IS JUSTIFIED IN THE PROCESS OF RECTIFICATION, MODIFICATION OR CLARIFICATION OF BIRTH CERTIFICATES, THE CHARACTERISTICS AND CONTEXT OF THE PLAINTIFF MUST BE TAKEN INTO CONSIDERATION[More Information...](#)

Derived from the criteria contradiction 273/2021, the Mexican Supreme Court of Justice considered that, in general terms, the applicability of the supplementation of the claim does not depend on the type of action attempted, but on the specific situation of the persons involved in the process.

Thus, in proceedings for rectification, modification and clarification of birth certificates, the claim must be supplemented when one of the parties, due to its situation *-whether of disadvantage or vulnerability-* requires a specific judicial treatment that guarantees its access to justice under equal conditions.

The foregoing under the consideration that the rectification, modification and clarification of birth certificates must be resolved in accordance with the pro actione principle *-which requires judicial authorities to exclude certain applications or interpretations of procedural requirements that unjustifiably obstruct the person's right to have a judicial authority to hear and resolve the claim submitted-*, while seeking to guarantee the right to identity of the person requesting it.

However, this is not enough to supplement the claim in benefit of the plaintiff, since the purpose of such figure is that the social and economic disadvantages of the persons do not turn into procedural disadvantages, so the judge must also verify in each case whether there is a situation of vulnerability that justify the use of the supplementation figure.

CIVIL LITIGATION. THE RESOLUTION OF THE APPEAL COURT THAT ORDERS THE CONTINUANCE OF THE PROCEEDING BY DECLARING INADMISSIBLE THE EXCEPTION OF PRESCRIPTION FILED BY THE DEFENDANT, DOES NOT CONSTITUTE AN ACT OF IMPOSSIBLE REPARATION FOR PURPOSES OF THE ADMISSIBILITY OF THE AMPARO CLAIM[More Information...](#)

In a civil ordinary plenary possession claim, the defendant asserted the exception of prescription, which was declared as inadmissible by the Court of Appeal, revoking the decision of the Judge and ordering the continuation of the claim until its conclusion.

Against that ruling, the defendant filed an amparo claim, which was granted by final ruling dated November 11, 2021. On the other hand, the third-party filed an appeal in which it was decided to revoke the amparo claim and dismiss the claim, considering that the ruling of the Court of Appeal that ordered the continuance of the proceeding *-by declaring inadmissible the exception of prescription filed by the defendant-*, would not constitute an act of impossible repair for the purposes of the amparo claim admissibility.

The foregoing, since it is not possible to consider as acts of impossible repair those acts that produce merely formal effects, since the inadmissibility of the exception of prescription has as a consequence the continuation of the claim, which only produces intra-procedural effects, whose consequences can be extinguished without having generated any affectation to the fundamental rights of the plaintiff, in the event that the final ruling issued is favorable and, otherwise, being in aptitude to assert it in the corresponding amparo claim.

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