CIVIL APPEAL 898/2017-III AND 899/2017-IV

THIRD UNITARY COURT

IN CIVIL AND ADMINISTRATIVE MATTERS OF THE

FIRST CIRCUIT

[…]

And an arbitration agreement is not efficient when there is any reason which impedes its effects, therefore those causes that impede the effects, negative or positive, of the arbitration agreement, are inefficiency causes.

Likewise, the arbitration effects will not be able to generate if there is a waiver from both parties to do so, since that consent is priority in the conformation of the agreement and one must be subject to it.

However, **this waiver to arbitration must be expressly and undoubtedly stated**, because it is the same manner that it should be stated in the arbitration agreement so there can be certainty of the actual consent in compromising, and the requirement that is imposed for that agreement must also, for the same reason, govern as to the waiver to the commitment.

In such manner that if in the current case there is not an expressed and undoubted waiver to the aforementioned arbitration, it is not legally possible to assume as the appellants pretend, that such waiver was factual.

It is applicable for analogy, considering the reasons that provide it content, the thesis number I.3o.C.521 C, issued by the Third Collegiate Court in Civil Matters of the First Circuit, with title and content as follows:

> "**COMMERCIAL ARBITRATION. CRITERIA TO DETERMINE THE INEFFICIENCY OF THE AGREEMENT.** An arbitration agreement is inefficient when there is any motive that impede its effects, therefore those causes that impede the effects, negative or positive, of the arbitration agreement, are inefficiency causes, due to whether the parties are not allowed and obliged to submit to arbitration, or since it is impossible to submit the difference before a local tribunal. Thus, the arbitration effects will not be generated if there is a waiver from both parties to do so, since that consent is priority in the conformation of the agreement and one must be subject to it, as it must be respected in the opposite case, i.e. when it is agreed in the arbitration agreement, attending to the fact that the parties will is the base of the commercial conventions. Of course, **such waiver to arbitration must be expressly and undoubtedly stated, because it is the same manner that it should be stated in the arbitration agreement so there can be certainty of the actual consent in compromising,** and the requirement that is imposed for that agreement must also, for the same reason, govern as to the waiver to the commitment. The arbitration effects will not take place either if there is a novation of the arbitration clause, since in such case the commitment to submit to arbitration would be replaced by the agreement to submit to local jurisdiction, i.e. a primal obligation for a latter one, in accordance to the nature of such figure provided for in article 2213 of the Federal Civil Code. Similarly, if the term to submit to arbitration, in case there is an agreement on the temporary validity or the one specified in a generic manner is applied, has elapsed, since in such case the negative prescription apples, freeing from obligations, in accordance to articles 1135 and 1158 of the Federal Civil Code, in relation to articles 1038 and 1047 of the Commercial Code. A similar impossibility of the production of effects of the arbitration agreement will take place if the local tribunal resolved the dispute in opposition to the parties, or when the judiciary resolution is firmed, due to the firmness it generates and the respect that must be done to the *res judicata*, which will impede the parties to submit to arbitration a matter that has already been solved by a State entity, who shall not either do the corresponding referral.

The death or incapacity of the arbitrators, in case they were nominally appointed in the arbitration agreement and there was not a provision in the latter that provides for the possibility of replace them, also generates that the agreement cannot produce its effects, since there will not be an arbitral tribunal that addresses the matter and who the judiciary authority can refer to. Those assumptions related to the lack of capacity so the arbitration agreement produces its effects, i.e. with its inefficiency, are enunciate but not limit, and [illegible] at the judge must constrict to verify whether there is a motive that impedes effects are produced."

