Crossroads and Conflicts between Labor and Civil, Commercial Laws In Mexico.

by Julio Vargas.



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

sierra
The leading aviation law firm in Mexico.

Audio message APRIL 15, 2022 YEAR 16 | NO. 11

Crossroads and Conflicts between Labor and Civil, Commercial Laws In Mexico

by Julio Vargas.

In this paper we will address cases where some labor laws interfere directly with civil and commercial provisions, creating roadblocks to the pursuit of justice when, for example a civil or commercial judge is attempting to enforce a judgment or ruling and a labor dispute arises on the side of one or both of the litigation parties in civil case.

To point out those conflicts we want refer to article 924 of the Federal Labor Law (Ley Federal del Trabajo)[1] which states:

As of the notification of the list of demands with summons to strike, all execution of any sentence must be suspended, nor can an embargo, seizure, diligence or eviction be carried out against the company or establishment, nor can assets be seized from the premises in which are installed, except when before the strike breaks out:

> I. Ensure the rights of the worker, especially indemnities, salaries, pensions and other accrued benefits, up to the amount of two years of the worker's wages;
>
> II. Credits derived from non-payment of fees to the Mexican Institute of Social Security;
>
> III. Ensure the collection of the contributions that the employer is obliged to make to the Institute of the National Workers' Housing Fund; and
>
> IV. Other tax credits.

The rights of the workers will always be preferred over the credits referred to in sections II, III and IV of this precept, and in any case the actions related to the cases of exception indicated in the previous sections, will be carried out without affecting the strike procedure."

At a first glance this provision does not clearly specify what or whose assets or rights are being prevented from being enforced. The first question, among many that arise after the reading of this provision is what happens to assets or rights that belong to third parties that are neither the employers' nor the workers'. For example, what happens with assets owned by third parties that aren't owned by the employer or workers that happen to be in the employer's premises for any reason at the time the strike begins.

The *ratio legis* behind article 924 is, among others, that it is intended to prevent employers from disposing of company assets and/or aggravating the workers interests and rights since the assets are considered a sort of guarantee to pay the labor duties owed to the workers. Therefore, it seems clear that the provision is directed, although not expressly written, to assets belonging exclusively to the employer, never related to assets not owned by the company or employer.

"At a first glance this provision does not clearly specify what or whose assets or rights are being prevented from being enforced".

Nevertheless, in labor proceedings in front of the labor board, there exists two criteria in the applicability of this provision, both of which unfortunately do not help to ease the separation. Repossession or plain removal of assets belonging to third party entities located in the premises of the employing company when the strike petition is served. Some labor boards consider that the applicability of article 924 is automatic, and others consider that it applies only to assets previously selected and attached by any labor board order deriving from any other labor proceeding.

In both cases, third party entities' property are affected because they are impeded to recover their assets, as a consequence, they need to engage in costly and lengthy legal procedures to obtain a court order that supersedes the labor board order. The process usually takes more than a year to obtain a court ruling.

1.- Article 924 of the Federal Labor Law (https://www.diputados.gob.mx/LeyesBiblio/pdf/LFT.pdf)

These crossroads of different legal matters are not new and the Mexican Supreme Court has already ruled, and set a binding precedent many years ago, that article 924 of the Federal Labor Law violates our constitutional rights and thus declare it as an unconstitutional provision[2]. The highest court reasoned that the provision does not contemplates any legal procedure available to any affected party by virtue of which it may raise defenses against any action that affects or deprives its rights with the application of the discussed provision with respect to its property in hands of the employer debtor by any reason.

In the Mexican legal system when an article of any law is declared as unconstitutional by the Supreme Court , sometimes it is either modified or simply derogated, but in some cases as in this particular case, such provision remains in the federal law and therefore as mentioned, labor boards still apply it and the affected party must file a lawsuit against its application to obtain a ratification of the illegality of such article to its benefit and then seek the repossession of the asset or the enforcement of the judgment over the relevant asset.

