

TERRUM

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

ABOGADOS
SIERRA Y
VAZQUEZ

May 15, 2015 year 03 | No. 06

The collection of a guarantee in
an Amparo.

by Juan Antonio Tiscareño
P. 01-02

MAY NEWS on
Mexican Aviation
P. 03

Contributors
P. 04

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

The *Amparo* is a judicial proceeding designed for the protection of fundamental rights, in which the *quejoso* –the plaintiff in the *Amparo*– can request a suspension order against the effects of some sort of acts, in prejudice of third parties, with the condition that he presents a guarantee in order to respond to the possible damages and lost profits that could be caused to those third parties. In these circumstances, important questions arise: What happens if an *Amparo* is filed for illegitimate purposes? Is there a relief for the affected parties? In this article, I will assess the possibility of collecting the guarantee presented by the *quejoso*, as one way to mitigate the effects of the suspension order granted by a court in an *Amparo* proceeding.

“What happens if an Amparo is filed for illegitimate purposes? Is there a relief for the affected parties?”

Nature and characteristics of the suspension order

The suspension order is a provisional remedy granted by the authority, which dictates the pertinent measures to conserve the matter of the proceedings, or to prevent in favor of the plaintiff, the final efficacy of the judgment. The suspension order only challenges the effects of the act, the causes of the act are examined in the final judgment that decides about the appropriateness or suitability of the *Amparo* lawsuit. The challenged act is not destroyed by the suspension order, it only paralyzes its effects. It is a measure to preserve the merits or substance of the case. In that sense, it is accessory, as the existence of the suspension order depends on the substance of the case.

The effectiveness of the suspension order terminates with the final judgment issued by the competent authority of the *Amparo*, or with a modification during the proceedings, caused by a change that becomes inconvenient or if its existence is illegal.

It is also an urgent measure, taking into account that the efficiency is directly related to the expeditiousness of its establishment, in such a way that its delay could yield the impossibility of materializing the object of the *Amparo* proceeding. This is called “*Periculum in mora*” in Latin.

“The suspension order is a provisional remedy granted by the authority, which dictates the pertinent measures to conserve the matter of the proceedings, or to prevent in favor of the plaintiff, the final efficacy of the judgment.”

Ancillary proceeding the collection of a guarantee in an Amparo proceeding

An ancillary proceeding regulated by the *Ley de Amparo* – the law that regulates all the aspects related to the *Amparo* proceeding – allows restitution, in favor of third parties, of the situation that prevailed before the issuance of the suspension order, for the case that those third parties were affected by the adoption of the provisional remedy, as long as the *quejoso* did not obtained a favorable judgment. Therefore, these are the requirements of appropriateness of the ancillary proceeding:

- The presence of a third party (in some *Amparo* proceedings, the presence of a third party is not essential).
- The issuance of a suspension order, which effectiveness is conditioned by the filing of a guarantee (a bond, a deposit-in-court certificate, etc.)¹
- The issuance of a final judgment, contrary to the interest of the *quejoso*.
- The full demonstration, demonstrated by the third affected party, that the suspension order caused damages to him.^{2,3}

“The effectiveness of the suspension order terminates with the final judgment issued by the competent authority of the Amparo...”

Having said that, I want to readdress the questions that I propounded in the introduction of this article: What happens if an *Amparo* is filed for illegitimate purposes? Is there a relief for the affected parties? These two questions are closely linked, and as you can see, have an answer according to the *Amparo* law. The affected party can obtain the restitution of damages and lost profits through a special ancillary proceeding, designed for such purposes.⁴

1.- The amount of the guarantee is fixed by the authority on a case by case basis.

2.- According to jurisprudence 2a/J. 138/2013 (10ª.) of the Supreme Court of Justice of Mexico, in case that the third affected party declares his conformity to the devolution of the guarantee of the *quejoso*, or declares that he did not resented damages or loss profits with the issuance of the suspension order, the authority who conducted the *Amparo* proceedings will return the guarantee to the *quejoso*.

