

COELUM

Monthly Digital Publication by ABOGADOS SIERRA Y VAZQUEZ

June 15, 2013
year 08 | No. 02



Narita International Airport, Tokio Japan. Photo by Carlos Sierra

Comments on the New Amparo Law (Part II).

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COELUM Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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by *Antonio Vázquez.*

During the lifetime of Coelum, few specific legal items have been analyzed in two or more articles of our monthly publication. The reason is that this newsletter does not pretend necessarily to be an exhaustive analysis of the international or domestic legal matters, but only to provide a serious general legal point of view of those matters that the members of this firm or even our guests consider important to share with all of you, or just to let you know about those legal matters which we consider may be of interest to you. Many times, the greatest challenge for all of us who collaborate in Coelum is to provide our readers in a few paragraphs, the complete and exact idea of the matter subject to analysis. This is one of these cases. This is the second article in which we will continue this effort of describing in few lines, all the important modifications that our new Amparo Law contains. In the first article in the May edition of Coelum, written by our colleague, Juan Antonio Tiscareño, he emphasized some important aspects of the amended Amparo Law such as its scope of application and concepts of legitimate interest, the general ruling of unconstitutionality and the creation of Plenary Circuit Courts, but he also mentioned that there are many other important aspects that should be reviewed. This is now the purpose of this second article.

First of all, it is important to note that this new Amparo Law is the result of hard, serious work initiated by the Supreme Court, members of the Federal Judicial Power, legislators, academics, investigators and even litigators, that lasted many years and which ended with the publication of the new Amparo Law. As consequence, this law is not a product of a superficial work, but is the result of an important effort of receiving and reviewing opinions of all those professionals related to the Amparo procedure. The general idea, when this work was initiated, was to prepare the rules for a new, modern Amparo procedure while maintaining those aspects that have been successful and then to change or even incorporate all those new ideas that practice has evidenced should be changed to create an Amparo procedure more in tune with the challenges of these times. This reform to the Law is so important that we are sure that it will be considered a very important development in the evolution of the Amparo procedure, which as explained before in the first article of this series, is the most important legal procedure in Mexico. This is because all the legal procedures concerning any matter in Mexico (administrative, civil, commercial, criminal, labor, etc) are usually finally ruled through the Amparo process. The new Law is recognized as being so important, that there is a unanimous opinion within the legal forum that recognizes that it has incorporated some procedural areas which break paradigms in the Mexican procedures. Most of them have been welcomed; few of them have provoked doubts or criticisms. In the next few lines we will try to enumerate some of them, giving our objective opinion as litigators who have experienced the Amparo procedure for many years.

I.- Breaking the models of the original Amparo procedure.

In this group we will include those new areas which may be considered to be successful changes that will improve and modernize the Amparo procedure. The prior article has already described some of them (Scope of application, legitimate interest, and general ruling of unconstitutionality). We will add these others:

a) Amparo against omissions of the authorities: Historically the Amparo was considered a legal procedure of defense against illegal or even unconstitutional acts of authority. The premise of the claimed act was mainly the illegal activity of the authority. Few cases of Amparo against omissions could be found in the original Law (e.g. An Amparo related to the right of petition of the governed individuals in order to provoke a response from the silent authorities). The new Amparo Law incorporates the right of the affected party to ask for an Amparo against those omissions of the authority which may result in a violation of the rights of the claimed party.

b) An Amparo challenging acts of private entities or individuals. - As the same case of the Amparo against omissions of authorities, historically the Amparo could only be submitted against acts of authorities. Now with the new statute, the scope of application of the Amparo procedure extends against those private entities or individuals whose acts may be equivalent to an act of an authority, affecting the rights of third parties through the exercise of certain capacities stated in law (article 5 Second paragraph).

c) Abrogation of the Amparo judgments which left the final decision to the reviewed Court (“Amparo para efectos”). - Article 77 of the new Amparo Law provides the rules that the Amparo Courts should follow in their final judgments. One important rule is to define the effects of the Amparo granted. In other words, the Amparo Courts should determine the right sense of the substance of the case. In this way, a common practice of those judgments known as “amparo para efectos” will be avoided. These kind of resolutions were very common and consisted basically in the declaration of the Amparo Court of granting Amparo against the specific illegal act of authority (e.g.: illegal analysis of a determined evidence in the procedure) but without ruling on the substance of the case and leaving competence to the reviewed authority to prepare a new act of authority that may modify the illegal act and ruling again the case. As you can imagine, these kinds of decisions produced a lot of new acts of authority and of course, a lot of new Amparo suits which provoked long lasting procedures. Fortunately this practice will be now eliminated.

