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**Nullity of Res Judicata Court Cases.**

By Julio Vargas



# Nullity of Res Judicata Court Cases.

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During the past weeks, several newspapers informed that the newly elected Ministers of our Supreme Court attempted to set a new precedent through which they intended to re-open and nullify concluded amparo and ordinary court cases.

If that is the case, such intentions raised several alarms and serious concerns in the legal community and created real uncertainty in several sectors of the community and local and foreign individuals and entities.

However, the news did not reflect accurately what took place in the Supreme Court sessions regarding this issue.

According to the new Minister Loretta Ortiz, wrote in El Universal newspaper that: "In recent days, interpretations circulated that generated concern: *it was stated that the Supreme Court could reopen any concluded trial. This idea, spread quickly, does not correspond to what was actually analyzed...*"", she said.

**"The annulment of concluded cases is regulated in Mexico City and some Mexican states procedural codes on very exceptional cases."**

Indeed, those interpretations must be clarified since, as mentioned above, the annulment of concluded cases is regulated in Mexico City and some Mexican states procedural codes on very exceptional cases. It is important to keep in mind that in Mexico, the Supreme Court capacities are established to rule Amparo cases through a constitutional procedure stated in the Ley de Amparo to protect individuals and institutions from acts of government and authorities that violate human and constitutional rights of individuals. Therefore, in my opinion our Supreme Court has no capacity to reopen not only Amparo cases but neither lower court ordinary cases in general to nullify them.

In fact, there is already a federal court precedent that supports my opinion stating that it is not appropriate to sue through an ordinary trial for an amparo lawsuit nullity, since such an action is subject to the rules of ordinary civil proceedings, through which it is not possible to subject what has been done in the constitutional instance<sup>2</sup>.

To better understand what is being stated by Minister Ortiz, we must briefly recap what the action for annulment of a concluded case is in terms of Mexican law.

The action for annulment of a concluded trial or judged case was introduced in the Mexico City Procedural Code and in several states since January of 2004.

The original article 737A, today abrogated, regulated the admissibility of the action for nullity of

1.- El Universal, December 9, 2025.

2.- Supreme Court of Justice of the Nation; Digital Registration: 2029945; Instance: Collegiate Circuit Courts; Eleventh Epoch: Subject(s): Common, Civil Thesis: III.3o.C.3 K (11a.); Source: Gazette of the Judicial Weekly of the Federation; Book 46, February 2025, Volume III, Volume 1, page 583; Type: Insulated. ACTION FOR ANNULMENT OF CONCLUDED TRIAL. IT DOES NOT APPLY IN THE CASE OF THE AMPARO PROCEEDING.

judged cases, establishing that it can only be brought against final and enforceable decisions when a specific cause exhaustively provided for by law is actualized. The grounds included cases of procedural fraud, use of false evidence, discovery of decisive documents not presented due to fortuitous event or obstruction by the counterparty, as well as manifest factual errors derived from the incorrect evaluation of acts or documents that were not the subject of controversy. It also provided for the admissibility of nullity when the contested judgment contradicted a previously final one, when the judgment comes from proven judicial fraud, or when there was collusion between the parties to the detriment of the plaintiff or the public interest, aimed at defrauding the law.

According to congress this action constitutes an exemption to the res judicata principle, to me, it is not an exemption, it directly contradicts our due process human right contained in our constitution destroying the res judicata, legal certainty and security principles.

**"This action... contradicts our due process human right contained in our constitution destroying the res judicata, legal certainty and security principles."**

Even more, over the years and through several Supreme Court precedents ruled after the action was included in the procedural codes, the grounds stated initially in the mentioned article 737A to bring the action were derogated, and currently the action remains in our newest National Civil and Family Procedural Code only providing that this action is admissible exceptionally against cases where a final judgment has been issued allegedly only as a result of collusion of the parties or that relied on false evidence that the losing party was unaware of at the time.

