

MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

CIVIL. A CIRCUIT COURT “CC” DETERMINED THAT THE SUPPLEMENTATION OF A DEFICIENT COMPLAINT IS APPLICABLE IN THE APPEAL WHEN IT INCLUDES THE DISCONNECTION OF ELECTRICAL SUPPLY AND THE UNCONSTITUTIONALITY OF ARTICLE 41 OF THE ELECTRIC INDUSTRY LAW, EVEN IF THE CASE IS DISMISSED ON THE GROUNDS THAT ONLY THE CORRESPONDING CONTRACT WAS APPLIED

[More Information...](#)

The Second Circuit Court in Civil Matters of the Seventh Circuit, resolved the constitutional appeal 333/2023 and determined that: **(i)** when the disconnection of electrical supply is based on the commercial contract for the basic supply of low-voltage electricity in the postpaid modality, the application of Article 41 of the Electric Industry Law enters into effect, and **(ii)** that the [supplementation of a deficient complaint](#) by the Plaintiff, provided for in Section VI of Article 79 of the Amparo Law, is applicable in the appeal when such disconnection is challenged along with the unconstitutionality of Article 41 of the Electric Industry Law, even if the case was dismissed on the grounds that the aforementioned provision was not applied in the corresponding contract.

This decision is based on the fact that, the fifth clause of the electricity supply contract establishes the right of the Federal Electric Commission (“FEC”) may suspend the service if any of the conditions contemplated in the eighteenth clause are met. This latter clause not only reiterates FEC’s authority to unilaterally and bindingly suspend the service, but also literally reproduces the content of Article 41 of the Electric Industry Law, which serves as the legal basis for such action.

In this regard, when analyzing contracts entered by FEC Distribution or FEC Basic Services Supplier, it is necessary to distinguish between clauses that apply general norms and those that are agreed upon based on the contractual freedom inherent to civil and commercial law. In other words, what is relevant is not whether the contract explicitly mentions a general norm, but whether the content of any clause is based on that norm, indicating that in such cases, there is no contractual freedom, but rather an obligation to follow the respective general norm.

Additionally, the Court relied on the jurisprudential thesis P./J. 34/2018 (10th), of the Plenary of the Mexican Supreme Court of Justice (“SCJN”), states that for the supplementation of a deficient complaint to be applied in accordance to Section VI of Article 79 of the Amparo Law, there must be a manifest violation of the law that has left the Plaintiff defenseless, as in this case.

AMPARO. A CC RULED THAT WHILE THE HARMONIOUS INTERPRETATION OF A CHALLENGED NORM DUE TO ITS MERE VALIDITY MAY LED TO THE DENIAL OF THE AMPARO, CONSTITUTIONAL PROTECTION MUST STILL BE GRANTED AGAINST FUTURE ACTS OF APPLICATION TO ENSURE THE EFFECTIVENESS OF THE JUDGMENT

[More Information...](#)

The Sixteenth Circuit Court in Administrative Matters of the First Circuit, resolved the constitutional appeal 175/2022 and determined that although the harmonious interpretation of a challenged norm, based on its mere validity, may result in the denial of amparo claim, constitutional protection must still be granted against its future acts of application to ensure the effectiveness of the final ruling.

The case arose from an amparo claim filed against Article 16, Section II, of Agreement FGJCDMX/25/2021, which establishes the guidelines for the entry of substantive personnel into the professional career service of the Attorney General’s Office of Mexico City, on the grounds that it establishes a disproportionate and unjustified measure, as it sets a twelve-month period for such personnel to prove the required professional qualifications through documentation issued by legally constituted educational institutions.

This decision was based on the fact that the harmonious interpretation of a norm provides legal certainty in its application, ensuring that authorities only apply it in a manner consistent with the Mexican Constitution protecting the rights of the plaintiffs. In other words, such interpretation incorporates rights in favor of those who seek amparo claim, related to the application of the norm in light of the fundamental rights that complement it.