[*It must be clear that the underlining to the transcript was added, even the font was modified from the one used in the original, without modifying its content, aiming to highlight the corresponding part, orientated to the subject to which a response is provided*]

Without being applicable to this case, the thesis cited as an aggravation of the following title: "ARBITRATION. WHEN THE APPELLANT ATTENDS BEFORE THE JUDGE TO FILE ITS CLAIM AND THE CONVICT REPLIES TO IT OR FILES FOR A COUNTERCLAIM, THE ARBITRATION COMMITMENT WILL BE EXTINGUISHED, AS FAR AS THE EXCEPTION OF LACK OF JURISDICTION IS NOT OPPOSED (JALISCO'S LEGISLATION)", since in addition that this is an isolated thesis, which is not binding for this appellant body, the truth is that unlike the local procedural legislation therein analyzed, in the Federal Code of Civil Procedure the tacit submission is not provided, in the assumptions referred to by the appellants.

That is, the parties are not deemed as tacitly submitted to the *a quo* jurisdiction, just because of the fact that the plaintiff files a lawsuit and its counterpart replies to it or files for a counterclaim, since in such federal procedural code there is not provision in such sense.

Therefore, it is concluded that, contrary to what the appellants asserted, in this case there is not a waiver to the arbitration clause.

FOURTH AGGRAVATION

The co-plaintiffs Drake-Mesa, Society of Limited Responsibility of Variable Capital, Finley Resources, Inc. and Drake-Finley Society of Limited Responsibility of Variable Capital, through their legal representative, specified as fourth and last aggravation the following:

-That the challenged resolution causes aggravation to the companies it represents, since its first operative paragraph, ***lacks rationale and motivation.***

-That in such manner, the first operative paragraph referred to, did not have any rationale and motivation, breaching the obligation provided for in the article 16 of the Magna Carta, which all the authorities must respect, especially the judiciary ones (it made a transcript of the first operative paragraph and the constitutional article indicated). It cited as applicable the criteria of the following title: "RATIONALE AND MOTIVATION. THE DIFFERENTE BETWEEN THE LACK AND THE UNDULY COMPLIANCE WITH BOTH CONSTITUTIONAL REQUIREMENTS TRANSCENDS TO THE ORDER IN WHICH THE CONCEPTS OF VIOLATION AND THE EFFECTS OF PROTECTIVE FAILURE."

-That it is not an obstacle to the foregoing, which in the first operative paragraph of the challenged resolution, refer to the second recital, in order to justify the corresponding justification and motivation, given that this consideration point does not exist, which violates the principle of legal certainty.

-That in light of what has been set out, it is applicable to revoke the challenged resolution.

RESPONSE TO THE AGGRAVATION

Approaches that in one part are unfounded and in another founded, but insufficient to vary the meaning of the challenged resolution.

Indeed, the appellants argue, in general, lack of rationale and motivation in the first operative paragraph of the challenged resolution, whose content is the following:

"*[…]*

FIRST. Due to the reasons set forth in the second consideration of this resolution, the court legally lacks jurisdiction to address the matter.

[…]".

Now, the operative paragraphs are just a reflex to the resolution, specifically, of the considerations.

Therefore, the exigence in the rationale and motivation, established in the article 16 of the Magna Carta, must be linked to the considerations section of the resolution, not to the operative paragraphs, since the considerations are those that must have the justification and motivation of the judicial resolution, as it may be seen in the article 222 of the Federal Code of Civil Procedures, whose content is the following:

"***ARTICLE 222.- The resolutions shall have, besides the other requirements common to every judicial resolution, a succinct list of the matters stated and the evidence offered, as well as the applicable legal considerations, legal and doctrinal, stating therein the motives to condemn or absolve from costs, and will resolve with all due accuracy the matters subject to the court's consideration, and establishing if necessary the term for compliance".***

[*It must be clear that the underlining to the transcript was added, even the font was modified from the one used in the original, without modifying its content, aiming to highlight the corresponding part, orientated to the subject to which a response is provided*]

Therefore, it is not viable the appellant's pretension regarding that an operative paragraph must be justified and motivated.

On the other hand, even when the argument that the first operative paragraph of the challenged resolution refers to a consideration that does not exist (second), is founded, since from the content of the challenged resolution it can be seen that the *a quo* supported the determination in the consideration first and only; however, before the existence of this incongruity between the consideration and the operative paragraph, must prevail the former, considering that the resolutions are not divisible and oblige in all its extension.

