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INTER-AMERICAN COURT. MEXICO IS RESPONSIBLE FOR VIOLATION OF PERSONAL LIBERTY AND THE PRESUMPTION OF INNOCENCE THROUGH THE APPLICATION OF "ARRAIGO" AND "PRISIÓN PREVENTIVA"

More information...

The Inter-American Court of Human Rights ("IACHR") has declared that Mexico is internationally responsible for violating the rights to personal integrity, personal freedom, judicial guarantees, and judicial protection contained in Articles 5, 7, 8, and 25 of the San Jose Pact, in relation to Mexico's obligations to respect and adopt internal legal measures contained in Articles 1.1 and 2 of said Pact. The foregoing, for the application of "arraigo" and "prision preventiva".

The violations were committed against Jorge Marcial Tzompaxtle Tecpile, Gerardo Tzompaxtle Tecpile, and Gustavo Robles López, starting from their arrest, deprivation of freedom, the criminal proceedings brought against them, the house arrest imposed on them, and the time they spent in preventive detention.

With regards to the "arraigo", the IACHR determined that, as a pre-trial measure of deprivation of freedom for investigative purposes, it was unconventional as it violated the rights to personal freedom and the presumption of innocence of the person under "arraigo". The applicable legislation on such figure -*Article 12 of the 1996 Federal Law against Delinquency and Article 133 bis of the 1999 Federal Code of Criminal Procedures*-: a) did not allow the person under such measure to be heard by a judicial authority prior to the same being imposed, b) restricted the freedom of the person without sufficient evidence linking them to a specific crime, c) did not specify the required material circumstances for applying the measure, d) established a purpose for the restrictive measure that was not compatible with the legitimate purposes for restriction of personal freedom, and e) affected the right against self-incrimination of the person under "arraigo".

In relation to preventive detention, the IACHR ruled that the Federal Code of Criminal Procedures -*which regulates preventive detention and was applied in the case*-, does not mention its purposes, the procedural dangers it aims to prevent, or the requirement to analyze the need for the measure in comparison to other, less restrictive measures for the rights of the accused, such as alternative measures to deprivation of freedom.

Additionally, preventive detention is applied for crimes of a certain gravity once the material conditions set forth by law are established, without an analysis of the need for the measure in light of the particularities of the case.

In this sense, the IACHR ruled that the Mexican state violated its obligation to adopt internal legal measures contained in Article 2 of the Pact with regards to the right not to be arbitrarily deprived of freedom, judicial control of deprivation of freedom and the reasonableness of the duration of preventive detention, the right to be heard, the presumption of innocence, and the right against self-incrimination, to the detriment of the victims.

Finally, the IACHR resolved that the conditions of incommunicado detention and isolation in which the victims were deprived of their liberty under the guise of "arraigo", as well as the inspection of the vehicle and searches conducted at their mother's house and a family-owned business, violated the right to personal integrity and the right to privacy recognized in the Convention.

AMPARO CLAIM. IN ORDER TO INVOKE NOTORIOUS FACTS, THE AMPARO JUDGE MUST BE RULED BY THE PRINCIPLE OF REASONABLENESS AND LIMIT TO FACTUAL CIRCUMSTANCES OF INDUBITABLE AND ACCESSIBLE KNOWLEDGE

More information...

The Ninth Federal Circuit Court in Criminal Matters located in Mexico City, issued a case-law criterion establishing that the Amparo Judges must be ruled by the principle of reasonableness and limit themselves to factual circumstances of indubitable and accessible knowledge, in order to be able to invoke as notorious facts, determinations that are contained in diverse files submitted to their jurisdiction. Concluding that:

(i) based on a joint interpretation of the case-law entitled: *"NOTORIOUS FACTS. GENERAL AND LEGAL CONCEPTS" -issued by the Plenary Session of the Mexican Supreme Court of Justice-* and Article 88 of the Federal Code of Civil Procedure, the Judges are entitled to invoke notorious facts; and

(ii) the case-law entitled: *"ELECTRONIC VERSIONS OF RULINGS STORED AND CAPTURED IN THE INTEGRAL SYSTEM FOR FOLLOWING UP FILES (SISE) HAVE THE CHARACTER OF NOTORIOUS FACTS" -by the Plenary Session of the Mexican Supreme Court of Justice-*, which states that amparo Judges may invoke as notorious facts the electronic versions of rulings stored and captured in the Integral System for Following Up Files.

The foregoing, only when: **a)** the right of access to jurisdiction established in Article 17 of the Federal Constitution is guaranteed, and **b)** the amparo judges must be ruled by the principle of reasonableness and limit themselves to factual circumstances of accessible and indubitable knowledge and which are not subject to discussion.