The latter needs to be explained. According to our legal amparo lawsuit system, judgments issued by the Supreme Court, when granted, only protect or benefit the plaintiff in that particular constitutional amparo proceeding. So, when the citizens or entities are affected by such illegal provision, they must file their constitutional amparo lawsuit to obtain the benefit of the unconstitutional declaration.

The Supreme Court, furthermore expresses in its ruling, that since such suspension of any form of enforcement contained in the 924 provision may be extended indefinitely, it turns out that at the end it benefits the debtor employer more than the workers to whom it was intended to protect, and the reason is because with the indefinite suspension is the employer who becomes allowed to breach its monetary obligations to other creditors who become deprived of their rights to enforce any judgment they might have in their favor and against the employer or to secure any credit.

The same Federal Labor Law contains in a completely different chapter a procedure to challenge any ruling that affects third party properties, which means that in the cases of study in this paper, the third affected party is dragged into a labor procedure to defend and repossess its assets when they become illegally trapped inside the premises of an employer company under a strike procedure.

Furthermore, each legal matter in Mexico including civil, commercial, and even bankruptcy laws, individually contemplate a legal procedure available for an owner to recover, repossess, collect or separate their assets when for any reason they end up involved in a third party legal lawsuit or procedure. In the aircraft industry in which we are involved, we have faced cases involving leased aircraft trapped in between strike, insolvency or commercial attachment of assets orders that affect such aircraft which are never owned by the conflicting parties in such procedures.

It seems that all these legal crossroads should easily be resolved if the parties naturally and honestly recognize the ownership of assets by third persons or entities that for some reason are in the possession of the employers, merchants or debtors in general.

It must be said that,when a person or entity abuses of its right of possession of an asset and knowingly affects property rights of others when in their possession, may constitute a criminal conduct, but nevertheless, implies that the owner will be dragged to court proceedings and spend time and money to fight for liberating its assets or putting behind bars in some cases those responsible for attempting to dispose of property belonging to others.

At the end and fortunately, in most cases, owners' rights end up prevailing and the assets are returned to the owner's hands but not in an easy, cheap and expeditious fashion.

Never the less, it must be said that provisions such as article 924, that have been ruled as unconstitutional and still remain in the law, have become as a legal gadget to block or use as an illegal negotiating weapon under the argument that if you wish to recover easily and in fast mode your asset, rather to fight in court you may sit down with the counterparty to try to reach a very uncomfortable settlement, in other words, legal blackmail.

There have been cases detected were this illegal strategy is used to block the enforcement of civil, commercial or even bankruptcy judgements against companies with debt obligations or holding pledged assets or in possession of leased assets; were the debtor companies collude with their unions and carefully craft a fake strike procedure in order to obtain upon service, the labor suspension order to prevent any enforcement of judgment on the employers company. This also creates a blackmail scenario for the debtor against the creditor behind a false legal screen to delay the enforcement of judgments and force settlement agreements by threatening of the time consumed in court and legal fees in order to destroy the efficacy of article 924 subject of scrutiny in this work.

2.- Supreme Court Precedent "TRABAJO, LEY FEDERAL DEL. EL ARTICULO 924 ES VIOLATORIO DE LA GARANTIA DE AUDIENCIA." (https://sjf2.scjn.gob.mx/detalle/tesis/820047)

Mexico will keep fuel and electricity prices.

President Andrés Manuel López Obrador assured this Tuesday that despite the effects that Russia's invasion of Ukraine may cause, his government will not increase fuel prices nor the price of electricity and asked the population to be calm about this issue. He assured that Mexico "is not affected" by the increase in oil prices, since our country is one of the 20 nations in the world that have this fossil fuel. *www.eluniversal.com.mx/nacion/amlo-asegura-que-pese-la-guerra-en-ucrania-no-aumentaran-los-combustibles-ni-la-luz 08/03/2022.*

Mexico sends a second flight to repatriate citizens caught in the war in Ukraine.

