

# Kluwer Arbitration Blog

## Does The New Amparo Law Threatens Arbitration In Mexico?

Cecilia Flores (Haynes and Boone LLP ) · Saturday, October 24th, 2015

The New Amparo Law in Mexico introduced a revised concept of “responsible authority”, under which arbitrators might be considered as authorities for *amparo* claim purposes. Such new concept poses some interrogations: *Does it threatens arbitration in Mexico? Would arbitration withstand the pounding? Would the parties’ agreement to arbitrate be enforced? Would the courts stand up the final character of arbitral awards?*

The *amparo* institution was first established in Mexico. Inspired by the *habeas corpus*, scholars *Manuel Crescencio Rejón, Ignacio Vallarta, and Mariano Otero*, conceived it as a court remedy for individuals to protect their constitutional rights against authorities. Since its establishment in the nineteenth century, it has been adopted by several Latin American countries. Similar remedies haven been established in European countries, such as Austria, Germany, Spain, and Switzerland.

The *amparo* remedy is considered as the main instrument for the protection of human rights and its use is widely spread against harms or threats inflicted to such rights by the state authorities. That is a result of Latin American countries’ declarative tradition, meaning that their constitutions provide an extensive declaration of human rights, comprising not only civil and political rights, but also social, cultural, economic, and even environmental rights.

Throughout the years, the *amparo* institution evolved further in Mexico, than in other Latin American countries. It became a complex and comprehensive institution. Hence, in addition to protecting human rights, the *amparo* remedy offers other protective actions against the Mexican state, such as court review of laws, as for its constitutionality and legality; review of administrative actions; review of court decisions; and protection of agrarian rights.

The ins and outs and the intricacy of the *amparo* proceedings, in practice were often beyond the main principles that inspired the *amparo* institution. That gave rise to a reform, that apparently nipped in the bud. The new Amparo Law went into force in Mexico on April 2, 2013.

Amongst others, the new Amparo Law introduced a revised concept of “responsible authority” under Article 5, section II, which reads as follows:

Article 5.- Are parties to the amparo proceeding:

...

II. The responsible authority, being held as such, despite of its formal nature, the one that pronounces, orders, enforces or attempts to enforce the act that creates, modifies,

or terminates legal situations in a unilateral and obligatory manner; or fails to perform the act, that if performed, it would create, modify or terminate such legal situations.

For the purpose of this Law, private parties will be held as a responsible authority when they perform acts equivalent to those of an authority, that affect rights in terms of this section, and whose functions are determined by a general law.

...

This new concept of “responsible authority” put arbitration at risk. In case of a bad interpretation, arbitrators could have been considered as authorities and *amparo* claims could be filed against arbitral awards.

However, the Mexican courts got it right and interpreted such concept in favor of arbitration:

- Case number 384/2013, by the Fifth Collegiate Civil Court of the First Circuit, deciding on the competence to decide an *amparo* claim.
- Case number 129/2014, under the jurisdiction of the Twelfth District Civil Judge in the Federal District, concerning a ruling ordering the recognition and enforcement of an arbitral award.
- Case 195/2014, by the Eight Collegiate Civil Court of the First Circuit.

The latter case was even published in a jurisprudence thesis “Private arbitrators. Do not have the character of responsible authorities in the *amparo* proceeding.” It clearly states the arbitrators are not considered as “responsible authorities”, for *amparo* claim purposes, since: the arbitrators’ duties and powers are not given by a general law, but by the parties’ arbitration agreement; and the arbitrators perform their duties and exercise their powers as private persons and not as public authorities. For that reason, arbitrators lack *imperium* to enforce their own determinations and awards.

After all, arbitration in Mexico got off lightly.

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