



TEMPORARY STAY OF EXECUTION WITH RESTITUTORY EFFECTS GRANTED IN THE AMPARO LAWSUIT

JANUARY 2025

Executive Summary:

- The suspension of the challenged act with restorative effects in the Amparo Trial is a measure provided for in the Amparo Law that seeks to temporarily restore the violated rights of the complainant, avoiding irreparable damage and preserving the subject matter of the trial without extinguishing it.
- In granting such a suspension, judges must ensure that it is temporary, reversible and not definitive, carefully assessing the legal consequences to ensure protection without affecting the development of the main trial.

In Mexico, the Amparo Lawsuit is a judicial review instrument based on Articles 103 and 107 of the Political Constitution of the United Mexican States ("PCUMS"), which purpose is to protect the human and fundamental rights established in the PCUMS and in the International Treaties in which Mexico is a party.

Section X of Article 107 of the CPUMS provides for a motion to stay in the cases and under the conditions determined by the regulatory law, i.e., the Amparo Law, through an analysis of the existence of good faith and social benefit.

In this sense, the Amparo Law provides for the figure of "motion to stay", which purpose is to preserve the subject of the Amparo Lawsuit and prevent individuals affected by the impugned act from suffering an affectation to their legal sphere while the dispute is being resolved, either with conservative measures - preventing an act from materializing in the legal sphere of the plaintiff- or anticipated protection -

restoration to the plaintiff of the enjoyment of an affected right-.

Thus, the Amparo Law itself establishes certain requirements that the Judge must evaluate in order to be in a position to deny or grant the motion to stay of execution, being these requirements: (i) that the suspension must be requested by the plaintiff, (ii) that it does not harm the social interest, nor contravene provisions of public order, (iii) that an analysis of the existence of good faith and danger of delay be made; and, (iv) that there is the legal and material possibility of granting it.[1]

It is important to point out that, as mentioned in the preceding paragraphs, the motion to stay is a benefit provided by article 147 of the Amparo Law. However, it has a transitory nature, since it begins when the order granting it on a provisional basis or when a resolution granting it on definitive basis is issued, and it ends when the matter is resolved by means of final judgment ruling the merits of the Amparo Lawsuit.

Now, focusing on the motion to stay with anticipated protection measures, the article referred to in the previous paragraph contemplates the possibility of granting restitutory effects to the motion to stay, which anticipate the effects of an eventual judgment as long as the aforementioned requirements are fulfilled and that such effects may be retroactive if there is a negative judgment for the complainant by establishing the following: "Attending to the nature of the claimed act, it will order that things remain in the state they keep and, if legally and materially possible, it will provisionally reestablish the complainant in the enjoyment of the violated right while a final judgment is issued in the amparo trial."

The First Chamber of the Federal Supreme Court ("SCJN") has determined that the nature of the challenged acts referred to in Article 147 of the Amparo Law is a factor to be considered by the Judge, but it is not a determining factor to grant or deny the motion for stay, since the legal consequences of granting of the motion for stay must be analyzed.[2]

The foregoing is only relevant in determining what type of measures may be adopted in the event that the motion for stay is granted, either: (i) to paralyze an act or (ii) to provisionally restore a right.

The latter means that the judges must consider the consequences that may be produced by certain types of acts, whether positive, negative or omissive, in order to decide whether things should be maintained in the state they are in or whether the person should be provisionally restored to the enjoyment of the violated right.

In the considerations mentioned above, what criteria should the courts consider in order to grant the motion of stay with restitutory effects?

The Second Chamber of the SCJN has stated that the parameters that the judges must take into account to analyze the possibility of granting the motion of stay with restitutory effects are that the provisional restitution of the rights be temporary, so in the event of a decision contrary to the complainant claim, the effects of the motion may be reversed, since the suspension may be revoked in the event of the denial of the amparo.[3]

The purpose of such "temporary or provisional" measure is to preserve the subject of the lawsuit, protecting the right that the complainant considers affected while the lawsuit is being resolved. Therefore, it is not important that the effects of a precautionary measure matches with those of an eventual amparo judgment, as long as such effects are transitory, not definitive, and can be reversed.

Therefore, since the provisional motion has a transitory nature, until the final judgment resolving the Amparo Lawsuit is issued, it is possible to grant it in accordance with the provisions of Article 147 of the Amparo Law, since, if legally and materially possible, the complainant must be reinstated provisionally or temporarily, in the enjoyment of the violated right without the subject of the main trial being exhausted.

However, it is important to specify that, if the restitution to the complainant in the enjoyment of the right that he considers violated is full, then such restitution is not appropriate by means of the motion of stay. The foregoing, since it would imply leaving the Amparo Lawsuit without subject, since, which is the subject of the final judgment issued in accordance with Article 77 of the Amparo Law.[4]

It is important to remember that, even if the motion of stay is granted with restitutory effects, this does not imply modifying, restricting rights or constituting any other rights that the complainant did not have before the filing of the lawsuit, but rather, maintaining the legal situation of the complainant in the state in which it was at the date of the filing of the lawsuit.

Concerning the above, it might seem irrelevant that there is identity between the effects of the motion of stay with restitutory effects and the effects of a possible favorable judgment for the complainant in order to evaluate whether it should be granted or not. As previously mentioned, the motion of stay with restitutory effects is a transitory benefit that seeks to prevent the complainant from suffering an affectation to his legal sphere.

What is critically important is for the Judges to analyze the legal consequences that the temporary restitution of rights may bring and whether this temporary restitution of rights may be revoked in case of a negative judgment. This is because it should

always be prioritized that the execution of the challenged act does not gravely and irreparably violate the rights of the person who filed the amparo lawsuit seeking protection and the restitution of their violated or affected rights.

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- [1] Articles 139 to 146 of the Amparo Law.
[2] 1a./J. 70/2019 (10a.) with digital registration number 2021263.
[3] Contradiction of thesis number 338/2022. Thesis: 2a./J. 22/2023 (11th.).
[4] Thesis: I.11o.C. J/5 K (11a.) with registration number 2024344.

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