3.- An isolated thesis of the 10th Collegiate Circuit Court of the First Circuit (thesis I.10o.C.12 K) concludes that the fact the authority that conducts the *Amparo* proceedings fixes the amount of the guarantee that must be granted by the *quejoso* does not imply that the existence of the damages and lost profits has been proved, since that fact must be evidenced by the third affected party.

4.- It is important to note that the third affected party has a term of six months, after the final judgment of the *Amparo* is issued, for filing the ancillary proceeding.

Mexican reserves may seem insufficient on the short run.

The reserves of the Mexican Central Bank (Banxico) may not be sufficient in the short run. The Mexican reserves add up to 270 billion dollars to make front to a crisis, produced by the elevation of interest rates by the Federal Reserve of the United States of America. However the rise on interest rates as a policy by the Federal Reserve to control the financial instability worldwide, may result in Mexico's reserves to be insufficient on the short term, even less sufficient upon a capital flight crisis. Mexico's international reserves have a 70 billion dollar on flexible credit to make front to any contingency, stated the governor of Banxico, Agustín Carstens. *cnnexpansion.com 28/04/15.*

Foreign Investment attracted to Mexico.

The managing consulting agency AT Kearney stated Mexico as the ninth most attractive country for investment at a global level, three ranks higher than the last time. United States of America head the list, followed by Brasil's sixth place. "The Mexican sectors were the structural reforms impact most like energy and telecommunications, have a high standard to attract foreign investment, especially for American investors" stated Ricardo Haneine, director general of AT Kearney Mexico. The recuperation from the general crisis may already be occurring as 66 of the companies in the consulting study plan to return to their original levels of investment by 2016, as prior to the financial crisis. *eleconomista.com.mx 28/04/2015.*

The UK's highest court has ruled that the government must take immediate action to cut air pollution.

The ruling represents a significant victory for campaigners, who started legal action after the UK breached EU limits for nitrogen dioxide in the air. NO₂ is produced mainly by emissions from diesel vehicles and is linked to a range of respiratory illnesses. The Environment Department said work had already been started on revised plans to meet EU targets on NO₂. In a unanimous ruling, a panel of five judges, headed by the court's president Lord Neuberger, ordered "that the Government must prepare and consult on new air quality plans for submission to the European Commission... no later than December 31 2015". The case had been brought by ClientEarth - a group of environmental lawyers - which notes that air pollution causes tens of thousands of premature deaths a year in the UK. *BBC News 29/04/2015.*

Nepal earthquake: Relief starts reaching remote villages.

As relief efforts continue in the Kathmandu Valley, the UN says the response is broadening to include hard hit areas such as Dhading and Gorkha. The 7.8-magnitude quake killed more than 5,000 people. Many survivors are in desperate need of food and water. Thousands of people are queuing to board buses and leave the capital, amid fears of further aftershocks. "We are scared of the epidemics that may spread because of all those dead bodies," a man waiting at Kathmandu's main bus station told the BBC. "Just to be safe, I'm leaving town for a while." *BBC News 29/04/2015.*

New Rules for Drones in Mexico.

Due to the increasing popularity of unmanned aircrafts, better known as drones, the DGAC (General Civil Aeronautic Direction) has implemented new rules for the use of these aircrafts. The DGAC has divided drones into three categories, those that weigh less than two kilograms, those that weigh between 2 and 25 kilograms, and those that weigh more than 25 kg. Each of these categories has to follow specific rules: drones weighing less than 2 kilograms don't have to be authorized by the DGAC, but if it is being used for commercial use it will need to have commercial insurance; drones between 2 and 25 kilograms only need authorization from the DGAC if they are being used commercially but can only be flown in certain clubs if they are for recreational use; finally drones weighing more than 25 kg will have to have authorization from the DGAC whether being used recreationally or commercially. *Excelsior.com.mx 29/4/2015.*

In this month extract was prepared by Alejandra Llopis, Pablo Domette, Miguel Ruelas, Lorena Gay and Harumi Wakida.

CONTRIBUTORS

Juan Antonio Tiscareño

Attorney at law. Admitted to practice law on 2006. Mr. Juan A. Tiscareño, 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 law at Universidad Panamericana.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Amparo, Commercial Litigation and Civil Litigation.

e-mail: jtiscareno@asyv.com