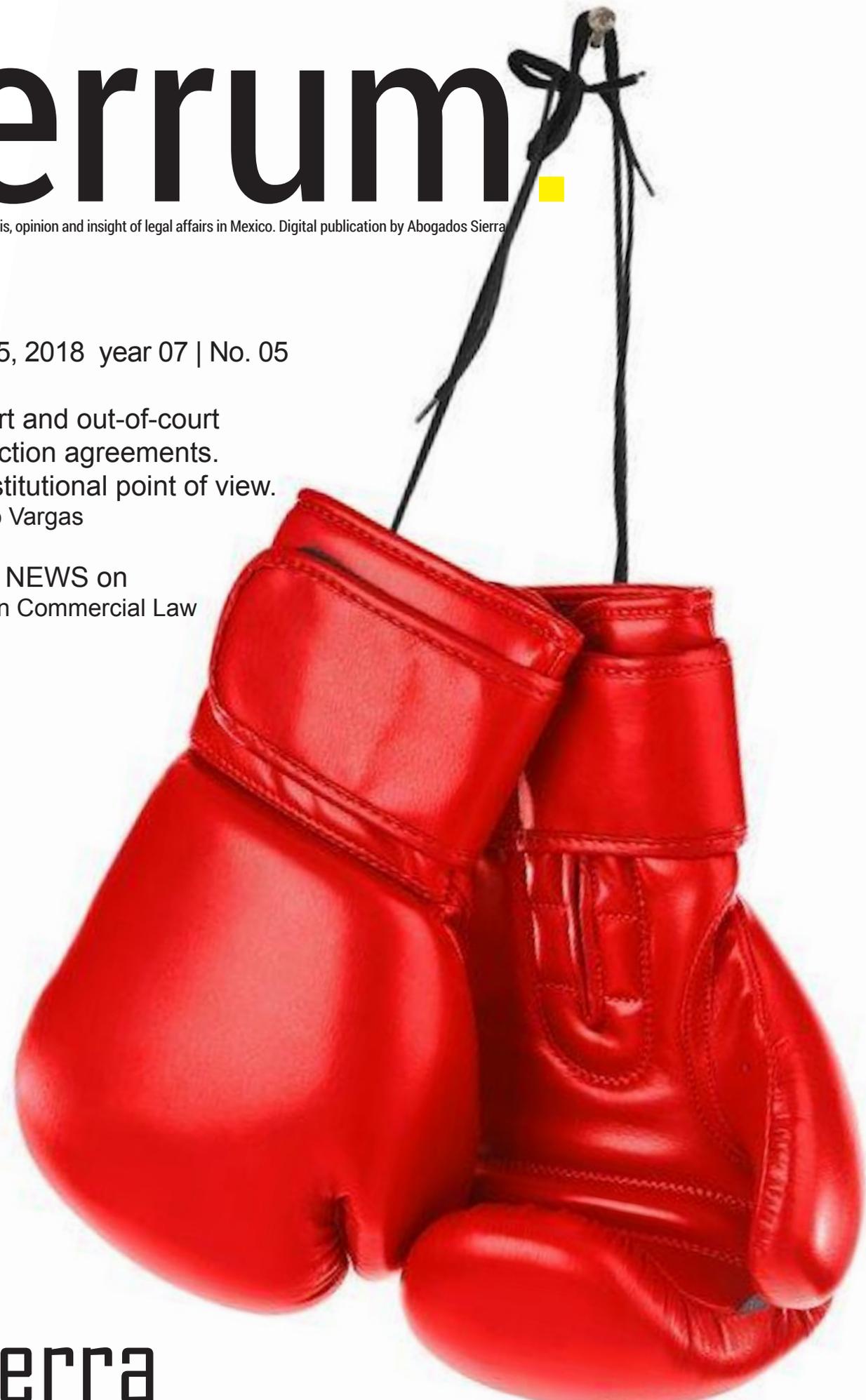


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A constitutional point of view.
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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

In-court and out-of-court transaction agreements. A constitutional point of view.

by Julio Vargas.

Societies in general and due to many and vary reasons tend to have disputes related to almost everything that affects human beings, either religion, rights, property, interests, business, etc.

Governments, in a noble attempt of make justice accesible for the citizens protecting and keeping social balances and order has created the courts of law as means to provide justice to everybody.

The evolution of legal procedures as a way to resolve disputes among societies has become a day by day endeavor trying to be more effective, expedite, just and fair. However, historically many reasons justified or not, have created problems related to the time a legal dispute might take to reach a resolution, factors that go from excess of bureaucracy, excess of loads of cases in a court and many other reasons. Therefore, litigating parties tend to create alternative forms to settle disputes in more efficient and expeditious ways.

One of many forms to terminate a dispute among two or several contentious parties is through the execution before the courts of law of a judicial (in-court) or non judicial (out-of-court) transaction agreement.

The transaction agreement is a legal institution that allows the parties in litigation to settle their dispute without waiting the sometimes a long and never-ending legal process to be judged.

“The evolution of legal procedures as a way to resolve disputes among societies has become a day by day endeavor trying to be more effective, expedite, just and fair.”

In fact, Mexico City local judicial authorities established the Center of Alternative Justice as an institution to help and assist individuals to seek peacefully and in orderly fashion guided by mediation specialists to settle out of court their disputes. These Centers have been, through the years, adopted by many other Mexican states.

As any legal institution it has some conditions for its validity and enforcement, since a constitutional stance for its full validity. In Mexico, due process is a constitutional and human right to every individual or entity that provides in general terms a guaranty for all individuals and entities that prior to any action from authorities or from anybody that affects its liberty, property, possessions and rights, may only be accomplished after the the individual has been heard in the court of law through a legal process that fulfills the due process essential formalities.