It is applicable for analogy, considering the reasons that provide it content, the thesis number issued by the Second Collegiate Court in Administrative Matters of the First Circuit, with title and content as follows:

"INCONGRUITY BETWEEN THE OPERATIVE PARAGRAPHS AND THE CONSIDERATIONS THAT RULE OVER THEM. (EXTENSION OF THE RES JUDICATA PRINCIPLE), Considering that the resolutions are indivisible and oblige in all its extension, when one of the operative paragraphs is not congruent with the considerations, the latter must prevail since they constitute the legal act of deciding, just as the judge wanted it to be stated, on the irregularities of the document that contains it".

[*It must be clear that the underlining to the transcript was added, even the font was modified from the one used in the original, without modifying its content, aiming to highlight the corresponding part, orientated to the subject to which a response is provided*]

Therefore, it is not necessary to carry out any amendment to the challenged resolution, since it is not a matter of the aggravation to which a response is herein provided, in addition that the parties could have

it to be clarified in accordance to article 223 of the Federal Code of Civil Procedures.

SIXTH. ANALYSIS AND RESPONSE TO THE AGGRAVATIONS STATED BY THE DEFENDANT *PEMEX EXPLORACIÓN Y PRODUCCIÓN*

FIRST AGGRAVATION

The defendant Pemex Exploración y Producción, through its legal representative, expressed as first aggravation the following:

-That the challenged resolution breaches the right to the company it represents to access to administration of justice.

-That the above is so, given that in the trial of origin, after airing all its stages, the judge declared his incompetence, based on a clause of the basal contract that contains an arbitration agreement, same as, according to the performance of both parties, should have been considered extinguished or annulled.

- That the a quo *ignored the fact that the parties in the trial, had been implicitly satisfied or had given their tacit consent for it to resolve the raised dispute,* ***canceling or extinguishing the arbitration agreement contained in the pact of wills base of the action****.*

- That in this way, both parties submitted to the jurisdiction of the district judge, since the plaintiff filed its claim before the Office of Common Parties of the District Courts in Civil Matters; and its represented, answered the claim without raising the exception of lack of jurisdiction.

- That with this procedural attitude, the parties expressed their tacit consent that the arbitration clause of the contract is understood to be extinguished or annulled by the simple will of the parties.

- That the judge of origin, invoked articles 1796 and 1832 of the Civil Federal Code, in order to indicate that in the basal contract the parties agreed to arbitration as a means to resolve their disputes, but which did not take into account the contractual freedom of the parties, so that just as they formalized at the time the basal contract, when a dispute arose they were able to establish, even tacitly, their waiver to process the arbitration and therefore they were subject to the jurisdiction and competence of the Federal Courts of Mexico City.

-That the foregoing is possible, given that in terms of numeral 1792 of the Federal Civil Code, the parties can agree to create, transfer, modify or extinguish obligations.

- That in addition, the diverse article 1796 of the code in quote, establishes that the consent or will of the parties. is what perfects the contracts and agreements.

- That finally, precept 1803 also of the Federal Civil Code, establishes that the consent can be express or tacit and that the tacit ***consent is that which results from facts or acts that presuppose or allowed to be presupposed.***

- That therefore, if in the case both parties submitted to the jurisdiction and competence of the a quo, thus expressing its tacit consent to revoke or extinguish the arbitration clause contained in the basal contract, the sentence appealed offends his client, since it did not consider the fact that both parts, tacitly, submitted to the jurisdiction and competence of the court, so it can resolve the raised dispute; and, notwithstanding the foregoing, declared itself incompetent in the final resolution. It cited as applicable, the following heading thesis: "ARBITRATION. WHEN THE APPELLANT ATTENDS BEFORE THE JUDGE TO FILE ITS CLAIM AND THE CONVICT REPLIES TO IT OR FILES FOR A COUNTERCLAIM, THE ARBITRATION COMMITMENT WILL BE EXTINGUISHED,

"AS FAR AS THE EXCEPTION OF LACK OF JURISDICTION IS NOT OPPOSED (JALISCO'S LEGISLATION)".

