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MÜGGENBURG,
GORCHES Y PEÑALOSA**CIVIL LITIGATION. THE MEXICAN SUPREME COURT OF JUSTICE RESOLVED THAT ARTICLE 578 OF THE FEDERAL CODE OF CIVIL PROCEDURES REGARDING CLASS ACTIONS IS NOT UNCONSTITUTIONAL**[More Information...](#)

The First Chamber of the Mexican Supreme Court of Justice resolved through amparo appeal 197/2022, that Article 578 of the Federal Code of Civil Procedures, which provides that class actions may only be filed in connection with consumer relations of goods or services and the environment, is not unconstitutional.

Said amparo appeal derives from a class action filed to claim from the Secretary of Public Education and the Secretary of Public Education and Culture of the State of Sinaloa, the damage caused by the deficient public education service. The District Judge dismissed the class action for being notoriously inadmissible, since the public education service did not fall within any of the legal hypothesis to file a class action, contained in Article 578 of the Federal Code of Civil Procedures. Said resolution was confirmed on the appeal.

Therefore, the collectivity filed an amparo claim, which was denied by the Circuit Court in the same terms and resolved that said article is not unconstitutional, because it establishes the scenarios/cases in which class actions can be filed regarding only consumer and environmental relations.

In this regard, the First Chamber resolved in the amparo appeal that said article is not unconstitutional, since the existence of a limitation for a class action does not violate the human rights of access to justice and fair compensation, because it is valid for the legislator to design specific procedures for different situations to make the administration of justice more specialized, accurate and efficient. Furthermore, it is even more important that the rendering of a public service by the State, which does not constitute a consumer relationship, has different ways for its jurisdictional review.

Particularly, when it is a breach of the obligations derived from the provision of educational services in public institutions, it can be considered as a patrimonial responsibility of the State.

In this sense, jurisprudence criterions with registration number [2025553](#) and [2022554](#) were published in the Judicial Weekly of the Federation.

ADMINISTRATIVE AMPARO CLAIM. WHEN A VIOLATION OF THE RIGHT TO PETITION, IS BEING CLAIMED THE JUDGE MUST ANALYZE WHETHER THE RESPONSE IS CONGRUENT WITH WHAT WAS REQUESTED[More Information...](#)

The Second Chamber of the Mexican Supreme Court of Justice resolved the thesis contradiction 77/2022, that arose between different Circuit Courts, that analyzed whether or not it is appropriate to analyze the congruence of the response to the petitioner's request, in application of the jurisprudence criterion 2a./J. 66/2016, when analyzing the violation of the right to petition by an administrative authority.

In this regard, the Second Chamber resolved that when a violation of the right to petition is being claimed, the judge must analyze the congruence of the response with the request made to the authority, since said jurisprudence criterion 2a./J. 66/2016 (10a.), states that: "(...) for the sole purpose of having the administrative authority of the Institute respond to the petition (...)", it implies that the response must be congruent with the request.

The foregoing, due to the need to guarantee the effective protection of relevant human right in accordance with Article 8 of the Mexican Constitution and therefore, in accordance with the jurisprudence criterion of the Mexican Supreme Court of Justice, in the sense that the response must effectively refer to what was requested.

CIVIL LITIGATION. MORAL DAMAGE CANNOT BE EXCLUDED FROM THE OBJECTIVE CIVIL LIABILITY, WHICH IS DETERMINED BY THE NON-PECUNIARY NATURE OF THE DAMAGE, WHICH HAS DIFFERENT CONSEQUENCES AND MEANS OF PROOF[More Information...](#)

The First Chamber of the Mexican Supreme Court of Justice, resolved through amparo appeal 538/2021 that moral damage is determined by the non-pecuniary nature of the damage, and has a different set of consequences and means of evidence, but it can not be excluded from objective civil liability, in accordance with the right to full compensation.

The foregoing, because the human right to fair compensation implies returning things to the state in which they were in, and if this is not possible, to establish the quantification of the compensation for the damage caused, which should, as far as possible, be paid, to nullify all the consequences derived from the damage caused and reestablish the circumstances that should have existed if the damage had not occurred. In this sense, the right to compensation contemplates that the damage caused determines the quantification of the compensation and the reparations are the measures by virtue of which the rights violations committed will no longer exist.

Also, regarding the quantification of moral damages, the following must be considered: (i) moral damage is divided into three categories regarding damage to honor, aesthetic damage, and damage to feelings; (ii) moral damages may have present and future consequences, both pecuniary and non-pecuniary; (iii) moral damage is independent from material damage; and (iv) in order to be compensable, the damage must be certain and personal.

In this regard, the damage which must be proven, although not necessarily through direct evidence; since the damage may be indirectly proven, which is the most common due to the type of interests involved (i.e. presumptions that must be overcome by the other party).

CIVIL LITIGATION. PUNITIVE DAMAGES ARE NOT APPLICABLE IN ANY CASE OF OBJECTIVE OR SUBJECTIVE CIVIL TORT LIABILITY[More Information...](#)

The First Chamber of the Mexican Supreme Court of Justice published a jurisprudence criterion in which it states that punitive damages do not apply in all cases of civil liability in which a compensation for moral damages might be quantified, whether it is objective or subjective, since they constitute an exemplary sanction for preventive purposes that may be implemented when the severity of the conduct justifies such sanction.

The foregoing, since the main purpose of punitive damages is not to provide the victim with the adequate or just compensation, but to serve a purpose on behalf of the State to prevent future human rights violations in relationships between individuals. Therefore, the assessment/quantification of punitive damages depends on the severity of the conduct in relation to the extent of responsibility of the person who generated the damage.

Consequently, not considering punitive damages in a specific case does not necessarily mean that the principle of fair compensation is violated, because each and every one of the circumstances of the specific case must be taken into consideration in order to establish the quantification of the compensation.

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