PLAINTIFF: DRAKE-FINLEY, S. DE R.L. DE C.V.;

DRAKE-MESA, S. DE R.L. DE C.V. AND FINLEY RESOURCES, INC

FILE: 20356/17-17-12-2/1599/18-S1-04-04

REF: Amparo Directo Lawsuit

[…]

Had the SECOND and FOURTH arguments asserted by my client in its initial brief been analyzed, it would have led to declare the nullity of the originally challenged resolution, since it derives from a procedure plagued with vices, which makes the resolution derived from the same, a violation of the guarantees of legality and legal certainty of my client.

In these terms, it is evident the illegality of the judgment that is being challenged in this case, since the Responsible Chamber was omitted to pronounce itself on said concepts of annulment asserted in the initial document filed in the complaint.

In terms of the foregoing, IT IS PROCEEDEDED THAT THIS H. COLLEGE COURT OF THE CIRCUIT GRANT THE PROTECTION OF THE FEDERAL JUSTICE OF THE UNION TO THE COMPLAINANT, since THE PRESENT CONCEPT OF VIOLATION IS FOUNDED, for the effect ANOTHER JUDGMENT BE ISSUED IN WHICH THE NULL AND VOID PROCEDURE OF THE ADMINISTRATIVE TERMINATION OF THE CONTRACT IS DECLARED, IN ACCORDANCE WITH ARTICLE 74, SECTION V OF THE AMPARO LAW.

NINTH CONCEPT OF VIOLATION

Violation of the provisions of Article 1 of the Political Constitution of the United States of Mexico, in relation to the various 50 of the Federal Law of Contentious Administrative Procedure as well as article 1105 of the North American Free Trade Agreement.

The complainant is injured by the final judgment dated October 4, 2018, issued by the H. First Section of the Superior Chamber of the Federal Court of Administrative Justice, issued within the trial number 20356/17-17-12-2/1599/18-Sl-04-04, in which it was determined to declare the legality and validity of the disputed resolutions, for being in violation of the principles of legal certainty, the essential formalities of the procedure, the access to the complete administration of justice, congruence and exhaustiveness of the judgments, since THE H. RESPONSIBLE CHAMBER CONTRARY TO LAW ESTABLISHED in the challenged judgment in its SEVENTH CONSIDERATION stated that *"Regarding the claimant's argument that PEP's breach of the contract caused it several damages by having Drake's staff, equipment and machinery suspended indefinitely, notwithstanding the fact that in accordance with the Bases of the International Public Bidding, the contract, appendix "A", as well as in the Fourth FTA Article 1001, paragraph 4, expressly states that none of the parties shall conceive a contract in such a way as to avoid the obligations of said chapter; also, Article 1002, paragraph 2 of the same law states that the value of the contract shall be the estimated value at the time of the call solicitation, and paragraph 4 of the aforementioned article states that in addition to the provisions of article 3.003. (4), an entity may not choose a valuation method or split the purchase requirements into separate contracts in order to avoid the obligations contained in that chapter, and finally, Annex DT-2 itself states PEP's obligation to deliver to it "monthly" Equipment Movement Programs. It is unfounded, since it is insisted that in the contract PEP was not obliged to exercise the minimum amount at a certain date, therefore, if on November 29, 2016, when it was notified the work order 28/2016, PEP had not yet exercised the minimum mount, this did not relieve the claimant in the fulfillment of its contractual obligations.",* which violates Articles 1 of the Political Constitution of the United Mexican States in relation to articles 8, 10 and 17 of the Universal Declaration of Human Rights and articles 8 and 17 of the American Convention on Human Rights, as well as Articles 50 and 50 of the Federal Law of Administrative Litigation Procedure, 1105 of the North American Free Trade Agreement.

The foregoing is so, since any interpretation and analysis that the First Section of the Superior Chamber of the Federal Court of Administrative Justice had to carry out was the most favorable to the interests of my principals, specifically to Finley Resources, Inc., since the business of Contract No. 421004821 is a foreign investment protected by the North American Free Trade

Agreement, in terms of Chapters X and XI of the of said Treaty. This is so since the Contract was entered into under the North American Free Trade Agreement (hereinafter referred to as "NAFTA"), since it derives from the International Public Bidding number 18575088-542-13, based on Chapter X of the NAFTA Government Procurement.

This Chapter X of the FTA regulates public tenders and procurements between nationals of the States Parties[1] and the States Parties to the NAFTA, as well as the conditions of safety and protection granted to foreign investors at the time of signing contracts with any of the State Parties and their governmental enterprises (including PEMEX[2]).

Likewise, the NAFTA, in its Chapter XI, Section A - Investments, regulates the investments[3] made by nationals of a State Party in the territory of another State Party, which according to Articles 1101, 1104 and 1105 must be protected fully and with all the benefits that the State Party can provide.

In addition to the above, article 1105 of the NAFTA establishes the following:

Article 1105: Minimum Standard of Treatment

1. *Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*

From the foregoing, it follows that both the investment, i.e. the Contract entered into with PEP, and Finley Resources, Inc., being an American company -considered an investor of a Party in terms of the NAFTA[4] - must be protected and secured in the fullest possible manner, since not doing so would violate Article 1 of the Political Constitution of the United Mexican States in relation to Article 1105 of the NAFTA.