-That in light of what was set out, it is applicable to revoke the challenged resolution and state that the a quo has jurisdiction to resolve the origin trial.

RESPONSE TO THE AGGRAVATION

Unfounded matters:

The most important matters proposed in this section, consist in the right to access to justice, the tacit submission to the *a quo* jurisdiction and the extinction of the arbitration clause contained in the agreement base of the action.

As it was explained in the response to the third aggravation of the appellants Drake-Mesa, Society of Limited Responsibility of Variable Capital, Finley Resources, Inc. and Drake-Finley Society of Limited Responsibility of Variable Capital, there cannot be a tacit submission to the jurisdiction of a District Court, when the document base of the action contains an arbitration clause that makes it incompatible, mostly because of the waiver to arbitration that must be expressed.

The fact that the plaintiffs have filed their lawsuit in the ordinary civil procedure, before de *a quo* since they deemed it as competent to solve the dispute raised, and that the now appellant Pemex Exploración y Producción, has replied to that lawsuit, without opposing the exception of lack of jurisdiction due to the arbitration commitment, does not extinguish or nullify the arbitration clause contained in the document base of the action.

The above since the arbitration clause can only be extinguished o nullified when is inefficient or when there is a waiver.

Now, the arbitration agreement is inefficient when there are motives that do not allow its effects to be produced and therefore the causes that impede the effects to be produced, negative or positive, are inefficiency causes.

Likewise, the arbitration effects will not be able to generate if there is a waiver from both parties to do so, since that consent is priority in the conformation of the agreement and one must be subject to it.

However, **this waiver to arbitration must be expressly and undoubtedly stated**, because it is the same manner that it should be stated in the arbitration agreement so there can be certainty of the actual consent in compromising, and the requirement that is imposed for that agreement must also, for the same reason, govern as to the waiver to the commitment.

In such manner that if in the current case there is not an expressed and undoubted waiver to the aforementioned arbitration, it is not legally possible to assume as the appellants pretend, that such waiver was factual.

It is applicable for analogy, considering the reasons that provide it content, the thesis number I.3o.C.521 C, issued by the Third Collegiate Court in Civil Matters of the First Circuit, with title and content as follows:

> "**COMMERCIAL ARBITRATION. CRITERIA TO DETERMINE THE INEFFICIENCY OF THE AGREEMENT.** An arbitration agreement is inefficient when there is any motive that impede its effects, therefore those causes that impede the effects, negative or positive, of the arbitration agreement, are inefficiency causes, due to whether the parties are not allowed and obliged to submit to arbitration, or since it is impossible to submit the difference before a local tribunal. Thus, the arbitration effects will not be generated if there is a waiver from both parties to do so, since that consent is priority in the conformation of the agreement and one must be subject to it, as it must be respected in the opposite case, i.e. when it is agreed in the arbitration agreement, attending to the fact that the parties will is the base of the commercial conventions. Of course, **such waiver to arbitration must be expressly and undoubtedly stated, because it is the same manner**

that it should be stated in the arbitration agreement so there can be certainty of the actual consent in compromising, and the requirement that is imposed for that agreement must also, for the same reason, govern as to the waiver to the commitment. The arbitration effects will not take place either if there is a novation of the arbitration clause, since in such case the commitment to submit to arbitration would be replaced by the agreement to submit to local jurisdiction, i.e. a primal obligation for a latter one, in accordance to the nature of such figure provided for in article 2213 of the Federal Civil Code. Similarly, if the term to submit to arbitration, in case there is an agreement on the temporary validity or the one specified in a generic manner is applied, has elapsed, since in such case the negative prescription apples, freeing from obligations, in accordance to articles 1135 and 1158 of the Federal Civil Code, in relation to articles 1038 and 1047 of the Commercial Code. A similar impossibility of the production of effects of the arbitration agreement will take place if the local tribunal resolved the dispute in opposition to the parties, or when the judiciary resolution is firmed, due to the firmness it generates and the respect that must be done to the *res judicata*, which will impede the parties to submit to arbitration a matter that has already been solved by a State entity, who shall not either do the corresponding referral. The death or incapacity of the arbitrators, in case they were nominally appointed in the arbitration agreement and there was not a provision in the latter that provides for the possibility of replace them, also generates that the agreement cannot produce its effects, since there will not be an arbitral tribunal that addresses the matter and who the judiciary authority can refer to. Those assumptions related to the lack of capacity so the arbitration agreement produces its effects, i.e. with its inefficiency, are enunciate but not limit, and they do reveal that the judge must constrict to verify whether there is a motive that impedes that the referred effects are produced."

