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“Airports and Auxiliary Services” (ASA)¹ Can be considered as Authority Liable to Amparo Claims?

by Gerardo Reyes.

On June 12, 1965, Mexican President Gustavo Díaz Ordaz issued a decree² in order to create an organism named “Airports and Auxiliary Services” (*Aeropuertos y Servicios Auxiliares, ASA*). Article 1 of the presidential decree appointed ASA as a decentralized organization from the Federal Government (“*Organismo Público Descentralizado*” in its original language).

The decentralized organizations from the Federal Government are organisms that are not subjected to the hierarchy of the Mexican Central Government. Also, they have legal capacity and they manage their own assets.³ This does not mean that ASA can proceed without any supervision because an executive board reviews all its activities;⁴ same board that designate the ASA’s General Director.⁵

In some cases, ASA as a decentralized organization, can proceed with public powers and in other cases, the organism can proceed as a private entity to handle its responsibilities entrusted at the mentioned decree.

“Article 2, sections II and IV of the “Presidential Decree that Create the “Mexican Airports and Auxiliary Services” as Decentralized Organizations from the Federal Government” of June 12, 1965, empowers ASA to increase the amount of duties payments relative to airports services.”

Among other assignments, ASA has the responsibility to administrate, operate and the maintenance of landing strips, air terminals and all airport service infrastructure. Furthermore, ASA must provide and administrate the radio navigation services, meteorology services, fuel supply and the administration of incomes and expenses of said airport services.

Article 2, sections II and IV of the “Presidential Decree that Create the “Mexican Airports and Auxiliary Services” as Decentralized Organizations from the Federal Government” of June 12, 1965, empowers ASA to increase the amount of duties payments relative to airports services.

The increase of the duties payments was not well accepted by some companies that required ASA’s services, therefore, between 1997 and 1998, the Second Collegiate Tribunal of Yucatán received and analyzed five “Amparo Claims” filed against the rising fee.

On the five trials ASA argued that an “Amparo Claim” cannot be filed against the decentralized organization,

1.- By its acronym in Spanish “Aeropuertos y Servicios Auxiliares” (ASA)

2.- “Presidential decree that create the “Mexican Airports and Auxiliary Services” as decentralized organizations from the Federal Government”. Former Mexican President Gustavo Díaz Ordaz, June 12, 1965. Mexico City.

3.- Precedent number 180563 of the Mexican Supreme Court, September 2004.

4.- Article 9 of the “Presidential decree that create the “Mexican Airports and Auxiliary Services” as decentralized organizations from the Federal Government”. Former Mexican President Gustavo Díaz Ordaz, June 12, 1965. Mexico City.

5.- Article 13 of the “Presidential decree that create the “Mexican Airports and Auxiliary Services” as decentralized organizations from the Federal Government”. Former Mexican President Gustavo Díaz Ordaz, June 12, 1965. Mexico City.

because it is not an authority. At the moment of the judgments the Amparo Law in force did not anticipate the possibility of a private entity being assessed as an authority and thus liable under Amparo Suits. Consequently, the Second Collegiate Tribunal of Yucatán had to analyze the case with the following result:

- ASA's increasing fees based on Article 2, sections II and IV of the "Presidential Decree that Create the "Mexican Airports and Auxiliary Services" as Decentralized Organizations from the Federal Government" must be considered as an Authority action liable to Amparo Claims for three reasons:⁶
 1. The increasing amount of duties payments relative to airports services is an authority action because there is a subordination relation between the parties⁷ **(act equivalent to an authority's acts)**.
 2. ASA's entitlement to increasing the amount of duties payments relative to airports services is **stipulated in a law**.⁸
 3. The increasing amount of duties payments relative to airports services **unilaterally changes the legal status** between the parties.

Beside the three described elements I would add one more pivotal requirement in order to obtain the admission of the "Amparo Claim". According to article 61, section XIV, there needs not to exist an ordinary remedy against the action disputed. Otherwise, even though the case fulfills the three reasons described the "Amparo" it would be dismissed.

As we already stipulated, the Amparo Law in force at the moment of the five judgments (1997-1998), did not contemplate when a private entity could be deemed liable to "Amparo Claims". However, thanks to the precedents before mentioned and other similar precedents; the Mexican Congress considered the three elements at the moment they issued and drafted the new Amparo Law. The incoming law of April 13, 2013 establish under article 5°, Section II, that these legal entities could be recognized liable to "Amparo Claims". The new Amparo Law and the precedent issued by the Second Collegiate Tribunal of Yucatan describe the three elements required to consider a private entity liable to "Amparo Claims":

- I.- The claimed act must be equivalent to authorities' acts.
- II.- The challenged act must be stipulated in a law.
- III.- The claimed act must unilaterally change the legal status between parties.

