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<u>AMPARO</u>. A CIRCUIT COURT (“CC”) DETERMINED THAT WHEN THE ACTS OF THE AUTHORITIES SUBJECT MATTER OF THE INJUNCTION/SUSPENSION REQUESTED BY THE PLAINTIFF ARE SUBJECTED TO THE TEST OF CONSTITUTIONALITY AND CONVENTIONALITY FOR VIOLATING THE LEGAL ORDER, THE CORE ELEMENTS OF THE CONSTITUTION MUST BE TAKEN INTO CONSIDERATION

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A Public Notary filed an amparo claim against the Decree by which the “Law of Notaries for the State of Nayarit” was issued (published in the Official Gazette of the entity on April 19, 2022) -*specifically against article 41 and seventh transitory, as well as the promulgation and disclosure of the referred Decree*-, and requested the injunction / suspension of the challenged norm for the effect of relevant articles not be applied to the plaintiff, until the resolution of said amparo claim; however, the District Judge denied the injunction measure.

Against such denial, the plaintiff filed a constitutional appeal, which was resolved by the 1st CC with residence in Mexico City, who decided to revoke the ruling denying the suspension and to grant it definitively.

The foregoing, under the consideration that **<u>the injunction / suspension</u>** <u>in the amparo claim</u> **<u>is one of the fundamental means to provisionally restore the national legal order</u>** <u>with regard to the authorities that violate it</u>, so that the Judge’s actions when analyzing the request for the precautionary measure must be subject to the **test of constitutionality and conventionality**, taking into consideration the Constitution’s elements, because although the Constitution admits reforms in accordance with the provisions of Article 135 of the same, it is true that it also contains norms that do not admit reform / are not amendable -*such as the norms related to (i) human rights, (ii) the legal system of republican and federated government, (iii) the division of powers and (iv) judicial independence*-, which act as barriers to maintain constitutional principles that must remain unalterable to protect the existence, essence and even constitutional identity of a nation.

Precisely, one of the mechanisms to avoid affecting such elements of the Constitution is the amparo claim, not only because the function of constitutional justice is to control the acts of the authorities in accordance with the Constitution and international human rights treaties, but also because it is articulated as a subsidiary body of law creation through its work of interpretation of the Constitution and the creation of binding jurisprudence.

<u>CONSTITUTIONAL LAW</u>. THE MEXICAN SUPREME COURT OF JUSTICE (“MSCJ”) DETERMINES THE SCOPE OF THE AUTHORITIES' OBLIGATIONS REGARDING THE HUMAN RIGHT TO WATER

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A District Court dismissed an amparo claim filed by several individuals who challenged the omission of three authorities in charge of the protection of the environment and water resources of the State of Coahuila to adopt measures in order to preserve water resources of the Main Aquifer of the Laguna Region. The foregoing, under the consideration that the plaintiffs lacked legal standing.

Against such dismissal, the plaintiffs filed a constitutional appeal which was resolved by the First Chamber of the MSCJ, who decided to revoke the ruling dismissing the case and granted the amparo protection to the plaintiffs, stating that the Mexican State would have the following obligations with regard to the protection of the human right to water: **(i) to respect**-*this is, to refrain from practices that restrict the right to water, and to interfere in water distribution systems*-, **(ii) to protect** -*this is, to adopt measures to prevent third parties from denying the right to water and contaminating it, as well as to impose measures for non-compliance*- and **(iii) to comply** -*i.e. to preserve water, adopt comprehensive strategies and programs to ensure that generations have sufficient and safe water, provide access to pure water and its sanitation at an affordable price*-.

The MSCJ also defined the following as guarantees of the human right to water: **a) availability** -*that the water supply should be continuous and sufficient*-, **b) quality**-*not containing microorganisms or chemical or radioactive substances, as well as having an acceptable color, odor and taste*- and **c) accessibility** -*physical, which implies that a water supply must be accessible; economic, which implies that the costs be affordable; non-discrimination, which implies that water and its facilities cannot be denied; and access to information*-, which were recognized in the “General Observation No. 15” of the United Nations Committee on Economic, Social and Cultural Rights of the United Nations.