[*It must be clear that the underlining to the transcript was added, even the font was modified from the one used in the original, without modifying its content, aiming to highlight the corresponding part, orientated to the subject to which a response is provided*]

And although, as indicated by the appellant, in accordance with the provisions of articles 1796 and 1832, of the Federal Civil Code, the parties to a contract can agree on the submission of certain controversies to arbitration, based on the freedom contractual and in the exercise of the autonomy of their will, the truth is that the resignation to it must be express and indubitable, for the reasons stated above.

Without being applicable to the case, the thesis cited in the way of grievance, under the heading following: "ARBITRATION. WHEN THE APPELLANT ATTENDS BEFORE THE JUDGE TO FILE ITS CLAIM AND THE CONVICT REPLIES TO IT OR FILES FOR A COUNTERCLAIM, THE ARBITRATION COMMITMENT WILL BE EXTINGUISHED, AS FAR AS THE EXCEPTION OF LACK OF JURISDICTION IS NOT OPPOSED (JALISCO'S LEGISLATION)", since in addition that this is an isolated thesis, which is not binding for this appellant body, the truth is that unlike the local procedural legislation

therein analyzed, in the Federal Code of Civil Procedure the tacit submission is not provided, in the assumptions referred to by the appellants.

That is, the parties are not deemed as tacitly submitted to the *a quo* jurisdiction, just because of the fact that the plaintiff files a lawsuit and its counterpart replies to it or files for a counterclaim, since in such federal procedural code there is not provision in such sense.

Therefore, it is concluded that, contrary to what the appellants asserted, in this case there is not a waiver to the arbitration clause.

Finally, it must be specified that the matter about access to justice will be addressed in the following section.

SECOND AGGRAVATION

The defendant Pemex Exploración y Producción, through its legal representative, expressed as second aggravation the following:

-That the challenged resolution aggravates the company it represents to, since de a quo ***did not analyze the evidentiary elements argued in the trial and even with that it invoked the arbitration clause contained in the agreement base of the action to declare itself incompetent.***

-That the aforementioned arbitration clause contains two exception cases to resolve the disputes through arbitration, i.e. in case that Petróleos Mexicanos administratively rescinds the contract or denies the request of the contractor to early terminate the pact of wills and the contractor decides to challenge both determinations.

-Additionally, the plaintiff did not exhaust the conciliatory mechanisms nor those of prevention and resolution of disputes of technical or administrative nature, since in the files there is not any document whereby it was requested to the Internal Control Body, that depends from the Public Function Secretariat, any conciliatory proceeding which had not been requested to the Resident of the Works, any request for the recognition of amendment of the contract or any working order , and therefore, it could not attend the trial or arbitration procedure.

-That, on the other hand, from the files it can be seen that the company it represents to rescinded the contract to the plaintiff as it was demonstrated by the supervening evidence that was admitted and vent in the trial, a short time before the final hearing took place and therefore, it complies with the requirement or impediment to not attend to arbitration, as it can be seen in the challenged resolution.

-That from the files it can be seen that it is feasible to apply the arbitration clause that the a quo invokes, which was resolved without analyzing the evidentiary elements of the trial, when from these it must have been proven that the jurisdiction of the a quo was justified, who even did not totally analyze the arbitration clause established in the contract.

