

A MISTAKE CAN BE IRREVERSIBLE: THE COURT REDEFINES HOW TO CHALLENGE PRECAUTIONARY MEASURES

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Executive Summary:

Recently, Mexico's Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) resolved a contradiction of precedents No. 272/2025, ruling that decisions granting or denying precautionary measures (*providencias precautorias*) in Oral Commercial Proceedings (*Juicios Orales Mercantiles*) **are not subject to appeal (*Recurso de Apelación*)**. The prior standard *-in effect since February 2025-* allowed parties to file an appeal against such decisions; however, now the only available remedy is the Indirect **Amparo Proceeding** (*Juicio de Amparo Indirecto*).

This shift completely redefines the litigation strategy in oral commercial proceedings. In practice, an error in choosing the remedy can result in the permanent loss of the opportunity to challenge a precautionary measure, with significant implications for the protection of your company's interests.

The Prior Standard (2025): Precautionary Measures Were Appealable

In February 2025, the Regional Plenary Court in Administrative and Civil Matters of the South-Central Region (*Pleno Regional en Materias Administrativa y Civil de la Región Centro-Sur*) issued binding case law under the heading **"PRECAUTIONARY MEASURES. DECISIONS GRANTING OR DENYING THEM IN ORAL COMMERCIAL PROCEEDINGS ARE APPEALABLE"** (registration number 2029969).

The Regional Plenary Court's reasoning was technically robust and was grounded in a clear procedural distinction: precautionary measures and oral commercial proceedings are proceedings of a different nature. While an oral commercial proceeding is the procedure in which the merits of the dispute are resolved, precautionary measures are mechanisms aimed at ensuring the practical effectiveness of an eventual judgment.

Under this logic, the Regional Plenary Court conclude

that the non-appealability rule set forth in Article 1390 Bis of the Commercial Code (*Código de Comercio*) applied only to decisions rendered within the oral commercial proceeding itself, but could not be extended to precautionary measures handled in parallel with main proceeding. Given that precautionary measures are governed by their own specific provisions under Chapter XI, Title I, Book V of the Commercial Code, Articles 1183 and 1345(IV) expressly provide for the availability of an appeal (*Recurso de Apelación*) against decisions rendered on such measures.

In practice, this standard meant that before seeking amparo relief, it was mandatory to exhaust such remedy to satisfy the exhaustion requirement (*principio de definitividad*).

The Supreme Court's New Standard

The Court's conclusion was unequivocal: decisions issued in precautionary measure proceedings arising from an oral commercial proceeding are not subject to

the appeal provided for in Articles 1183 and 1345(IV) of the Commercial Code, as the non-appealability rule governing oral proceedings applies.

This means that, unlike the prior standard, it is no longer necessary or appropriate to exhaust an ordinary remedy before filing an amparo proceeding.

Extension to Pre-suit Precautionary Measures

A particularly noteworthy aspect is that the Court also extended this standard to precautionary measures issued at the pre-suit stage (*etapa prejudicial*). The Court reasoned that because such measures are related to or intended to lead to the commencement of an oral commercial proceeding, it would be inconsistent to exempt the application of the non-appealability rule at that stage, as it forms part of the same regulatory framework.

Why Does This Matter? Practical Consequences and Risks

This is, without question, the most important part of this analysis. The change in criteria is not merely theoretical; it has direct and immediate implications for any company that is *-or could become-* a party to oral commercial proceedings in Mexico.

1. Under the prior standard, filing an indirect amparo without first exhausting the appeal would have resulted in the dismissal of the amparo for failure to comply with the principle of finality. Now, the exact opposite is true: if you file an appeal, it will be dismissed as inadmissible, and the time elapsed during its processing could cause the 15-day deadline for filing the indirect amparo to expire irreversibly.
2. The immediate-processing appeal against precautionary measure decisions had to be filed within a six-day period. The indirect amparo must be filed within fifteen days under Mexico's Amparo Law (*Ley de Amparo*). While the deadline is numerically longer, preparing an indirect amparo complaint is considerably more complex - *compared to a statement of grievances (escrito de agravios)*- as it demands greater preparation and technical expertise, which in practice effectively reduces the time available to react.
3. Article 1390 Ter 2 of the Commercial Code establishes an identical non-appealability rule for

oral executive commercial proceedings (*juicios ejecutivos mercantiles orales*): "...no ordinary remedy shall lie against decisions rendered in this proceeding..." Although the conflicting criteria case expressly addressed oral commercial proceedings, the identity of the non-appealability rule in both types of proceedings makes it reasonable to anticipate that the standard will be applied in the same manner to oral executive commercial proceedings. This is especially relevant for companies that use these proceedings as a mechanism for collecting commercial debts.

4. As noted above, the Court extended the non-appealability rule to precautionary measures requested prior to filing the lawsuit. This means that even at the pre-suit stage *-when a company seeks to secure its debtor's assets or resources before commencing litigation-* the only avenue to challenge a decision granting or denying such measures will be the indirect amparo.

There is a legitimate tension between the principle of procedural expediency and the right of access to justice and adequate defense. In fact, the Court itself acknowledged that imposing the obligation to exhaust the appeal would constitute an obstacle to the right of access to justice, by incorporating a remedy not provided for in the legislation applicable to oral proceedings. At the same time, it may be argued that eliminating the second instance for precautionary measures *-which can have severe and immediate financial effects, such as the freezing of bank accounts-* significantly reduces the procedural safeguards available to the parties.

Conclusion

The standard adopted by the Supreme Court not only redefines the avenue for challenging such decisions, but also requires a fundamental rethinking of litigation strategy from the very start of the proceedings.

In this new scenario, decisions related to precautionary measures must be made with greater precision and speed: when faced with a decision granting or denying them, the proper remedy is the indirect amparo proceeding, without resorting to an appeal.

At the same time, the elimination of the second instance reinforces the importance of building solidly

grounded requests for precautionary measures from the outset, as the opportunities for subsequent correction are significantly reduced.

Consequently, the correct identification of the appropriate remedy and the technical quality in the preparation of these measures are no longer merely desirable but become critical to the effective protection of the interests at stake.

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