II. Modifications that should be reviewed carefully in practice.

We found another group of very important modifications that should be reviewed in practice due to their importance and the new matters that they are related to. We can enlist the following in this group:

a) Abrogation of the provisional suspension in the Amparo procedure. - The provisional suspension was determined by the Amparo Judge with the filing of the Amparo suit. It was an important order to maintain the substance of the Amparo case. Now this urgent measure has been abrogated, and the Amparo Court will only rule on the definitive suspension.

b) Abrogation of the suspension in those cases related to concessions of public goods. - For many years we have experienced an abusive use of suspensions granted by the Amparo Courts that basically paralyzed the administrative procedure against licensees companies. This problem became particularly evident in the telecommunications industry in which the Mexican State cannot move forward in these cases due to the suspensions granted. The new Amparo handled this problem by eliminating the suspension on those cases in which the State may be obstructed in invalidating the National Goods (article 129 paragraph XIII of the Amparo Law). We think this new provision should be reviewed carefully in practice in order to determine if it will not provoke the abuse of acts of authority due to the absence of an effective legal tool in favor of the affected parties.

c) Introduction of the collective action to submit Amparo. - The new Amparo Law introduced a new kind of Amparo that may be submitted by collective plaintiffs. This is very important and a modern idea of the protection of the Amparo procedure. Unfortunately, the law does not provide any kind of elements in which this new collective Amparo should be followed or even ruled, so there are important questions that will be resolved in practice, once real cases are submitted before the Amparo Courts: Who are the legitimate groups to submit this kind of Amparo claim? Which will be the procedure to be followed? What will be the effects of the Amparo judgments and if granted, which way will the affected rights will be reestablished in favor of the affected parties? As said before, the Courts should resolve all these matters once cases are submitted before them.

In conclusion, we are at the forefront of an ambitious reform of the Amparo procedure. Many positive areas have been incorporated and there are other new rules that only practice and the jurisprudence will determine if these are positive amendments. Without doubt, we are in the presence of an important change to the Amparo procedure in Mexico.

The DGAC's New Electronic Filing System.

by Vera García.

In this article the author will describe the electronic filing system¹ announced by the General Directorate of Civil Aviation (DGAC). This system provides the possibility of sending filings and information required by the DGAC via web, which will facilitate the management and resolution of these procedures.

“...the system has several procedures for use by permit and concession holders of public air transport services.”

At the moment, the electronic filing system is more focused on the issuing of licenses than in the granting of permits for the provision of air transport services. However, the system has several procedures for use by permit and concession holders of public air transport services.

As the first step, the system requires the registration of the user². The user should provide his Fiel³; his Private Key and his FIEL's password. Once the first step of registration has been completed, the system is supposed to send a confirming e-mail. After that, the user should confirm the e-mail and accept all the terms and conditions of the system.

As a second step, the user should log into the Ministry of Communications and Transports web page in order to complete an application form in which is shown the information of the legal representative, the address, RFC, CURP⁴, country, user, password, e-mail, and the names of the companies that are represented. It is then required to attach copy of the CURP and Power of Attorney of the company or companies that are represented. After all the above is completed, the system must will send a second e-mail saying that the user's request is being processed and within the nine business days following, the system will send a third e-mail message to notify the approval or non-approval of the application.

If the user request is approved, the legal representative may visit the web page: <http://aplicaciones4.sct.gob.mx/cass/servlet/hweblogin>, log-in with his user name and password as authorized by DGAC. After log in, there is an option in the main menu to enter a new request and in that module will be displayed a list of the procedures that are available for selection. The system has a green checkmark for the user's guide on each specific application or procedure for authorization.

Once a procedure has been selected, the legal representative must select the name of the company on whose behalf he is proceeding from among the companies that are represented by him and attach the required documents for such request. Then select the button to accept, attach the FIEL, the private key, and the password of the FIEL. In order to confirm that the request was properly processed, a notice must appear to say that the signature was successful and advising which documents were attached.

1.- Site developed by the Ministry of Communications and Transports on its website, for sending and receiving documents, notices and communications, as well as the consultation of information.