-That it asserts the above, since the origin judge did not analyze the clause 47 of the contract base of the action, in its totality, should it has done it, would have realized that ***there were two exceptions to the arbitration agreement****, the first one in the sense that the plaintiff itself had exhausted the conciliatory mechanisms and of dispute prevention and resolution, established in the clauses 27 and 28 of the same contract, which obliged it to review the evidentiary elements argued in the trial, in order to detect whether any of them makes reference to request the conciliation to the Internal Control Body or request the recognition of the amendment of the contract or any working order and, if it did not find any of those elements, to conclude then that there was an exception to the arbitration procedure, since only when exhausting such alternative means of dispute resolution, it was possible to initiate the arbitration procedure.*

-That the a quo also sidestepped that in terms of clause 47 of the contract, in the event that the contract is terminated, the parties can no longer attend the arbitration and in this case, the a quo did not analyze the evidence, so it could not realize that before the completion of the final hearing of the trial, its represented objected the exception of lack of Law and Action based on the aforementioned administrative rescission procedure that due to breaches of the plaintiff was decreed, which was even challenged through administrative proceedings before the Federal Court of Administrative Justice. It cited as applicable the following thesis: "COMMERCIAL ARBITRATION. CRITERIA TO DETERMINE THE INEFFICACY OF THE AGREEMENT".

- That therefore, the a quo should not have declared itself incompetent and should have proceeded to resolve the merits of the lawsuit, so that by not doing so, the challenged resolution lacks the proper foundation and motivation, which must be revoked.

RESPONSE TO THE AGGRAVATION

Unfounded matters:

The main issues in this grievance are those related to the valuation of evidence, the interpretation of the arbitration clause contained in the basal contract, its scope and its relationship with other clauses of the same agreement of wills, as well as the right of access to justice.

In that tenor, we have that the a quo, specifically in the first consideration, in what interests, proceeded to study the basal contract and focused his analysis in clause 47 and determined, **the parties agreed to submit to the arbitration**, the disagreements, discrepancies, differences or disputes arising of the interpretation or execution of the contract or that are related to it, and that have not been resolved by any of the mechanisms provided for in the contract.

Likewise, it highlighted that the conduct of this arbitration was agreed, according to the Arbitration Rules of the Chamber of Commerce, and, that as an exception to arbitration, the parties agreed to submit to the jurisdiction of the Courts in Mexico City, Federal District, i.e. only in two cases, that is:

1) When Pemex Exploración y Producción, administratively rescinds the contract or terminate it early; and,

2) When Pemex Exploración y Producción, in accordance with Clause Sixteenth, deny a request by the contractor to terminate the contract early and the contractor chooses to challenge such determinations.

Based on said interpretation of the basal contract, the origin judge concluded that the benefits claimed by the co-actors in the original trial, are of those that will have to be resolved through arbitration and not through a dispute before the Federal Courts, with jurisdiction in Mexico City.

And it added that the above is viable, since the parties can contractually agree the way in which they will resolve their disputes.

Well, the previous determination is correct.

It starts from the premise that, as indicated by the a quo, the parties to a contract may agree to submit certain disputes to arbitration, supported

in the contractual freedom of the parties and exercise of the autonomy of their will, in accordance to articles 1796 and 1832 of the Federal Civil Code.

In order to provide content to that premise, it is necessary to specify that article 17 of the Magna Carta establishes the human right of access to justice, which states that the inhabitants of this country have the right to be administered justice by the Mexican State courts, which will be expedite to provide it in the terms established by the law, issuing the resolutions in a prompt, complete and impartial manner.

In that same constitutional precept, the permanent constituent established in expressly manner that the laws should prevent alternative dispute resolution mechanisms controversies.

As noted above, in the Magna Carta it was established as a right in favor of the inhabitants of this Nation, the option of going before the courts of the Mexican State so these be the ones who solve the disputes that arise between them; or, resolve such conflicts through another kind of alternative means of disputes solution.

Now, as it is well known, one of the most famous mechanisms of dispute resolution is the **contractual arbitration**, through which the parties of a determined legal relationship, are allowed to establish in a freely and voluntary manner that the disputes arising between them be resolved through arbitration procedure.

