



Criterion of the Supreme Court of Justice of the Nation in relation with the additional exception to the Principle of Definitiveness that governs the Amparo Trial contained in the Law of the Coordinated Regulatory Bodies in Energy Matters

On Friday, August 14th, this year, it was published at the Weekly Federal Court Report, a settled case-law named *Coordinated Regulatory Bodies in Energy Matters. Article 27 of the Regulating Law, By Establishing an Additional Exception to the Principle of Definitiveness that Governs the Amparo Trial, Violates the Principle of Constitutional Supremacy*, which became mandatory as of August 17th, and which contains the criterion of the Supreme Court

of Justice of the Nation ("SCJN") in relation to the analyzed matter, as well as the corresponding justification.

First of all, it is considered relevant to keep in mind that, broadly speaking, a settled case-law is the reasoning of some competent body of the Federal Judiciary as to how a legal or constitutional provision must be understood or interpreted under certain circumstances, and that it is binding for the

same body and those of the lower hierarchy to take into account in the future when examining and applying controversies held before them.

In the specific case, it is a settled case-law "by repetition", having known the SCJN of five Amparo Trials promoted by different persons from particular situations, between April and May 2020, and resolved all of them in the same sense. In those trials, it was

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questioned the constitutionality of article 27 of the Coordinated Regulatory Bodies in Energy Matters Law ("LORC"), which states that general rules, such as general administrative provisions issued by the corresponding regulatory bodies (the Energy Regulatory Commission and the National Hydrocarbons Commission), can only be challenged by indirect Amparo Trials, without being allowed the suspension legal figure.

It also provides that only decisions of regulatory bodies arising from proceedings followed as trials may be challenged, for legal violations committed when issuing the resolution or during the corresponding proceeding, and that ordinary or constitutional remedies against intra-procedural acts cannot be admitted.

It was alleged in the respective disputes that the article in comment was unaware with the rules and guiding principles of the Amparo Trial, as regulated in the Political Constitution of the United Mexican States and the Amparo Act.

With regard to the above, the Second Chamber of the SCJN determined that article 27 of the LORC seeks to establish an exception to the Principle of Definitiveness of the Amparo Trial, but without being provided in Article 107, fraction IV, of the Constitution, or some other of its provisions or the regulatory act, thus exceeding and violating what is mandate by the statute of supreme hierarchy.

It is argued that the admissibility of the Amparo Trial and the exceptions to its Principle of Definitiveness can only be regulated by the Constitution itself and the Amparo Act, because it is conceived as an extraordinary mean of defense and it is essential that other available remedies that would be applicable are tried and finished before.

Contemplating and increasing the available exceptions to said principle in any law would

involve distorting the essence of the Amparo Trial as an extraordinary mean of defense with the corresponding consequences, and would involve the establishment of rules of admissibility and exceptions that are not expressly provided in applicable regulation for such trials.

It is considered relevant to understand that the consequences of the settled case-law for the effective practice of individual activities imply that, as from the entry into force of the latter, it is allowed to challenge the general rules issued by the Energy Regulatory Commission or the National Hydrocarbons Commission by any of the ordinary means of defense applicable which are contemplated at other laws, such as the nullity trial or the federal administrative litigation trial, with its corresponding remedies.

The settled case-law shall be materialized in the operation of the legal scaffolding in the same manner in which it is regulated any action of another governmental authority and such as it was prior to the issuance of the *"Decree reforming and adding various provisions of the Political Constitution of the United Mexican States, in Energy Matters."*

Issued on December 20th, 2013, and the subsequent publication of the LORC, making it easier for individuals to execute their fundamental rights and ensuring the compliance with the principles of the Amparo Trial, as well as its nature and other characteristics.

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