In this sense, the judicial decisions determine which interpretation is legitimate from a constitutional perspective. This generates a legal rule regarding how the norms should be interpreted to preserve their constitutionality; in other words, it produces a mandate on how they should be applied. Therefore, the interpretation in conformity with a challenged provision, solely due to its validity, even if it results in the denial of an amparo against it, must also give rise to the right of the plaintiffs to ensure that the authorities can only apply that provision in such a manner and not in any other way that may contradict their rights.

ADMINISTRATIVE. A CC ESTABLISHED THE DIFFERENCES BETWEEN A COMPLAINT AND A REPORT FILED BEFORE THE FEDERAL CONSUMER PROTECTION AGENCY (“PROFECO”) REGARDING THE USE OF PRIVATE TELEPHONE LINES FOR ADVERTISING PURPOSES

[More Information...](#)

The First Circuit Court in Administrative Matters of the Second Circuit resolved the amparo claim 63/2023 and determined that for the purpose of filing a complaint before PROFECO, it is unnecessary for individuals to prove ownership of the private telephone lines used for advertising if the respective numbers are registered in the Public Consumer Registry. However, for a report, the affected consumer must establish their identity.

This decision is based on the distinction that a complaint is a different procedural act from a report made by a consumer.

On one hand, a report is a formal claim when a provider specifically and directly harms consumers by not adhering to the terms and conditions under which a service was contracted, or a product was purchased. To file and process a report, various requirements must be met, including the name and address of the plaintiff, their official identification, the contract, receipt, or proof of purchase, the name and address of the provider, a description of the good or service in question, and a description of the events that gave rise to the complaint. The consumer’s legal standing must also be proven, whether they are an individual or a legal entity, in accordance with Article 109 of the Federal Consumer Protection Law. This can lead to a conciliation process between the provider and the consumer to resolve their differences, and if conciliation is not possible, the rights of the involved parties will be preserved.

On the other hand, a complaint can be filed by anyone *-not necessarily by the affected party-* for acts or omissions by a provider or service provider that violate consumer protection regulations and must include the name or business name of the reported establishment, information for its location, a description of the events related to the complaint, the product or service involved, and, if applicable, the name and address of the plaintiff. Consequently, PROFECO will conduct a verification visit to the provider, and if it finds that consumers’ rights have been violated, it may impose sanctions.

However, a complaint is not necessary as PROFECO can act ex officio to sanction violations of the prohibition established in Article 18 Bis of the Federal Consumer Protection Law.

ADMINISTRATIVE. A CC DETERMINED THAT PROVISIONAL INJUNCTION IN AN AMPARO CLAIM IS APPLICABLE WITH RESTORATIVE EFFECTS AGAINST PROCEDURAL OMISSIONS IN A NULLITY CLAIM

[More Information...](#)

The Sixteenth Circuit Court in Administrative Matters of the First Circuit resolved the appeal 498/2023 and determined that a provisional injunction in an amparo claim is applicable with restorative effects against procedural omissions in a nullity claim before the Federal Administrative Court.

This matter derived from an amparo claim filed against the omission by the instructing Magistrate to process various filings and continue with the respective procedural stage. Consequently, the plaintiff requested a provisional injunction.

In this sense, the Court relied on Article 147 of the Amparo Law, which mandates that, when granting an injunction, appropriate measures must be taken to preserve the subject matter of the claim until its conclusion. Thus, the provisional injunction is applicable against the mentioned omissions, as it pertains to procedural actions within the nullity claim and not substantive actions, such as a ruling on the appeal or claim that recognizes a right for the petitioner, provided that the final resolution has not yet been issued.

CONTACT

esteban.gorches@mgps.com.mx

juan.blanco@mgps.com.mx

fernando.sanchez@mgps.com.mx

maria.castro@mgps.com.mx

+52 (55) 52 46 34 00

Info@mgps.com.mx

www.mgps.com.mx

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