

# MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

**ADMINISTRATIVE. THE REGIONAL PLENARY DETERMINED IN RELATION THE INJUNCTION IN THE AMPARO CLAIM, POSTINGS OF MESSAGES AND VIDEOS ON SOCIAL MEDIA ARE NEITHER CORRESPONDING NOR EQUIVALENT TO INFAMOUS PENALTIES PROHIBITED IN ARTICLE 22 OF THE MEXICAN CONSTITUTION FOR THE PURPOSES OF THEIR APPLICABILITY**

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The Regional Plenary resolved the contradiction of criteria 193/2023 and determined that it is not appropriate to decree an immediate injunction to paralyze the effects of postings of messages and videos on social media, as they do not equate to infamous penalties prohibited by Article 22 of the Mexican Constitution.

In this regard, this issue derived from contradictory criteria held by various Circuit Courts regarding whether publications on social media are equivalent to infamous penalties prohibited by Article 22 of the Mexican Constitution and whether suspension should be granted against them. While one tribunal considered that the publications were equivalent to such penalties and indicated that immediate injunction was appropriate, the other argued that such acts were not equivalent to infamous penalties.

In this sense, the decision of the Plenary was based on the fact that Article 22 of the Mexican Constitution prohibits the Mexican Government from imposing infamous penalties, which seek to denigrate the reputation of a person convicted of illegal acts. Expressions on social media cannot be equated to these penalties, as they are not imposed by competent authorities as punishment for illicit conduct. Therefore, immediate suspension is not appropriate to halt the effects of publications on social media, as they do not constitute infamous penalties prohibited by Mexican Constitution.

**CIVIL. THE FIRST CHAMBER OF THE MEXICAN SUPREME COURT (“SCJN”). DETERMINED THAT MORAL DAMAGES ARE APPLICABLE EVEN IN CASES OF OBJECTIVE CIVIL LIABILITY, IN LINE WITH THE RIGHT TO A FAIR COMPENSATION**

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The First Chamber of the SCJN, resolved the constitutional appeal 1386/2020 and determined that according to Article 1916 of the Civil Code for Mexico City, it is valid to repair moral damage even in cases of objective civil liability, without violating the rights to equality and non-discrimination, as it constitutes compensation in accordance with the right to fair compensation.

This decision is based on the historical limitation of the Civil Code for Mexico City, which restricted the repair of moral damage to cases of illicit acts, valid for subjective civil liability. However, a legislative amendment in 1982 extended this compensation to objective civil liability, as indicated in Article 1916. This extension reflects the legislative intent to compensate for moral damage caused by the use of dangerous mechanisms, even in illicit acts. Therefore, this provision does not violate the rights to equality and non-discrimination, as it aims to ensure fair compensation, recognizing that both illicit acts and the use of dangerous mechanisms can cause moral damage to victims.

**CONSTITUTIONAL. A CC RULED THAT THE TRUE EXERCISE OF FREEDOM OF SPEECH / EXPRESSION LIES IN TOLERANCE AND RESPECT TOWARDS THE THOUGHTS EXPRESSED BY OTHERS THROUGH WORDS. THEREFORE, IF THE PRESIDENT FORMULATES GENERAL EXPRESSIONS THAT DO NOT EXCEED THE LIMITS OF TOLERANCE, THE COURT CANNOT RESTRICT THE EXERCISE OF THAT FREEDOM IF THE EVALUATIVE EXAMINATION DOES NOT DETECT HARM OR AFFECTATION TO THE DIGNITY OF THE PLAINTIFF**

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The First CC of Administrative Matter of the Fourth Circuit (“1st TCC”), resolved the appeal 595/2023 and determined that true freedom of speech expression resides in tolerance and respect for the thoughts of others. However, crossing the boundaries of tolerance by offending someone for their flaws or differences, or for acts considered illegal without filing complaints or using appropriate legal means, constitutes a violation of the duty to protect the human right to dignity. Lastly, authorities are obliged to respect and protect this right in accordance with the Mexican Constitution.