Thus, the origin of the arbitration is the arbitral commitment or arbitration clause, that is established at the moment of agreement, which is defined as the specific act through which the parties exercise their contractual right and autonomy of the will to submit to an arbitration procedure the differences that arise from the legal contractual relationship they have.

And, the autonomy of the wills, as the creator power of individualized norms between the contractual parties, authorized by the legal civil framework determines the conditions in which the dispute should be resolved and narrows the questions of the legal relationship that will be vent through this procedure.

It is applicable to the above the thesis number I.3o.C.941 C, issued by the Third Collegiate Court in Civil Matters of the First Circuit, whose title and content are the next:

> **"ARBITRATION CLAUSE. CONCEPT. The arbitration is a conventional institution that aims to resolve a dispute between parties by means of a third party to whose decision they submit to and legally link them, since it is supported on the contractual freedom of the parties and the exercise of the autonomy of will. The arbitration clause is a specific act through which the parties exercise their contractual right and autonomy of the wills to submit to an arbitration procedure the differences that arise from the legal contractual relationship they have; the autonomy of the wills, as the creator power of individualized norms between the contractual parties, authorized by the legal civil framework determines the conditions in which the dispute should be resolved and narrows the questions of the legal relationship that will be vent through this procedure "**

[*It must be clear that the underlining to the transcript was added, even the font was modified from the one used in the original, without modifying its content, aiming to highlight the corresponding part, orientated to the subject to which a response is provided*]

It is important to mention that the arbitration agreement may adopt the shape of a compromising clause included in the contract or in the shape of an independent agreement.

In accordance to what it was set out, it must be said that the existence of an arbitration commitment or arbitration clause, has as legal and material effect, the **waiver of the parties to be the Mexican State courts those that address the disputes arising between them, derived from a specific legal relationship**, and therefore, such waiver, contrary to what the appellant asserted, does not imply a breach of the right of access to justice.

Well then, in this specific case said waiver occurred precisely, by virtue of that, as the a quo highlighted, in clause 47 of the basal contract, identified with the number 421004821, the parties that signed it (contestants in the trial of origin), agreed as follows:

"***[…]***

CLAUSE 47

APPLICABLE LAW, ARBITRATION AND JURISDICTION

47.1 Applicable Law.

The Contract will be governed by the Federal Laws of Mexico and other provisions that emanate from it.

47.2. Arbitration.

All disagreements, discrepancies, differences or controversies that derived from the interpretation or execution of this Contract or that have relationship with it, that have not been resolved by any of the mechanisms provided for in the Contract, will be definitively resolved through arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce, by three arbitrators appointed in accordance with said Rules of Arbitration.

The arbitration administrator will be the International Court of Arbitration of the ICC, the seat of arbitration shall be Mexico City, Federal District, Mexico, the arbitration will be in Spanish, including all acts and documents generated as a result of the substantiation of the procedure, being the legislation applicable to the fund of the business the laws Mexican federal authorities, their regulations and other provisions that derive thereof, including and overall, the Law of Petróleos Mexicanos, its Regulations, the Administrative Provisions of Procurement in matter of acquisitions, leases, works and services of the activities substantive productive nature of Petróleos Mexicanos and Organisms Subsidiaries, and the other provisions issued by the Board of Administration of Petróleos Mexicanos, in terms of article 53 of the Law of Petróleos Mexicanos.

The parties agree from this moment to suit their interests, opt out of the "Emergency Arbitrator" Provisions referred to in the Rules of Arbitration of the International Chamber of Commerce in force as of January 1 (first) of 2012 (two thousand and twelve) or the Regulation that replaces it, if that figure is considered.

Administrative rescission and early termination procedures of contract, established by PEP are of an administrative nature, therefore will not be subject to arbitration.

It is expressly agreed by PEP and the CONTRACTOR that the latter only may go to the Arbitration instance once the solution mechanisms established in CLAUSE 27 "CONCILIATION" and CLAUSE 28 "MECHANISMS FOR PREVENTION AND RESOLUTION OF DISPUTES OF A TECHNICAL OR ADMINISTRATIVE NATURE".

[…]".