Otherwise, judges would be authorized to inquire beyond what is publicly understandable and available in the course of their judicial function, which would imply that the information obtained does not constitute a notorious fact, but rather the result of an unjustified investigation.

In regard with the foregoing, a jurisprudence criterion was published under the following title: *"NOTORIOUSFACTS. IN ORDER TO ADJURE THEM THE AMPARO JUDGE MUST BE RULED BY THE PRINCIPLE OF REASONABLENESS AND BE LIMITED TO FACTUAL CIRCUMSTANCES THAT ARE ACCESSIBLE, INDUBITABLE AND NOT OPEN TO DISCUSSION"*, with registration number 2025709.

ADMINISTRATIVE AMPARO CLAIM. THE NATIONAL ANTI-CORRUPTION SYSTEM IS A DEFENDANT AUTHORITY IN AN AMPARO CLAIM AND MAY BE SUMMONED THROUGH ITS COORDINATING COMMITTEE

More information...

A Regional Plenary in Administrative Matters, located in Mexico City resolved the thesis contradiction 21/2021 that arose between different Circuit Courts, differed on whether the National Anticorruption System ("SNA") is a responsible authority for purposes of the amparo claim.

In this sense, the Regional Plenary determined that the SNA has the character of defendant authority when it is indicated as such in an amparo claim and may be summoned to trial through its Coordinating Committee.

The above, given that the powers of the SNA are based on a law of public order, which said system exercises legal power and also creates, modifies or extinguishes specific legal situations to the detriment of the governed. The above, as its existence is founded in constitutional article 113 and the General Law of the National Anti-corruption System; even, article 6 of said law establishes that its object consists of establishing principles, general bases, public policies and procedures for coordination among authorities of all levels of government in the prevention, detection, and punishment of administrative offenses and acts of corruption, as well as in the oversight and control of public resources.

In addition to the above, in accordance with Articles 113, Sections I and III of the Constitution and 8 of the General Law of the National Anticorruption System, the SNA has a Coordinating Committee, which is responsible for establishing the coordination mechanisms among the members of the SNA and is also in charge of the design, promotion and evaluation of public policies to combat/fight corruption. Also, according to Article 13, last paragraph, of the General Law of the National Anticorruption System, the SNA will meet when the Coordinating Committee has previously called for a meeting.

In regard with the foregoing, when the SNA is pointed out as a defendant authority, it may be summoned through said Committee, in accordance with the above mentioned articles, since it is responsible for establishing the coordination mechanisms among the members of the SNA and the effectiveness of said system is under its responsibility.

CIVIL LITIGATION. THE CIVIL ACTION IS APPLICABLE WHEN THE VICTIM OR A THIRD-PARTY FILES A DIRECT ACTION AGAINST THE INSURER TO DEMAND THE COMPENSATION FOR THE DAMAGES CAUSED BY THE ELECTRIC POWER TRANSMISSION AND DISTRIBUTION SERVICE PROVIDED BY THE FEDERAL ELECTRICITY COMMISSION ("CFE")

More information...

The Regional Plenary Session in Civil Matters, located in Mexico City issued a case-law by resolving the thesis contradiction 6/2022, whereby different Circuit Courts held divergent determinations when analyzing the applicability of the civil or administrative action when demanding direct action against an insurer, to claim payment of the indemnification due to the update of the insurable risk, determined in a liability insurance contract, in accordance with Article 147 of the Insurance Contract Law, without the intervention of CFE, where two of the Courts considered that the direct action against the guarantee company is applicable under this provision, without the intervention of the contracting insurer, and, on the contrary, the other resolved that the payment of the indemnification in question is claimable based on the procedure provided in the Federal Law on State Patrimonial Liability -*administrative route*-.

In this regard, the Regional Plenary Session resolved that, in this case, the civil action is applicable because said Article 147 recognizes the substantive and personal right of the third party who was damaged to demand the indemnification determined in a liability insurance contract directly against the insurer without the need to initiate a lawsuit against the insured.

Additionally, since the right of the third party who was damaged stems from the update of the event and the existence of the insurance contract entered into between the insurance company and the insured person, then the civil action is applicable when the victim or third party who was damaged directly exercises the right against the insurer to claim the payment of the indemnification for an unlawful act/risk caused by the transmission and distribution of electricity service provided by CFE.

This is because the law provides that the victims of accidents due to civil liability may claim against the insurer without the intervention of the insured; that is, the direct action is autonomous and is regulated by the Insurance Contract Law, regardless of the private or public character of the insured entity and, therefore, the procedure provided in the Federal Law on State Patrimonial Liability is not applicable.

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