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[1] Mexico, United States of America and Canada

[2] Annex 1001 .1 a-2 of Chapter X of the NAFTA.

[3] Article 1139: Definitions Section C Definitions of Chapter XI of the NAFTA, establishes that investments are, among other things, what is referred to in subparagraph (h) *"interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or…"*

[4] Pursuant to NAFTA, Chapter XI, Section C - Definitions, Article 1139, investors of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

This should undoubtedly afford full protection to the entire investment as a whole (including Drake-Finley S. de R.L. de C.V., and Drake-Mesa, S. de R.L. de C.V.) and Finley Resources, Inc. personally, in accordance with the terms established in the Federal Constitution, in particular, the provisions of Article 1o, which reads as follows:

> "Artículo 1o. En los Estados Unidos Mexicanos todas las personas gozaran de los derechos humanos reconocidos en esta Constitución y en los tratados internacionales de los que el Estado Mexicano sea parte, así como de las garantías para su protección, cuyo ejercicio no podrá restringirse ni suspenderse, salvo en los casos y bajo las condiciones que esta Constitución establece.
>
> Las normas relativas a los derechos humanos se interpretarán de conformidad con esta Constitución **y con los tratados internacionales de la materia favoreciendo en todo tiempo a las personas la protección más amplia."**

Therefore, at the time of deciding the judgment, the First Section of the Superior Chamber of the Federal Court of Administrative Justice had to interpret the facts and legal arguments presented in this case in the most favorable way to my clients, since it must protect a superior protection and guaranty to the great investment and trust that they have placed in Mexico, its economy and its people.

This interpretation and protection recognized in the NAFTA is not arbitrary, since the very purpose of the NAFTA is to bring foreign investment to Mexico in order to provide employment for Mexicans and to boost the growth of the national economy, therefore essential to provide foreign investments with the greatest possible legal and real security so that they can continue to generate jobs and economic spillover in the country.

Otherwise, if the Mexican State, from the Executive Branch to its Courts, does not protect foreign investments and their investors, they will gradually leave the country for one with better economic and contract compliance conditions, also driving away future investment projects in Mexico due to the lack of suitable conditions to generate business.

It should be recalled that, having established in the Contract, in Clause 47.1 Applicable Law, that the Contract shall be governed by the "Federal Laws of Mexico" and the NAFTA is an integral part of the Mexican legal system, placing it above the Mexican legislation, in terms of Article 1 of the of the Constitution and the jurisprudence issued by the Mexican Supreme Court of

Justice of the Nation (among others, P. IX/2007, P./J. 84/2004, and P./J. 20/2014 (10a.)), then the NAFTA is the applicable law for the Contract, and the law that had to be used by the First Section of the Superior Chamber of the Federal Court of Administrative Justice for the interpretation, without this interpretation was made in the specific case, since the Responsible Chamber only limited itself to stating that "It is unfounded, since it is insisted that in the contract EP was not obliged to exercise the minimum amount at a certain date, hence, if as of November 29, 2016, when it was notified of the work order 28/2016, PEP was still not exercising such minimum amount, this did not relieve PEP from the obligation in the fulfillment of its contractual obligations", a fact that violates Article 1 of the Political Constitution of the United Mexican States in relation to article 1105 of the NAFTA, by not considering that the investments of my represented company, had to be treatment in accordance with international law, including fair and equitable treatment, as well as protection and full protection and security, which did not occur in this case.

The foregoing is not precluded by the defendant authority's argument that Clause 32 of the Contract establishes a literal interpretation of the Contract, since said Clause only affects the interpretation that the parties give to the contract during its execution and performance, but at NO point does it establish the interpretation of the Contract by third parties or any jurisdictional body, the provisions of Clauses 47.1 and 47.3, which, as noted, include the NAFTA as the applicable law for its interpretation in the present case.

In view of the foregoing, **the interpretation and analysis that should have been made by the First Section of the Superior Chamber of the Federal Court of Administrative Justice was the most favorable one to the interests of my principals, for the protection of the investment (the Contract) and of Finley Resources, Inc., as a foreign investor, in terms of NAFTA and the Federal Constitution, a fact that violates Article 1 of the Political Constitution of the United Mexican States in relation to article 1105 of the FTA, by not considering that the investments of my client had to be treated in accordance with international law, including fair and equitable treatment in accordance with international law, including fair and equitable treatment, as well as full protection and security, a fact that did not occur in this case.**

In terms of the foregoing, IT IS PROCEEDEDED THAT THIS H. TRIBUNAL COLLEGIATE COURT OF THE CIRCUIT, GRANT THE

PROTECTION OF THE FEDERAL JUSTICE OF THE UNION TO THE COMPLAINTEE, since THE PRESENT CONCEPT OF VIOLATION IS FOUNDED, to the effect that ANOTHER JUDGMENT IN WHICH THE PLAIN NULLITY OF THE PROCEDURE OF ADMINISTRATIVE TERMINATION OF THE CONTRACT IS DECLARED IN ACCORDANCE WITH ARTICLE 74, SECTION V OF THE LAW OF AMPARO.

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