

# MGPS | MÜGGENBURG, GORCHES Y PEÑALOSA

## **CONSTITUTIONAL. THE FIRST CHAMBER OF THE MEXICAN SUPREME COURT OF JUSTICE (“SCJN”) DETERMINED THAT THE SUBMISSION OF *AMICUS CURIAE* WRITS ARE ADMISSIBLE IN AMPARO CLAIMS AND THEIR RESPECTIVE APPEALS INVOLVING SOCIAL SIGNIFICANCE OR THE PROTECTION OF HUMAN RIGHTS**

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The First Chamber of the SCJN resolved contradiction of criteria 70/2024 and determined that the courts of the Federal Judiciary Branch (“PJF”) may admit *amicus curiae* writs in amparo claims and their respective appeals when they involve matters of social significance or aim to protect human rights by presenting technical information, expert opinions, or legally relevant arguments for case resolution. However, courts are not obligated to address these writs in their final rulings or consider them in their rulings.

The case arose from contradictory criteria adopted by different Circuit Courts (“CC”) when analyzing whether *amicus curiae* writs could be admitted in amparo claims or appeals derived therefrom. One court held that such admission was not possible, arguing that the Amparo Law limits participation to the parties involved in the proceedings and that amparo cases do not share the same level of significance as constitutional actions or constitutional controversies, where such briefs are explicitly allowed. Conversely, the other court held that *amicus curiae* writs were admissible, based on the interpretation of the American Convention on Human Rights, the General Agreements of the SCJN and the importance of the case in question.

This decision is based in the systematic interpretation of Article 2, second paragraph, of the Amparo Law, which provides for the application of the Federal Code of Civil Procedure in the absence of an express provision. Specifically, Article 79 of the Federal Code of Civil Procedure authorizes judges to rely on any person or document to ascertain the truth. This legal basis supports the admission of *amicus curiae* writs.

The submission of *amicus curiae* writs is supported by the interrelation between freedom of expression and the right to defend human rights. Their admission contributes to the prompt administration of justice and the effective judicial protection of rights.

Accordingly, given that amparo claims and their respective appeals can be of equal social significance as other constitutional control mechanisms, the admission of *amicus curiae* is deemed appropriate in cases of social significance or those aimed at defending human rights through the presentation of technical information, expert opinions, or legally relevant arguments. However, it is understood that the court is not obligated to incorporate such writs into its decision or consider them in its rulings.

## **ADMINISTRATIVE. A CC DETERMINED THAT IT IS SUFFICIENT FOR THE PLAINTIFF IN AN AMPARO CLAIM TO CHALLENGE THE OMISSION OF THE REGIONAL CHAMBER OF THE FEDERAL ADMINISTRATIVE COURT OF JUSTICE (“TFJA”) TO ANALYZE THE MERITS OF THE CASE, IN ORDER FOR THE CC TO STUDY THE EFFECTIVENESS OF THE ARGUMENTS**

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The Twenty-First CC in Administrative Matters of the First Circuit (“21 CC”), resolved amparo claim 656/2023 and determined that that when a ruling issued in a nullity claim is challenged in an amparo claim, the generic statement of the plaintiff regarding the omission of the responsible authority to analyze the merits of the case is sufficient for the CC to verify the effectiveness of its argument.

In this regard, the CC based its decision on the fact that, in terms of Article 50 of the Federal Law of Administrative Claims, it is the obligation of the Chambers of the TFJA to first examine the arguments that could lead to nullify the challenged resolution, in accordance with the principle of greater benefit, which consists of the obligation to analyze all the concepts of annulment tending to controvert the merits of the case, despite the fact that they may notice *ex officio* or due to a grievance, a deficiency in the grounds of the competence of the defendant authority or even its non-existence, in order to maximize the right of access to justice and because with this the plaintiff could satisfy his claim. Therefore, when the referred Chambers declare the nullity of the challenged administrative act because the issuing authority is legally incompetent, in an amparo claim it is sufficient to generically controvert such determination, without being necessary to specify state which is the most beneficial argument for the corresponding study to be carried out, according to the cause of action.

## **AMPARO. THE FIRST CHAMBER OF THE SCJN RULED THAT THE AMPARO CLAIM AGAINST THE REFUSAL OF A CREDIT INSTITUTION TO OPEN A BANK ACCOUNT IS INADMISSIBLE, SINCE IT IS NOT CONSIDERED AN ACT OF AUTHORITY**

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The First Chamber of the SCJN resolved contradiction of criteria 128/2024 and determined that the refusal of credit institutions to open a bank account does not constitute an act equivalent to that of an act of authority because there is no super subordination / hierarchical relationship between the parties, which constitutes grounds for the inadmissibility of an amparo claim.

The case arose from contradictory interpretations by certain CC regarding whether the refusal to open a bank account could be considered an act of authority for the purposes of an amparo claim. One court held that it was necessary to admit the amparo claim to analyze whether banking institutions acted with the characteristics of an authority. In contrast, other courts concluded that banking institutions do not qualify as responsible authorities since the refusal to open a bank account places the petitioner on an equal footing with the bank, rather than in a position of subordination.

The decision is grounded on the fact that, although banking institutions are part of the Mexican Banking System and perform activities of public interest related to national economic development, as provided by the Law on Credit Institutions, this does not imply that they can be considered authorities for the purposes of an amparo claim when refusing to open a bank account.

This refusal is based on the principle of freedom of contract, allowing banking institutions to decide whether to take on certain risks with potential clients. In such cases, there is no super subordination relationship between the banking institution and individuals seeking to open a bank account, as the matter pertains to a commercial credit agreement.

Therefore, the refusal of a credit institution to open a bank account constitutes a notorious and manifest cause of inadmissibility of the amparo proceeding, in accordance with the provisions of Article 61, section XXIII, in connection with sections I of article 1 and section II of article 5 of the Amparo Law.

## **ADMINISTRATIVE. A CC DETERMINED THAT THERE IS NO IMPEDIMENT TO ANALYZE AMPARO CLAIMS AGAINST THE DECREE THAT AMENDS, ADDS, AND REPEALS SEVERAL PROVISIONS OF THE MEXICAN CONSTITUTION, REGARDING THE RESTRUCTURING OF THE PJF**

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The Fifth CC in Administrative Matters of the Third Circuit (“5° CC”) resolved the impediments 10/2024, 11/2024, 13/2024, and 14/2024 and concluded that no impediment exists to resolve amparo claims challenging the decree amending, adding, and repealing several provisions of the Constitution concerning the reform of the PJF.

This decision is based on the systematic interpretation of Articles 51, 52, and 53 of the Amparo Law, which establishes that, in line with the principle of necessity and consistent with the right to effective judicial protection recognized in Article 17, second paragraph, of the Mexican Constitution, District Judges and Circuit Magistrates are not precluded from hearing amparo claims challenging the decree in question or the related impediments. Given the nature of the decree, which impacts all judges across the Mexican Republic, a blanket impediment would render all judges unable to resolve these matters. Thus, the principle of necessity mandates prioritizing the constitutional duty to administer justice effectively and ensuring compliance with the constitutional mandate of justice delivery.

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