Furthermore, the MSCJ ruled that the authorities incur in an omission for purposes of the amparo claim, when there is non-compliance with an obligation established in an international human rights provision, since **1.** any omission of this type is susceptible of being challenged via amparo claim, **2.** any silent affection of the Constitutional States is attributable to the authorities, **3.** human rights integrate the Mexican block of constitutionality, **4.** human rights are susceptible of being applied by any jurisdictional body, **5.** international treaties must be applied directly because they are part of the Supreme Law, **6.** every treaty compels the parties that sign it to comply with it, **7.** when the lack of exercise of the powers of an authority is challenged, a presumption of unconstitutionality is generated, and **8.** the simple inactivity of the authorities can promote the creation of adverse legal effects to the constitutional block.

Therefore, the MSCJ ruled that the authorities may incur in administrative omissions when they fail to comply with their duties adopted at the international level regarding the promotion, protection, defense and guarantee of the human right to water.

<u>CONSTITUTIONAL LAW</u>. THE MSCJ DETERMINES THE INADMISSIBILITY OF FILING IMPEDIMENTS OF THE JUSTICES OF THE MSCJ IN CONSTITUTIONAL CONTROVERSIES AND ACTIONS OF INCONSTITUTIONALITY

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In sessions dated June 12 and 13, 2023, the Plenary of the MSCJ discussed motions 1/2023, 12/2023 and 13/2023 filed by the Legislative Branch of Nuevo León for Justice Ana Margarita Ríos Farjat to abstain from being an instructor in several constitutional controversies filed by such branch and determined that in constitutional controversies and actions of unconstitutionality, it is improper to promote motions to remove MSCJ justices.

The MSCJ emphasized that, although the resolutions of the Plenary may be issued by a simple majority of its members, in the cases of constitutional controversies and actions of unconstitutionality, the challenged norms may only be declared invalid when they are approved by a qualified majority of eight votes of the present Justices.

Therefore, in order to safeguard the due resolution of such matters, in accordance with the qualified majority required by the Constitution, the Plenary reiterated its criteria in the sense that in the aforementioned cases -*constitutional controversies and actions of unconstitutionality*-, the filing of impediments with regard to the members of the Plenary of the MSCJ, is inadmissible.

In such cases, an impediment may only be analyzed when it arises from an excuse filed by the Justice himself or herself who considers that is unable to resolve a case.

<u>CONSTITUTIONAL LAW</u>. THE PLENARY SESSION OF THE MSCJ INVALIDATED THE SECOND PART OF THE PACKAGE OF AMENDMENTS/REFORMS OF THE SO-CALLED “PLAN B” FOR VIOLATIONS TO THE LEGISLATIVE PROCEDURE

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In a session held on June 22, 2023, the MSCJ analyzed and discussed the resolution of the unconstitutionality actions 71/2023 -*and their accumulated*- filed by several political parties, Deputies and Senators of the Congress of the Union and the Mexican Transparency Institute, and by a majority of 9 votes resolved **<u>to declare the invalidity</u>** of the Decree by which several provisions of the General Law of Institutions and Electoral Procedures, the General Law of Political Parties, the Organic Law of the Federal Judiciary Branch and the General Law of Appeals in Electoral Matters were amended, added and derogated, published in the Federal Official Gazette on March 2, 2023.

The Supreme Court of Justice insisted that, as it has stated on more than 30 occasions, the legislative procedure constitutes the basis of the democratic system and not a mere formalism, since it requires the legislative body to observe and protect the principles of legality, representativeness, and deliberative democracy.

Thus, from the discussion and analysis of the unconstitutionality actions, the MSCJ resolved that there were multiple major violations to the legislative procedure that invalidate it, since: **(i)** the “Plan B” initiatives were presented for discussion and approval without being published prior to the beginning of the session so that the legislators had the opportunity to know them -*when, by the way, such Initiatives include 6 laws and more than 510 added, reformed or modified articles*-, **(ii)** the initiatives were classified as urgent by the legislative majority without providing any reason, **(iii)** both the Chamber of Deputies and Senators discussed and eliminated articles of the Decree whose text had already been previously approved by both Chambers, and **(iv)** the Joint Commissions of the Senate did not meet and approve the opinion jointly, nor did they comply with the previously established voting rules.

By declaring the invalidity of such Decree, the MSCJ determined that in order to preserve the principle of certainty that governs electoral matters, the rules that had been amended/reformed **<u>will recover their effectiveness with the text they had before the entry into force of the challenged Decree</u>**.

Therefore, the so-called electoral “Plan B” was invalidated in its entirety, considering that last May the MSCJ had invalidated the Decree amending the General Law of Social Communication and the General Law of Administrative Responsibilities -*the first package of amendments/reforms of “Plan B”*-.

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