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MÜGGENBURG,  
GORCHES Y PEÑALOSA**CONSTITUCIONAL. THE MEXICAN SUPREME COURT OF JUSTICE (“SCJN”) GRANTS AN INJUNCTION TO SUSPEND THE EFFECTS OF THE DECREE AMENDING, ADDING, AND REPEALING VARIOUS PROVISIONS OF THE GENERAL LAW ON SOCIAL COMMUNICATION AND THE GENERAL LAW ON ADMINISTRATIVE RESPONSIBILITIES, REGARDING THE ELECTORAL “PLAN B”**

On December 27th, 2022, the President of Mexico published in the Federal Official Gazette, the Decree amending and adding various provisions of the General Law on Social Communication and the General Law on Administrative Responsibilities -*the first package of laws that make up the so-called “Plan B” in electoral matters-*, which entered into force the day after its publication.

Various constitutional control measures were submitted against such decree, such as Unconstitutionality Actions, Constitutional Controversies, and Amparo Claims.

In this regard, on February 21st, 2023, the Justice of the SCJN, Alberto Pérez Dayán, admitted several Unconstitutionality Actions submitted by different political parties, as well as several Deputies and Senators under the file number 29/2023 and its accumulations 30/2023, 31/2023, 37/2023, 38/2023, 43/2023, and 47/2023.

Likewise, said Justice granted the injunction to suspend the effects of the Decree in question, for the purpose that it does not apply in the electoral processes that are currently taking place in the State of Mexico and Coahuila, based on the fact that:

(i) it was issued within the electoral ban period provided for in the penultimate paragraph section II of article 105 of the Constitution, which orders that electoral laws must be issued and published at least 90 days before the start of the electoral process in which they will apply;

(ii) it contains fundamental legal modifications -*with the objective to clarify concepts such as government propaganda, among others-*; and

(iii) because if it is not granted, its application could cause irreparable harm to the democratic system and the human rights involved in it.

**COMMERCIAL LITIGATION. REGIONAL PLENARY HAS RULED THAT THE PERSON AGAINST WHOM INJUNCTIONS ARE IMPOSED IN A PREJUDICIAL COMMERCIAL PROCEEDING MUST EXHAUST THE ORDINARY APPEAL, PROVIDED THAT THE AMOUNT OF THE TRANSACTION ALLOWS IT**[More Information...](#)

The Regional Plenary in Civil Matters located in the Mexico City, resolved the criteria contradiction 18/2021, in which one of the Courts held that the person against whom an injunction is ordered in a prejudicial commercial proceeding is obligated to exhaust the principle of definitiveness before filing an amparo claim, while the other Court held that there was no obligation to exhaust the ordinary appeal due to the lack of notification of the imposition of the injunction, since the complete lack of awareness of such measure, granted the character of an authentic third party plaintiff, as an exception to the aforementioned principle.

In this regard, the Regional Plenary held that the ordinary means of defense must be exhausted, in accordance with articles 1168, 1177, and 1178 of the Commercial Code and the precedents of the SCJN, the person against whom an injunction is decreed in a prejudicial commercial proceeding is not exempt from exhausting the ordinary appeal recourse set forth articles 1183 and 1345, section IV, of the Commercial Code, interpreted in the jurisprudence: “*SECURITY MEASURES IN COMMERCIAL LITIGATION. AGAINST THE RESOLUTION THAT GRANTS THEM, THE APPEAL OF IMMEDIATE TRAMITATION IN DEVOLUTIVE EFFECT PROCEEDS, IN TERMS OF ARTICLE 1345, SECTION IV, OF THE COMMERCIAL CODE, SO IN OBSERVANCE OF THE PRINCIPLE OF DEFINITIVENESS, IT MUST BE EXHAUSTED PRIOR TO THE FILING OF THE INDIRECT AMPARO CLAIM*”, provided that the amount of the business allows it, since the exception case to the principle of definitiveness established in article 61, section XVIII, clause c), of the Amparo Law is not met, as it lacks the character of a third party plaintiff, since it was linked to the precautionary process, and because the right to prior hearing does not apply to injunctions -as they constitute precautionary acts and not deprivation acts-.

In regard with the foregoing, a jurisprudence was published under the following title: “*PRECAUTIONARY MEASURES DECREED PRIOR TO THE FILING OF THE COMMERCIAL CLAIM. THE PERSON AGAINST WHOM THEY ARE DICTATED IS NOT EXEMPT FROM OBSERVING THE PRINCIPLE OF DEFINITIVENESS, AND THEREFORE MUST EXHAUST THE ORDINARY APPEAL, IF THE AMOUNT OF THE BUSINESS ALLOWS IT, SINCE HE IS NOT LOCATED IN THE CASE OF EXCEPTION OF THE THIRD PARTY PLAINTIFF TO THE CLAIM.*”, with registration number [2025814](#).

