

# MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

## **CONSTITUTIONAL. THE SECOND CHAMBER OF THE MEXICAN SUPREME COURT OF JUSTICE (“SCJN”) DETERMINED THAT CONCILIATION, AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM, PROTECTS THE RIGHT OF ACCESS TO EFFECTIVE JUDICIAL PROTECTION AND, THEREFORE, IS CONSISTENT WITH BOTH CONVENTIONAL AND CONSTITUTIONAL LEGAL FRAMEWORKS** [More Information...](#)

The Second Chamber of the SCJN, resolved constitutional appeal 4977/2023 and determined that conciliation is an appropriate tool that contributes to conflict resolution and prevents the parties involved from being subjected to jurisdictional or contentious procedures that may prove to be exhausting, costly, and burdensome. Therefore, its design contributes to the establishment of a modern justice system that aligns with the right of access to judicial protection and prompt conflict resolution, in accordance with multiple instruments of both conventional and national character.

This decision is based on the interpretation of various international instruments, such as the United Nations Charter, the American Convention on Human Rights, the European Convention on Human Rights, and the norms of the International Labour Organization. Additionally, the Inter-American Court of Human Rights, through its friendly settlements, has recognized that conflict resolution is not limited to jurisdictional means.

Alternative dispute resolution mechanisms, such as conciliation, promote a modern, efficient, and expedited justice system, as recognized in the Mexican Constitution in Articles 17, 18, and 123, Section A, Subsection XX, through the figure of conciliation, particularly materialized in the labor field through the pre-trial conciliation process.

Pre-trial conciliation in labor matters provides individuals with an alternative means to resolve conflicts voluntarily, quickly, and with legal certainty. This tool strengthens the right of access to justice by creating a space for dialogue to reach amicable agreements. To achieve this goal, in labor matters, Mexico established an administrative entity with full authority to resolve conflicts and issue binding decisions. Finally, it is important to emphasize that conciliation does not restrict access to judicial procedures, as it allows recourse to the courts if necessary, and its regulation does not violate Article 17 of the Constitution.

## **CIVIL. THE FIRST CHAMBER OF THE SCJN DETERMINED THAT FINANCIAL COMPENSATION FOR THE DISSOLUTION OF MARRIAGE OR COHABITATION CAN BE CLAIMED BY THOSE WHO HAVE DEDICATED THEMSELVES PREPONDERANTLY TO HOUSEHOLD CHORES AND FAMILY CARE, REGARDLESS OF THEIR GENDER** [More Information...](#)

The First Chamber of the SCJN, resolved constitutional appeal 4316/2023, and determined that Article 342-A of the Civil Code for the State of Guanajuato is constitutional by establishing that either spouse may demand compensation from the other of up to fifty percent of the value of the assets that were acquired during the marriage, provided that they have married under the regime of separation of property and that the plaintiff has devoted himself preponderantly to the home or to the care of the family, since it does not exclude men from requesting compensation when they assume the burdens of domestic work and care of the family to a greater extent.

In this regard, this matter derived from an amparo claim filed against Article 342-A of the Civil Code for the State of Guanajuato, since it was allegedly discriminatory, since it prevented the man from accessing economic compensation under the gender stereotype that he could only be an economic provider and not someone who could also dedicate himself to domestic work and childrearing.

In this sense, the Chamber based its decision on the recognition of the role of language in guaranteeing gender equality and the elimination of stereotypes. The use of neutral language in the phrase “either spouse may sue the other” allows both men and women to have equal access to financial compensation.

This approach avoids reproducing stereotypes about gender roles in the home and recognizes that family dynamics have evolved towards more equitable participation. The article in question allows either spouse or common-law partner to request financial compensation, without assuming based on gender stereotypes that the woman performed the housework and child-rearing – *entitling her as the only one eligible to request it*– and that the man was the only economic provider during the relationship and, therefore, the only one obliged to pay it.