Hundreds of Mexicans will have a new chance to return home. The Mexican government's second plane has taken off for Romania, with the goal of rescuing as many of their compatriots as possible who have been unable to flee the conflict in Ukraine. Families have fled to neighboring nations, while people in transit to the west are still attempting to flee Ukrainian land. A journey of more than 11,000 kilometers is ahead, on a Mexican Air Force flight that EL PAS approached this Friday. *https://elpais.com/mexico/2022-03-11/mexico-envia-un-segundo-vuelo-para-repatriar-a-sus-ciudadanos-atrapados-en-la-guerra-en-ucrania.html 11/03/2022.*

President Andrés Manuel López Obrador rejects payroll credit reform and anticipates veto if Senate approves it.

President Obrador anticipated to veto the reform which includes in the law the concept of "delegated collection", where employees can authorize their employers to pay payroll credits that are linked to their salaries. The ruling -which amends three different laws- states that once the employee has obtained the credit, the employee must authorize its employing entity to deduct from the monthly or biweekly payroll a determined amount to make partial and periodic payments or the total payment of the loan to the financial entity. "Workers' salaries shouldn't be seized under any circumstances, the salary is sacred, and it allows the sustenance of families, it cannot be appropriated, no bank should do it and the government should not lend itself to do it", explains the Federal Chief Executive from Minatitlán, Veracruz. *www.forbes.com.mx/amlo-rechaza-reforma-sobre-creditos-de-nomina-y-anticipa-veto-si-la-avala-el-senado/ 18/03/2022.*

Deputies create a pro-Russian group in the Congress of Mexico in the middle of the invasion of Ukraine.

The Mexican Chamber of Deputies installed a group of Friendship with Russia. The act was promoted by the parliamentary group of the Labor Party (PT) and has raised controversy and sparked indignation among the opposition, because the position of the government of Andrés Manuel López Obrador has been to openly condemn Moscow's aggression in the Security Council and the General Assembly of the United Nations (UN). The PT, traditionally a satellite party with marginal representation, has promoted in its almost 30 years of existence solidarity and support to regimes such as North Korea, Nicaragua, and Hugo Chavez's Venezuela. Lately, bilateral friendship groups with China and Serbia were also installed, in acts that went practically unnoticed in the Chamber of Deputies. *https://elpais.com/mexico/2022-03-23/los-diputados-mexicanos-invitan-al-embajador-ruso-al-congreso-rusia-no-empezo-la-guerra-en-ucrania.html 23/03/2022.*

Domestic workers in Mexico: formalizing, professionalizing, revaluing, and dignifying their work.

In general and absolute terms, the jobs that were lost during the most complicated months of Covid-19 have been regenerated, but this has not been the case for domestic workers. During February 2 million 147,316 people were registered as employed in household and care work, according to the National Survey of Occupation and Employment, of which 92% are women. Recovering its pre-pandemic employment levels is one pending task, but revaluing, dignifying, formalizing, and professionalizing domestic work are also fundamental tasks. Domestic employees must be recognized as workers and enjoy the same labor rights as the rest and must have access to information about their rights and work situation, as well as access to courses, workshops and training that give them a more solid preparation to perform their jobs. The informality in which nearly 98% of this work takes place contributes to the persistence of multiple forms of violence against domestic workers. In addition, domestic work has the lowest salaries in the market. *www.eleconomista.com.mx/empresas/Trabajadoras-del-hogar-en-Mexico-formalizar-profesionalizar-revalorizar-y-dignificar-sus-labores-20220330-0028.html 30/03/2022.*

In this month extract was prepared by A. Fragoso, P. Arandia, R. Nerio, R. Mancilla, J. García, S. Robles, A. Pérez.

TERRUM.

JULIO VARGAS

Attorney at Law: Admitted to practice law in 1990. Mr. Vargas of Mexican nationality obtained his law degree at the Instituto Tecnológico Autónomo de México A.C. (ITAM). Mr. Vargas is specialized in financial litigation for over 20 years.

LANGUAGES: Spanish and English.
PRACTICE AREAS: Litigation of civil, commercial, stock market, banking, aviation, environmental, and administrative law in low courts, appellate and Supreme Court and corporate law.

e-mail: jvargas@asyv.com

sierra
The leading aviation law firm in Mexico.

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

www.linkedin.com/company/asyv

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 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.