Those essential formalities of due process are: i) the right of service of process and its consequences; ii) the right to provide to the court elements of proof in its defense; iii) the right to oral argumentation; and iv) the right to receive a judgment that resolves the disputed issues.

Being the right of service of process an essential formality which unfolds as the right of a litigating party to: a) the knowledge that a legal procedure has been initiated against him; b) who is the plaintiff and which are its specific demands; c) the knowledge of its ability and right to defend itself and provide proof in court and argue for such purpose.

Once those requirements have been fulfilled, the litigating parties are able to reach a settlement of their dispute through a transaction agreement which must comply with key elements that consists in the intent to resolve an ongoing dispute or preventing a future one by mutual and reciprocal concessions between the parties.

The main benefit of a judicial transaction agreement is that, if approved by the court, it becomes a final judgment and therefor undisputable, in other words, *res judicata*.

In that sense, there have been many cases in which the parties, in an attempt to expedite their dispute solution through a judicial transaction agreement, the plaintiff, once that it has filed its initial claim, and before service of process, files along a judicial transaction agreement proposal.

In these cases, our Supreme Court ruled to reject such practice under the technical argument that states that, being the service of process an essential formality of due process that guaranties the rights of the defendant defined in the above lines, the defendant must be formally served in order to consider the defendant informed of its rights mentioned, and therefor if the service of process has not been produced, even though the defendant appears in court with the intention to execute the transaction agreement, such agreement cannot be approved by the court because, formally speaking, the process relation among the parties has not been established before the court, furthermore, the judge would approve and issue a final judgment in a process not formally established yet and without the certainty that the defendant is fully aware of its legal rights through the service of due process.

As noted, since transaction agreements may also be reached among the parties through out-of-court procedures, they must be filed in court and go through a validation process in order for the judge to consider such transaction as final judgment, so then again certain essential formalities must be met before it is fully legal, binding and enforceable.

Fortunately, more recent Supreme Court ruling has modified its previous criteria related to the necessity of service of process to defendant as an essential requirement for the approval of an out-of-court transaction agreement.

This ruling states that in cases when there is a lawsuit legally filed in court and defendant has not yet been served of due process and the plaintiff appears before the court with an out-of-court transaction agreement entered with the defendant and ratified before a notary public, the transaction agreement may be validated by the court, even though service of process has not been fulfilled, in order to become a final judgment and *res judicata* if it is shown to the court this key elements: I) that the out of court agreement proves that the defendant has knowledge that a lawsuit has been filed against him, II) the name of the plaintiff and its demands; III) that he has full knowledge of his right to defend himself to such extent that he is agreeing in the transaction agreement granting reciprocal concessions to resolve and settle the existing dispute filed in court.

The out-of-court transaction agreements that reach those specific ends have been know considered by our Supreme Court to be in accordance with the constitutional and human right of due process in its service of process modality and therefor valid and binding, even though such service of process does not in fact takes place.

Furthermore and finally, the transaction agreements reached among the conflicting parties through the Center of Alternative Justice will be recognized as a final judgment in the courts of law.

OECD raises outlook for Mexico growth.

The Organization for Economic Co-Operation and Development (OECD) has upgraded its growth forecasts for the Mexican economy for both this year and next. In its Interim Economic Outlook released this month, the OECD said that Mexico's gross domestic product (GDP) will grow by 2.5% this year and 2.8% in 2019. <https://mexiconewsdaily.com/news/oecd-raises-outlook-mexico-growth/> 13/03/2018.

40-hectare solar park opened in Coahuila.

A new, 40-hectare solar park was inaugurated yesterday in Matamoros, Coahuila, an 800-million-peso (US \$43-million) project that will power municipal and state facilities and services. The Coahuila Solar Park's 76,400 solar panels in Noacán will generate over 20 million kilowatts per year. <https://mexiconewsdaily.com/news/40-hectare-solar-park-inaugurated-in-coahuila/> 15/03/2018.

The Unintended Consequences of Starting a Trade War with Mexico.

Canada and Mexico have escaped the new global tariff on steel and aluminum intended to be imposed by the United States. However, President Trump threats to pull out of NAFTA might be a negotiating tactic, or it might even seem like a way to address the trade imbalance between the United States and Mexico, but its long-term impact on American manufacturing will can be worse than that people believe. <https://www.forbes.com/sites/willyshih/2018/03/19/the-unintended-consequences-of-starting-a-trade-war-with-mexico/#17f6c58f2f28> 19/03/2018.

Ex-governor accused before the International Criminal Court (ICC).

Oaxaca's human rights ombudsman has accused a former governor of crimes against humanity in a case filed before the International Criminal Court (ICC). Specifically Ulises Ruiz Ortiz is being accused of using state resources for the illegal detainment of protesters and initiating actions by illegal armed groups to instil terror among citizens and commit extrajudicial killings during a period of turmoil between 2006 and 2007. <https://mexiconewsdaily.com/news/ex-governor-accused-in-international-court/> 26/03/2018.

Mexico, U.S. sign accords on customs, border cooperation.

Mexico and the United States have signed three accords to improve bilateral customs procedures and expedite the flow of agricultural produce across their almost 2,000-mile (3,220-km) border. <https://www.reuters.com/article/us-usa-mexico-cooperation/mexico-u-s-sign-accords-on-customs-border-cooperation-idUSKBN1H300H> 26/03/2018.

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