Nowadays, the "Presidential Decree that Create the "Mexican Airports and Auxiliary Services" as Decentralized Organizations from the Federal Government" of 1965 has been modified by two subsequent decrees on August 22, 2002 and December 23, 2011. In case of a similar situation the Amparo proceeding must be the same because the successive presidential orders also empower ASA to manage income and expenses of the airport services and the three elements to consider a private entity liable to "Amparo Claims" remain in full force and effect.

6.- Precedent number 196679 of the Second Collegiate Tribunal of Yucatán, March 1998.

7.- There is a similar precedent about the subordination relation that confirms the argument issued by the Second Collegiate Tribunal of Yucatán. Precedent number 2006034 of the Fifth Collegiate Tribunal of Baja California, March 2014.

8.- Article 2, section II and IV of the "Presidential decree that create the "Mexican Airports and Auxiliary Services" as decentralized organizations from the Federal Government". Former Mexican President Gustavo Díaz Ordaz, June 12, 1965. Mexico City.

E.U. Parliament votes to ratify Canada trade deal and sent Trump a message.

A landmark trade deal between the European Union and Canada cleared a crucial hurdle on Wednesday, a move that proponents said served as a counterweight to protectionist policies advocated by President Trump. The ratification of the Comprehensive Economic and Trade Agreement by the European Parliament comes after seven years of tortuous negotiations, aiming to cut many tariffs on industrial goods as well as on farm and food items, and open the services sector in areas like cargo shipping, telecommunications and financial services. Lawmakers at the European Parliament comfortably approved the deal by 408 votes to 254.

www.business.financialpost.com 15/02/2017.

Mexico's foreign minister expresses 'worry and irritation' in talks with US Secretary of State Rex Tillerson.

Luis Videgaray raises concerns over 'US policies that could be harmful for the national interest' at a joint news conference with Donald Trump's top envoy Lucy Pasha-Robinson. The immigration guidelines are the latest point of tension between neighbours that have also been at odds over Mr Trump's vow to build a wall on the border and his attempts to browbeat Mexico into giving concessions on trade. But both sides also pledged further dialogue on migration, trade and security issues facing both nations. None of the officials made direct references to the deportation of immigrants from third countries to Mexico, or to paying for the border wall planned by Mr Trump, a red-flag issue for Mexico. *www.independent.co.uk 20/02/17.*

Pound retreats from two-month high against euro on weak UK business investment data but French political nerves still weigh.

UK's economy accelerated at the end of 2016. Enthusiastic British shoppers boosted the economy in the final three months of last year, pushing growth up to 0.7pc in the quarter, faster than was first thought. GDP growth accelerated in the last quarter of the year, speeding up from the 0.6pc initially estimated by the Office for National Statistics. The economy had already proved resilient since the Brexit vote, with growth of 0.6pc in the quarter before, and the quarter after, the referendum. *www.telegraph.co.uk 22/02/17.*

How a scandal that started in Brazil is now roiling other Latin American countries.

Brazilian construction company Odebrecht paid more than \$700 million in bribes to officials in Central and South America. The company received more than \$2.8 billion in benefits. In December, Odebrecht agreed to pay \$3.5 billion in global penalties, the largest foreign bribery settlement in the history of the U.S. Department of Justice, which, together with Swiss and Brazilian prosecutors, uncovered an \$800 million web of graft spanning at least 12 countries in Latin America and Africa. *www.washingtonpost.com 22/02/2017.*

Mexico warns U.S. It'll cut off NAFTA talks if tariffs added.

Mexico's top trade negotiator doubled down on threats to break off talks to rework Nafta, saying his country will walk away if the U.S. insists on slapping duties or quotas on any products from south of the border. "The moment that they say, 'We're going to put a 20 percent tariff on cars,' I get up from the table," Mexican Economy Minister Ildefonso Guajardo said in an interview. "Bye-bye." This doesn't mean, Guajardo emphasized, that Mexico would be looking to scrap Nafta. But by saying it refuses to even discuss the kind of tariffs President Donald Trump has long trumpeted, the country is ratcheting up the pressure on U.S. negotiators and effectively daring them to pull out of the 23-year-old pact. *www.bloomberg.com 27/02/2017.*

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