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CRIMINAL. A CIRCUIT COURT ("CC") RULED THAT TEMPORARY SUSPENSION WITH RESTITUTIVE EFFECTS AGAINST THE IMPOSITION OF PREVENTIVE DETENTION IS INADMISSIBLE

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The Third Circuit Court of Criminal Matters in the State of Mexico ("3° CC"), resolved the appeal 172/2023 and determined that the temporary injunction with restitutive effects against the imposition of preventive detention is inadmissible, even with what was decided by the Inter-American Court of Human Rights ("IACHR") in the cases *"Tzompaxtle Tecpile and others"* and *"García Rodríguez and another"* both vs. Mexico, where this measure was declared non-conventional.

In this regard, this issue derived from an amparo filed against the imposition of preventive detention, in which the plaintiff requested the injunction with restitutive effects. Their claim was based on the fact that, in resolving the cases *"Tzompaxtle Tecpile and others vs. Mexico"* and *"García Rodríguez and another vs. Mexico"*, the IACHR declared it non-conventional, so they considered that this was sufficient to prove the appearance of good law, for the purposes of the injunction.

In this sense, the decision of the 3° CC was based on the fact that the IACHR's judgments did not alter the normative structure of the Mexican State, but rather required legislative adjustments regarding preventive detention, a task of the Legislative Branch. However, while courts can analyze the conformity of norms with international treaties, the jurisprudential doctrine of the Mexican Supreme Court ("SCJN") limits such analysis, maintaining the preponderance of national norms. This position was reaffirmed even in the face of more recent regional decisions, emphasizing the hierarchy of SCJN jurisprudence.

Finally, the 3° CC emphasizes that the norms restricting the granting of injunction with restitutive effects remain valid, supported by the legislator's intention to avoid confusion about the effects of injunction. Therefore, the judge cannot decide discretionally against what is established in current norms, in deference to the legislator and the consolidation of the Rule of Law.

ADMINISTRATIVE. A CIRCUIT COURT DETERMINED THAT THE PRECEDENTS OF THE CHAMBERS OF THE FEDERAL ADMINISTRATIVE COURT OF JUSTICE ("FAC"), SHOULD BE APPLIED IN SIMILAR CASES

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The First Circuit Court in Criminal and Administrative Matters in Chihuahua (1° CC) resolved the amparo claims 585/2022, 34/2023 and 62/2023, and determined that the Chambers of the FAC must apply their precedents in similar cases.

In this regard, this matter arose from various contentious-administrative claims, in which a Regional Chamber of that court resolved cases of similar antecedents with different criteria, without justifying its decision.

In this sense, the decisions of the 1° CC were based on safeguarding equality in the application of the law, consistency and universality of criteria, legal certainty and control of judicial arbitrariness. In addition, judges must base their decisions on general principles/universal rules accepted in previous cases, or that would apply in similar situations in the future.

Finally, the 1° CC emphasizes that although judges may change a previous interpretation in the exercise of their judicial independence and in compliance with the duty to motivate, this does not necessarily weaken the merits of the current case. In accordance with the constitutional appeal 276/2009 of the First Chamber of the Mexican Supreme Court of Justice, any change of criteria must be rationally and reasonably motivated, so in order to safeguard the principle of universality in legal reasoning, it is necessary that they provide reasons that are of such weight and force that, in the specific case, take precedence not only over the criteria that served as the basis for the decision in the past, but also over the considerations of legal certainty and equality, since the rule of self-precedent manifests itself in a burden of specific argumentation assumed by the person who seeks to modify it.

CIVIL. A CIRCUIT COURT DETERMINED THAT THE JUDGE OF THE PLACE WHERE THE INTERNATIONAL COMMERCIAL ARBITRATION TOOK PLACE HAS JURISDICTION TO ADJUDICATE ON THE NULLITY OF THE ARBITRAL AWARD, EVEN IF IT IS ASSERTED AS A COUNTERCLAIM IN THE PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF A FOREIGN AWARD

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The Ninth Circuit Court of Civil Matters in México City ("9 CC"), resolved the constitutional appeal 292/2023 and determined that the judge of the place where the international commercial arbitration took place has jurisdiction to adjudicate on the nullity of the arbitral award, even if it is asserted as a counterclaim in the procedure for recognition and enforcement of a foreign award.

This decision is based on the considerations of the First Chamber of the SCJN when resolving amparo claim 8/2011, from the thesis titled *"INTERNATIONAL COMMERCIAL ARBITRATION. THE JUDGE OF THE PLACE WHERE IT WAS CONDUCTED IS COMPETENT TO ADJUDICATE ON THE NULLITY OF THE ARBITRAL AWARD."*, as well as the functional interpretation of articles 1422, first paragraph, and 1463 of the Commercial Code. It is concluded that only the judge of the place where the arbitration procedure took place can adjudicate on the nullity of an international arbitral award, even if it is asserted as a counterclaim in the procedure for recognition and enforcement of a foreign award, since although the reasons for declaring the nullity of an award are almost identical to those that can be invoked to deny its recognition or enforcement, there is a practical difference, in that a request for nullity can only be filed before a tribunal of the State in which the award was issued and its enforcement; whereas opposition to enforcement or recognition can be requested from a tribunal of any State, since if the dispute was resolved under the law of a foreign State, its nullity can only be decided under that same normative scheme, even if asserted as a counterclaim.

CIVIL. THE CIRCUIT COURT RULED THAT THE AGREEMENT FOR THE RECOGNITION OF DEBT BETWEEN INDIVIDUALS IS NOT AN ACT OF COMMERCE

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The First Circuit Court in Civil Matters in Veracruz ("1° CC"), resolved the amparo claim 2/2023, and determined that the debt recognition agreement signed between individuals cannot be considered an act of commerce, without its content recognition and signature before a public notary making it a suitable document to establish the oral commercial executive route.

In this regard, the 1° TCC based its decision on Article 1049 of the Commerce Code ("CC"), which states that commercial claims proceed against actions derived from commercial acts, without being able to attribute that quality to the debt recognition agreement signed between individuals as it does not fall within the specific circumstances seen in Article 75 of the aforementioned Code; without prejudice of the fact that the plaintiff could have acknowledged the signatures and the content of the contract before a public notary, thus seeking to convert it into a public document that would fit into the hypothesis seen in articles 1166 and 1391, section II, of the CC, and to endow it with the quality of an act of commerce, an essential requirement to establish any of the channels provided for in the CC.

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