

TERRUM

Briefing, analysis, opinion and insight of legal affairs in Mexico
Digital publication by ABOGADOS SIERRA Y VÁZQUEZ

ABOGADOS
SIERRA
VAZQUEZ

July 15, 2014 year 02 | No. 08

A Revolutionary Concept in the
Defense of Fundamental Rights.

by Juan Antonio Tlscareño.

P. 01-03

May NEWS on
Mexican Commercial Law

P. 04

Contributors

P. 05

"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

A Revolutionary Concept in the Defense of Fundamental Rights.

by Juan Antonio Tiscareño.

Within the phenomenon of social conflicts, once a person suffers an injury and submits the dispute to the courts, the experience and knowledge of the judges when applying the law plays an essential role. Federal courts enjoy good credibility, and generally the influence of power and money is discarded when issuing their judgments. People should feel confident that right and reason will be the elements that constitute the core of the court judgment.

“People should feel confident that right and reason will be the elements that constitute the core of the court judgment.”

We are at a propitious time to examine carefully one of the most important legal instruments in our country, due to its social, cultural, and economic content. The *Amparo* proceeding has been thoroughly commented. It is the most relevant court proceeding, specifically designed to protect fundamental (human) rights. The publication of the new *Amparo Law* on April 2, 2013, in the Federal Official Diary, is a benchmark in the history of this constitutional proceeding because it contains a complete new system of the right of claiming for an *amparo*. Overall the new constitutional and legal regulation of the *amparo* proceeding, with its new clauses, in many occasions breaks with a tradition that was thought immutable. The compromise of the Mexican State in favor of fundamental rights, domestic or international, and the judicial review admitted by the Supreme Court of Justice make us conclude that we are in presence of a very different system of *amparo*.

The new *Amparo Law* contains a lot of innovative concepts. One of these concepts is the “legitimate interest” in contrast to the concept of “legal interest” which was the only type of interest accepted by the previous *Amparo Law*. Currently, both kind of interests are available, depending of the case.

“The diffuse interests are the interests prescribed in law, by virtue of which great segments of the population gain benefits in a shared manner, without the exclusivity and direct nature that are hallmarks of the legal interest.”

In fact, this new concept of legitimate interest is based on an amendment in 2011 to the Mexican Constitution, which opened the legitimacy for standing in court to a “legitimate individual or collective interest”, to indicate it as the one related to the affectation of the legal sphere of the governed “by virtue of his special situation before the legal system”. Articles 5, 6, and 61 of the new *Amparo Law* provide this type of interest.¹

The legitimate interest has a close link to the so called “diffuse” interests. The diffuse interests are the interests prescribed in law, by virtue of which great segments of the population gain benefits in a shared manner, without the exclusivity and direct nature that are hallmarks of the legal interest. These characteristics are very distinctive in specific types of cases, for example, related to urban regulations, environment law, or omissions committed by the authorities. I will provide you an example to see how the legitimate interest works in an *Amparo* proceeding, to see things more clearly.

Let’s suppose that without authorization, a street block is closed by a group of neighbors, arguing that they seek for more security on the neighborhood. The closure of the street violates the right of freedom of movement established in the Mexican Constitution but the government does not do anything about this violation. It incurs in an omission of its duty. With the traditional concept of legal interest, an *amparo* lawsuit filed by a citizen in order to obtain the reopening of the street would not succeed because the citizen does not have an exclusive right for requesting the reopening of the street, it is a right of a specific group. In this case, the neighbors of the block in which the street was closed. But, with the new concept of the legitimate interest, the individual neighbors may file an *amparo* lawsuit against the omission of the government to perform the necessary tasks to reopen the street. With the previous law, citizens would need to follow a larger and more tortuous path to obtain the reopening of the street (other legal actions different from the *amparo* which of course are slower and less effective), but with the new law, the citizens have a very speedy remedy to fix the violation of fundamental rights in cases related to diffuse interests.

“We are confident that the concept of legitimate interest will bring new opportunities for granting justice in benefit of large sectors of population”.

We are confident that the concept of legitimate interest will bring new opportunities for granting justice in benefit of large sectors of population. This prediction will be confirmed as the cases are brought to courts.