**AMPARO CLAIM. REGIONAL PLENARY RESOLVES ON THE NON-RETROACTIVITY OF JURISPRUDENCE APPLIED TO A LEGAL HYPOTHESIS BUT ISSUED AFTER THE SUCH HYPOTHESIS OCCURRED**[More Information...](#)

The Regional Plenary in Civil Matters located in the State of Mexico, resolved the criteria contradiction 2/2022 between different Circuit Courts, that dissented about whether the jurisprudence 1a./J. 39/2020 (10a.) was retroactively applicable or not, when analyzing the validity of a notification challenged in an amparo claim, when it was performed prior to the issuance of such jurisprudential criteria.

In this regard, the Regional Plenary determined that no retroactive effects would be generated in the application of said jurisprudence 1a./J. 39/2020 (10a.), as there was no prior jurisprudence that interpreted the same normative portion related to the certification that the notifier must carry out when conducting the notification, with the copies of the documents attached to the initial writ.

The above, as according to Article 217, last paragraph, of the Amparo Law, jurisprudence will not have retroactive effect in prejudice of anyone.

This hypothesis would presuppose that there is a prior criterion that interprets the same legal assumption as the new jurisprudence, only in that case, the jurisdictional bodies are obliged to resolve a matter according to the existing criterion.

Therefore, the Regional Plenary concluded that in the absence of prior jurisprudence, the judge may use their interpretative autonomy and, therefore, the application of the subsequent jurisprudence would not have retroactive effects to the detriment of anyone, since there was no prior jurisprudence that interpreted or defined the legal assumption, but rather a repeated judicial practice that could even be different from that adopted by another court in similar cases.

In regard with the foregoing, a jurisprudence criterion was published under the following title: “*JURISPRUDENCE. NO RETROACTIVE EFFECTS ARISE WITH RESPECT TO THE TESIS 1a./J. 39/2020 (10a.) ISSUED BY THE FIRST CHAMBER OF THE SUPREME COURT OF JUSTICE, IN THE NON-EXISTENCE OF PREVIOUS JURISPRUDENCE.*”, with registration number [2025929](#).

**COMMERCIAL LITIGATION. THE RULE SET FORTH IN ARTICLE 1394 OF THE COMMERCIAL CODE RELATED TO ATTACHMENT IN COMMERCIAL EXECUTIVE PROCEEDINGS IS VALID SINCE IT OVERCOMES THE CONSTITUTIONAL PROPORTIONALITY TEST**[More Information...](#)

The First Chamber of the SCJN resolved the amparo claim appeal 414/2021 that derived from an amparo claim in which the plaintiff challenged **a)** the ruling that declared ungrounded the revocation appeal filed against the order that decreed the seizure of their property in a commercial executive claim, and **b)** the unconstitutionality of articles 1394, first paragraph, and 1395, section II, of the Commercial Code, establishing that they unjustifiably limit the rights of access to justice, due process, hearing, and private property, since the disposition of their assets is restricted.

In that sense, the First Chamber determined that the aforementioned articles -*which regulate the right granted to the plaintiff to request a seizure of assets from the moment the claim is notified-* pass the proportionality test, and therefore constitute a constitutionally valid measure.

The reason for this, is that the purpose of these articles is to privilege procedural equality between the parties, to balance and prevent unjustified excesses in the face of the lack of clarity of the law for carrying out notifications in commercial executive claims, in addition to the fact that it seeks to attach easily realizable assets in order to guarantee the parties' rights, which provides legal certainty and facilitates executive processes.

Thus: **a)** this measure pursues a constitutionally valid purpose -*by seeking to ensure that the execution in commercial executive claims does not lose the agility and simplicity with which they were created-*, **b)** it is an appropriate measure -*as it allows for the temporary assurance that there will be sufficient assets to cover the amount owed-*, **c)** it is a necessary measure to guarantee the satisfaction of the creditor -*since it constitutes a legal mechanism to ensure payment to the plaintiff if their claim is well-grounded-*, and **d)** it is strictly proportional -*since it allows for the guarantee of the subject matter of the claim until the end of the process-*, in addition to being a temporary disposition over the assets to ensure the payment of the debt.

**CONTACT**[esteban.gorches@mgps.com.mx](mailto:esteban.gorches@mgps.com.mx)[juan.blanco@mgps.com.mx](mailto:juan.blanco@mgps.com.mx)[fernando.sanchez@mgps.com.mx](mailto:fernando.sanchez@mgps.com.mx)[jose.navarro@mgps.com.mx](mailto:jose.navarro@mgps.com.mx)[bernardo.lopez@mgps.com.mx](mailto:bernardo.lopez@mgps.com.mx)

+52 (55) 52 46 34 00

[Info@mgps.com.mx](mailto:Info@mgps.com.mx)[www.mgps.com.mx](http://www.mgps.com.mx)

Paseo de los Tamarindos 90 Torre I  
Piso 8, Bosques de las Lomas  
C.P. 05120  
Mexico City, Mexico