The new Article 52 provides that:

"Article 52. An action for annulment of a concluded trial is admissible in cases in which a final judgment or order has been issued that has become enforceable, and any of the following circumstances apply:

**I.** If the ruling was based on evidence that was subsequently recognized or declared to be false in any way, or that the losing party was unaware had been recognized or declared as such prior to the ruling, and

**II.** When there is collusion or other fraudulent maneuvering by the litigating parties in the trial whose nullity is sought, to the detriment of the party bringing the action for annulment of a concluded trial."

**"Action for annulment of concluded trial. it is inadmissible when the procedural legislation does not provide for it, even in the case of fraudulent proceedings."**

The former Supreme Court set a precedent ruling that the "action for annulment of concluded trial, it is inadmissible when the procedural legislation does not provide for it, even in the case of fraudulent proceedings". According to Minister Ortiz, the new Supreme Court discussed the legality of a nullity action against a concluded executive mercantile case, not any amparo judgment or other cases included in the procedural codes, since there is already a firm and binding precedent that holds that the nullity action is inadmissible when the procedural legislation does not provide for it, even in the case of fraudulent proceedings<sup>3</sup>.

The discussion held by the new Supreme Court was that for some ministers, in support of the mentioned precedent, since the Commerce Code that regulates executive mercantile proceedings does not include the mentioned nullity action, then it is not possible to use as suppletory any other procedural code that contemplates the nullity action, against those who considered that in case of fraudulent proceedings the action should be allowed.

She also explained that: "...the First Chamber considered that, exceptionally, the action could be admitted in cases of procedural fraud; the Second Chamber held the opposite."<sup>4</sup>

**"...in Mexico the legal certainty and security of the final judgments that conclude a court case is vastly respected by observing and applying the *res judicata* principles."**

Although we can affirm that in Mexico the legal certainty and security of the final judgments that conclude a court case is vastly respected by observing and applying the *res judicata* principle, the mere existence of the action as it is currently provided and available to the parties in the national procedural code, although in very exceptional cases, in my opinion, it still constitutes a direct violation to the due process constitutional right in its aspects of legal certainty, security and *res judicata* principles.

In the commented case ruled by the Supreme Court, the split voting was 5 vs. 4 ministers in favor of applying to such case the current binding jurisprudence precedent referred to above, by recognizing that procedural legislation already establishes the exceptional mechanisms to challenge final judgments and that it is not possible to create additional exceptions not provided for by the law.

Cases like these are what counselors fear, that the new Supreme Court Ministers appointed through popular vote with no visible merits or experience to form part of the judicial power, attempt to illegally reopen previous cases ruled by the former Supreme Court Ministers.

Finally, the mentioned new Minister stated that: "...Legal certainty requires recognizing that precedents remain in force even in the face of changes derived from the judicial reform, as provided for in the new Law on the Judicial Power of the Federation."<sup>5</sup>

Let's not take such words for granted and keep fighting to maintain safe Supreme Court holdings that truly protect human rights of individuals.

3.- Supreme Court of Justice of the Nation Digital Registration: 2030778 Instance: Plenary Eleventh Epoch Subject(s): Civil Thesis: P/J. 14/2025 (11a.) Source: Gazette of the Judicial Weekly of the Federation. Book 52, August 2025, Volume II, Volume 1, page 7 Type: Jurisprudence. ACTION FOR ANNULMENT OF CONCLUDED TRIAL. IT IS INADMISSIBLE WHEN THE PROCEDURAL LEGISLATION DOES NOT PROVIDE FOR IT, EVEN IN THE CASE OF FRAUDULENT PROCEEDINGS.

4.- El Universal, December 9, 2025.

5.- El Universal, December 23, 2025.

# TERRUM

## JULIO VARGAS PARTNER

Julio is a partner and heads the litigation group. His expertise in financial litigation gives him a unique understanding of the delicate matters surrounding the intricate matters involving contractual default and insolvency. Mr. Vargas has over 25 years of experience in financial litigation, heading the legal practice of a major Mexican bank before joining Sierra LATAM.

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- Attorney at law by Instituto Tecnológico Autónomo de México

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