1.- Notwithstanding the aforementioned, the new law also contains exceptions, in which the traditional concept of “legal interest” is necessary for an *amparo*, for example, the *amparo* against a resolution from a court in a judicial proceeding. It is important to bear in mind that an *amparo* can be promoted against any act of authority, including in some cases, acts of particulars that act as authorities.

Energy legislation must prioritize infrastructure and employment, lawmakers told.

Mexico's energy legislation must aim to boost infrastructure and create jobs using the country's oil revenues, sector experts said during a meeting with congress members. Limiting the country's hydrocarbon revenues to investment in the technological development of the energy sector would be a serious error, Fluvio Ruiz Alarcón, who sits on federal oil company Pemex's board, said during a meeting with the congress energy and treasury committees, according to a congressional press release. *BNAmericas*. 17/06/2014.

Mexico is now Latin America's most expensive mining jurisdiction.

Mexico has become Latin America's most expensive country for mining investments, as the country is rolling out its energy reforms approved last year, which increases taxes from 5% to 7.5%, charged as a percentage of profits. Gold and silver miners are the ones that will hurt the most, as they now have to pay an additional 0.5%, taking their total royalty up to 8.0%. As a consequence, the cost of mining and exploring for gold and silver in the country has increased 13% and 20%, respectively, over the past year. *Airline Industry Today*. 19/06/2014.

SHCP promises transparency.

Deputies from four parties have expressed concerns that regulatory laws for the energy reform could contain hidden tax breaks for Pemex and the Federal Electricity Commission. The parties informed Miguel Messmacher, an undersecretary with the Finance Secretariat (SHCP), of their concerns. Norma Ponce Orozco of the Institutional Revolutionary Party (PRI) ask for specific information about the implications of a new method of calculating the use of funds in the new Stabilization Fund that will store and guide the use of public profits from oil production if the secondary laws are approved. Messmacher said that official state funds will be increased from 44 million pesos (\$3.38 million) to 100 billion pesos (\$7.6 billion) and federal funds from 88 million pesos to 200 billion pesos (\$15.34). *The News*. 24/06/2014.

Energy reform gives CFE budget autonomy.

Federal Electricity Commission Finance Director Francisco Santoyo Vargas said Tuesday that Pemex will be the pillar of the electricity industry and compete with the private sector on equal terms under the new tax system and budgetary autonomy proposals in the energy reform. During congressional debate on the secondary laws for the energy reform Vargas said the new tax regime for the Federal Electricity Commission (CFE), plans to turn it into a Productive State Company (EPE), a non-for-profit corporate entity. *The News*. 24/06/2014.

Senate establishes date to discuss secondary telecommunications legislation.

The Mexican parties have finally set a date in order to revise the proposal of secondary legislation in telecommunications. The telecommunications reform had already been approved by Congress on May 22, 2013 and promulgated by the president on June 10, 2013, but even after a year since it entered into force no secondary legislation on that matter exists. The reform contemplated that this legislation should have been approved by December last year but the discussion had been delayed due to a lack of consensus between the different parties. *CNN Mexico*. 26/06/2014.

Mexico to invest \$31.9 bn. in water infrastructure through 2018.

President Enrique Peña Nieto said Mexico plans to invest 415 billion pesos (\$31.9 billion) in water infrastructure between 2014 and 2018 to guarantee all Mexicans have access to that vital resource. He noted that Mexico's geographical location makes it vulnerable to droughts and also prone to hurricanes and intense rainfall, which raise water levels but also cause serious damage to homes, basic infrastructure and crops. Water management is a global issue that requires the commitment of the international community, according to Peña Nieto, who expressed confidence that the World Water Council's efforts will lead to mechanisms that guarantee water supplies for the entire planet.. *Fox News*. 27/06/2014.

CONTRIBUTORS

Juan Tisacreño

Attorney at law. Admitted to practice law on 2006. Mr. Juan A. Tisacreño, of Mexican nationality, obtained his law degree at Universidad Panamericana. He also attended post-graduate studies in commercial litigation, civil litigation, administrative litigation and business administration at different universities. He is currently studying a master's degree in constitutional proceedings at Universidad Panamericana.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Commercial Litigation and Civil Litigation.

e-mail: jtiscareno@asyv.com

ABOGADOS
SIERRA
VAZQUEZ

Prol. Reforma No. 1190 25th Floor
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com | www.asyv.aero
mail@asyv.com

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra y Vazquez SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.