This decision by the 1st TCC is based on the interpretation of Articles 1, 6, and 7 of the Constitution, as well as Article 19 of the Universal Declaration of Human Rights, where citizens and authorities have the right to express and disseminate their ideas. If a court does not find that these expressions violate the Constitution or harm the dignity of the plaintiff, it should not restrict them, as they constitute a true exercise of freedom of expression through tolerance and respect for others thoughts.

**CONSTITUTIONAL. A CIRCUIT COURT (“CC”) RULED THAT THE CONSTITUTIONAL RESTRICTION ON PERSONAL FREEDOM DERIVES FROM CONVICTIONS AGAINST THE MEXICAN GOVERNMENT BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS (“IACHRR”) AND IN ACCORDANCE WITH THE DOCTRINE AND JURISPRUDENTIAL CRITERIA OF THE SCJN**

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The CC resolved the constitutional appeal 33/2023 and determined that the constitutional restriction on personal freedom must be interpreted so that the Supervisory Judge, even without a request from the Public Prosecutor’s Office, considers the imposition of preventive detention and determines its necessity, proportionality, and suitability for the purposes of the criminal process. However, the judge is not obligated to impose this measure in all cases but must evaluate other less restrictive measures, considering the exceptional nature of preventive detention and its suitability, proportionality, and necessity.

This issue derived from an amparo claim filed against the imposition of mandatory preventive detention, in which constitutional protection was granted, and the interpretation of Article 19 of the Mexican Constitution, which establishes the automatic imposition of such measure in certain crimes, was defined. This was done considering the rulings of the IACHR against Mexico Government in the cases García Rodríguez and others vs. Mexico, and Tzompaxtle Tecpile and others vs. Mexico, as well as the doctrine and jurisprudential criteria of the SCJN.

However, the decision of the CC was based on the jurisprudential criteria established by the SCJN, which has determined that in matters of fundamental rights, the legal system has two main sources: the rights recognized in Mexican Constitution and those established in international treaties, and when a right is recognized in both sources, the *pro-persona* principle is applied in favor of the individual. However, if the Constitution establishes an express restriction, this must prevail. Also, the condemnatory rulings of the IACHR are binding, but if they contradict a constitutional restriction, what is established in Mexican Constitution must prevail. Therefore, constitutional restrictions can be interpreted more favorably to the individual as long as there are no contrary mandatory criteria.

**ADMINISTRATIVE. THE FIRST CHAMBER OF THE SCJN DETERMINED THAT THE RIGHT TO PETITION IS ONE OF THE PILLARS OF REPRESENTATIVE DEMOCRACY**

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The First Chamber of the SCJN, resolved the constitutional appeal 245/2022 and determined that the right to petition is fundamental in representative democracy, allowing citizens not only to vote but also to actively participate in the direction of public affairs. This right enhances other fundamental rights, such as the right of access to justice, freedom of expression, and democratic participation. Thus, the Government must interact with the population to address their requests in various forms, such as petitions, complaints, or initiatives, in a plural and democratic society. This right is crucial in the modern era, with the increasing importance of information technologies.

The First Chamber based its resolution on the fact that the right to petition has been fundamental in the development of democracies and has been recognized in various contexts as an attribute of national citizenship. In Mexico, this right has been established since the Constitutional Decree for the Freedom of Mexican America in 1814, which guarantees citizens the freedom to claim their rights before public authorities. Various Mexican constitutional instruments have recognized citizens’ right to formulate initiatives, claims, and petitions to authorities. According to the constitutionalist Mariano Otero, citizenship includes the right to petition, along with the right to vote, assembly, and membership in the National Guard.

Furthermore, it is argued that this right is considered one of the pillars of representative democracy, allowing citizens to actively participate in the direction of public affairs. In addition, international instruments for the protection of human rights have contributed to defining and strengthening the right to petition, and in the era of social media, these platforms offer an opportunity to expand the protection of the right to petition, facilitating citizen participation and strengthening democracy.

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