2.- Legal representative of a company that sends or receives documents through the Electronic Filing System.

3.- The set of characters and data that allows identification of the signer, which is created by electronic means under his exclusive control, so that only those bound thereto and to which the data relates, allowing any change that is detectable and which has the same legal effect as a handwritten signatures.

4.- National identification of population registry.

Finally, the procedure will be sent to the DGAC and the legal representative will receive a confirming e-mail informing the number given to the procedure, name of the procedure, the company name and link for consultation purposes.

When an application does not meet certain requirements, the legal representative will get a notification by e-mail with the following information: Name of the procedure, number of the procedure, company name and the deadline date to provide the missing details, also comments and observations regarding the application and the official document issued by the DGAC. In this case, the legal representative should log-in to the system as mentioned before, go to the main menu, select the button “Activities to perform”, after this, the system will show the application that has not met all of the requirements. Following that, the legal representative should attach the documents referred in the official requirement issued by the DGAC, accept, and once again attach his FIEL, the Key and the signature of the FIEL. If the attachment was correct, the system will display a confirmation and the procedure will be sent to the DGAC.

Lastly, the DGAC should resolve each procedure within the period determined by the law, and will notify by e-mail if the procedure has been accepted or denied. It is important to mention that sometimes the DGAC could require the user to present documents directly to the filing office in order to compare some of the documentation.

After receiving the email with the outcome of the application, the applicant should log into the system and select “Services” and then “Consulting Services”, the system will display all the procedures, and the user should review the procedure with the corresponding ID. The System will display the general information of the application and the official document of response issued by the DGAC.

Available procedures in the Electronic Filing System are as follows:

1. Flight-schedules for permit or concession holders of national and international air transport service.
 - Authorization of flight-schedules for permit holders of international air transport services.
 - Authorization of flight-schedules for concession holders of national air transport services.
2. Registration and deregistration in the Mexican Aeronautic Registry
 - Request to inscribe documents by which it acquires ownership or possession of an aircraft for obtaining the certificate.
3. Request for a provisional registration marks.
 - Request for the assigning of provisional registration marks of aircraft.
 - Provisional Assignment of registration marks for insured aircraft.
4. Permits for the administration, operation, use, and construction of airports and heliports.
 - Permit for the administration, operation, use and construction of civil airports for private services: natural person.
 - Permit for the administration, operation, use and construction of civil airports for private services: juridical person.
 - Permit for the administration, operation, use, and construction of civil heliports for private services: natural person.
 - Permit for the administration, operation, use, and construction of civil heliports for private services: judicial person.
 - Permit for the administration, operation, use, and construction of civil airports for public services: judicial person.

5. Authorization of insurance policies.
 - Authorization of insurance policies for air transport services providers.
6. Accreditation of technical requirements to be observed by a permit or concession holder.
 - National permit and concession holders.
 - Foreign air carriers.
 - National permit holders of commercial air transport services.
7. Permit to provide air transport services.
 - Permit to provide international non-scheduled air transport services: Mexican carriers.
 - Permit to provide international non-scheduled air transport services: Foreign carriers.
 - Permit to provide national non-scheduled air transport services: Air taxi, cargo and air ambulance.
 - Permit to provide national non-scheduled air transport services: Non-scheduled carriers with assigned routes.
 - Permit to provide international scheduled air transport services.
 - Permit to provide private air transport services.
 - Permit to provide private business air transport services: Specialized air services.
8. Accreditation of capacity licensees and certificates for the aeronautic technical personal. (10 different procedures).
9. Licensees for the aeronautic technical personal. (32 different procedures).

“...the Electronic Filing System can be very helpful to file requirements and documents and also to observe the status of the proceeding without the necessity of going to the filing office.”

It cannot be denied that the system of filings has improved in the past months, for example, some months ago, a permit holder in order to obtain an authorization for the validation of its operations specifications had to file before the DGAC, several hard copies of the Operations Manual, Maintenance Agreement, Ground Handling Service Agreement, among other documents. Each must be notarized on each page and apostilled in the country of the foreign operator. The new politics of the DGAC allows foreign permit holders to file the mentioned documents in compact discs. This is not only easier, but also reduces much of cost to the carrier. However, in our experience, the system to check the pending procedures with the DGAC on the website of the Ministry of Communications and Transport has had many deficiencies because it is not updated dally, and sometimes even goes weeks without any updates.