The granting of this compensation does not depend on the gender of the person requesting it, but on proving that the person who assumed the responsibilities of the home and care during the marriage or cohabitation was at an economic and patrimonial disadvantage at the end of the relationship because he or she was unable to dedicate himself to paid work in the same way as his or her partner did.

## **CIVIL. THE FIRST CHAMBER OF THE SCJN RULED THAT MAXIMUM CAPS FOR THE QUANTIFICATION OF MORAL DAMAGES ARE UNCONSTITUTIONAL AS THEY VIOLATE THE RIGHT OF VICTIMS TO FULL REPARATION** [More Information...](#)

The First Chamber of the SCJN resolved constitutional appeal 711/2023 and determined that article 1995 of the Civil Code for the State of Puebla, which establishes a maximum cap of one thousand days of general minimum wage for the quantification of compensation for moral damages, is unconstitutional. It violates the victims’ right to full reparation of damages, as it prevents judges from issuing fair decisions to quantify this concept based on reasonableness and taking into account the specific circumstances of each case.

The case arose from an amparo claim filed against the unconstitutionality of article 1995 of the Civil Code for the State of Puebla, in its version effective until December 29, 2017, which was applied subsidiarily in the criminal process.

This decision is based on the June 10, 2011, amendment to Article 1° of the Mexican Political Constitution, which recognized the right of victims to reparation for human rights violations, including measures of restitution, satisfaction, non-repetition, and compensation, conceptualized as the right to full reparation of damages.

In criminal matters, the purpose of damage reparation is to restore the victim to the situation they were in prior to the commission of the crime. To achieve this, it must be timely, full, comprehensive, effective, fair, and proportional.

In this sense, fair compensation is not only aimed at restoring the lost patrimonial balance but must also be sufficient to enable the affected person to meet their needs and live a dignified life. Therefore, the right to full reparation of damages is incompatible with the existence of caps, tariffs, or maximum and minimum limits that hinder the quantification from being tailored to the specific characteristics of each case to be just.

## **CIVIL. THE FIRST CHAMBER OF THE SCJN DETERMINED THAT THE CONDITIONS OF “APPEARANCE OF GOOD RIGHT” AND “RISK IN DELAY” DO NOT APPLY TO THE SEIZURE OF GOODS AS A PRECAUTIONARY MEASURE IN COMMERCIAL MATTERS, AS THESE ARE SPECIFIC TO AMPARO CLAIMS** [More Information...](#)

The First Chamber of the SCJN resolved constitutional appeal 136/2023 and established that for the granting of the precautionary measure of seizure of goods in commercial matters, the criteria of “appearance of good right” and “risk in delay”, which are exclusive to amparo claims, do not apply. Instead, it is sufficient to prove the existence of a liquid and enforceable credit, as required by Article 1175, Section I, of the Commercial Code.

The case arose from an amparo claim filed against the constitutionality of Article 1175, Section I, of the Commercial Code, which requires a liquid and enforceable credit rather than “appearance of good right” and “risk in delay”.

This decision was based on the principle that the seizure or attachment of goods, like any precautionary measure, does not arise in the abstract but is implemented within a legal process following specific rules. Therefore, for the attachment of goods in commercial matters, it is necessary to meet the requirements of Article 1175, Section I, of the Commercial Code, which obliges the applicant to demonstrate the existence of a “liquid and enforceable” credit.

These requirements relate to the likelihood of the right being invoked but are not equivalent to or interchangeable with legal figures such as “appearance of good right” and “risk in delay”, which are conditions that must be examined for the injunction in amparo claims. This distinction arises from the differences between these legal procedures and the purposes of their respective precautionary measures.

Thus, since the injunction in amparo and the seizure of goods in commercial claims follow different procedures with distinct objectives, the aforementioned article is not unconstitutional for requiring the applicant to prove the existence of a “liquid and enforceable” credit instead of applying “appearance of good right” and “risk in delay”.

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