In conclusion, the Electronic Filing System can be very helpful to file requirements and documents and also to observe the status of the proceeding without the necessity of going to the filing office. However, we are not really sure that the electronic filing system is working as it should. We hope however that the electronic filing system continues to improve in order to give a faster and better service to the carriers.

Mexico City Airport to reach maximum capacity in 2014.

Alfonso Sarabia de la Garza, the AICM chief executive, stated that México's largest airport could reach its limit of 32 million passengers as soon as next year. This statement is supported by data released by the Mexican Transport Institute (IMT). Even though he stated the he did not have any new information on the construction of a new airport, he said that if that project happens, the AICM will probably disappear. *La Crónica*. 09/May/13.

Puebla International Airport will continue Operations.

Puebla's International Airport, the "Hermanos Serdan", will resume operations after clean up tasks required because of volcanic activity. The Communications and Transport Ministry (SCT) said that the terminal closed on Wednesday at 5:00 am but will start operations again. The closure affected flights to Monterrey, Guadalajara, Tijuana, Cancun and Houston. *Excelsior*. 09/May/13.

Mexican Airlines face a lag in investment.

Mexican airlines face an important investment lag in comparison with other countries in Latin America, mainly due to legal restrictions. While Grupo Aeromexico, Mexico's largest airline carried 14.8 million passengers in 2012, airlines from smaller countries easily surpassed that number. AviancaTaca, from Colombia, El Salvador and Costa Rica carried 23 million over the same period, while Latam (formed by Chilean airline LAN and Brazilian TAM) carried over 65 million passengers. This lag is due mainly because of Mexico's foreign investment restrictions, which forbid Mexican airlines from receiving more than 25% in foreign participation. *Reforma*. 13/May/13.

IFAI orders release of Mexicana's official documents.

The IFAI, the Mexican Transparency Agency ordered the Communications and Transport Ministry (SCT) to release the official documents from Mexicana that certify the company's market exit. IFAI's Chief Commissionaire, Jacqueline Peschard Mariscal stated that the DGAC, an SCT agency, has documents that confirm Mexicana's bankruptcy and it is the SCT's obligation to require the DGAC to make them public. *La Crónica*. 20/May/13.

A promising solution for airway congestion.

The federal government has established that one of the goals for the current six-year administration is to give a long term response to the growing demand for airport services in the Valley of Mexico and in the center of the country. It is however not clear if the federal government is planning to build a new international airport for Mexico City. This goal, included in the National Development Plan 2013-2018, will serve as a base for the elaboration of the National Plan of Infrastructure that should be ready in the several weeks. Over the past few weeks, both federal authorities and local authorities have discussed the necessity of building an alternative airport for Mexico City, which will reach maximum capacity in 2014. *Reforma. 21/May13.*

Mexicana's maintenance bases receive operating certificates.

Mexicana's maintenance bases, known as MRO's passed the test set by international authorities concerned with aviation. Now they will continue providing their services indefinitely. In an official statement by the company, details of the test were handled by the FAA (Federal Aviation Administration) from the United States for Mexico City base and at Guadalajara base, the tests were handled by the EASA (European Aviation Safety Agency). As a result, the aviation international authorities awarded the MROs the necessary operating certificates. *The Economist. 28/May13.*

New Boeing 737s will be more nature friendly.

The Boeing Company said Thursday that they are confident that their new 737 MAX airliner will consume 13% less fuel than current 737 models, which saves more than expected in previous estimates. During a press conference, Boeing said their prediction is based on computer models and tests in wind tunnels. Aircraft production would begin in 2015 with delivery to customers in 2017. *Financiero. 31/May13.*

Mexico City International Airport receives 8 bomb detectors.

The Director General of the International Airport "Benito Juárez" Mexico City (AICM), Alfonso Sarabia de la Garza, said in a recent statement that the airport has received 8 explosive detection devices. The "Quantum Sniffer" is an explosive detection device of QF-150 generation, from the Government of the United States in order to support security needs, as mentioned in the Merida Initiative. The official emphasized that the priority for the airport is to provide more security to the users and welcomed this donation, which is the first of a package with a total value of five million dollars, which was budgeted at the Merida Initiative. The second delivery of equipment is expected in September and will include Mobile Units Explosives Search (UMBE). With this equipment, which is capable of detecting up to 17 different types of explosives and radioactive material, the AICM will strengthen measures to further improve security. *Financiero. 31/May13.*

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