INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES
(ICSID)

FINLEY RESOURCES INC. AND OTHERS, (CLAIMANTS)

VS

UNITED MEXICAN STATES, (RESPONDENT)

CIADI CASE No. ARB/21/25

EXPERT WITNESS REPORT ON ADMINISTRATIVE CONTRACTS AND CIVIL AND ADMINISTRATIVE LITIGATION

JORGE ASALI HARFUCH

December 2, 2022

INDEX

I, Jorge Asali Harfuch, a Mexican national, declare the following:

1. This expert report (the "Report") is submitted in support of the defense of the United Mexican States ("Mexico") against the claims brought by Finley Resources Inc., MWS Management Inc. and Prize Permanent Holdings, LLC (the "Claimants"), under the North American Free Trade Agreement ("NAFTA") and the Agreement between Mexico, the United States and Canada ("USMCA").

2. All terms appearing with initial capital letters shall have the meaning attributed to each of them through this Report. In addition, a glossary of defined terms is attached to this Report as Exhibit A.

I. PROFESSIONAL CAREER AND INDEPENDENCE

3. I am a Mexican attorney with 25 years of experience in handling all types of civil, commercial and administrative disputes, including bankruptcy proceedings and international arbitration.

4. I studied law at the Escuela Libre de Derecho, from which I obtained my law degree with honors in 1998. Afterwards, I studied a master's degree at Harvard University, from which I graduated in 2001. I am admitted to practice law in Mexico.

5. In 1998 I founded Ojeda y Asali, S.C., a litigation firm in Mexico City, in which I was a partner until 2013. Since 2014, I am a partner of Bufete Asali, S.C. My professional practice focuses on the ruling of complex disputes, mainly in the energy, maritime, financial services, and construction industries.

6. My curriculum vitae is attached to this Report as Exhibit B.

7. I am independent of the Parties, their counsels, as well as the members of the arbitral tribunal. I have no present or past relationship with any of the foregoing. Notwithstanding the foregoing, from 2020 to 2022 I served as legal expert for the Mexican Government in the investment arbitration *Alicia Grace et al. vs the United Mexican States*, CIADI Case No. UNCT/18/4. In my opinion, this situation does not affect my impartiality or independence, nor does it create a conflict of interest.

8. The purpose of this Report consists in the study and legal analysis of the termination of Contracts No. 424042803 ("Contract 803") and 424043804 ("Contract 804"), and the administrative termination of Contract 421004821 ("Contract 821", jointly with Contracts 803 and 804, the "Contracts"), as well as the trials related to these Contracts.

9. I have been instructed by Mexico to analyze the information in a professional, independent, and unbiased manner and to carry out its legal study with the application of my technical knowledge and experience in the subject in an objectively manner.

10. This Report was originally presented in Spanish, and I will be available, if necessary, to testify at the hearing in Spanish.

II. INTRODUCTION

11. The purpose of this Report is the study and legal analysis of the Contracts, as well as of the civil and administrative trials that the Claimants initiated before the Mexican courts in connection therewith. The purpose of this Report is also to respond to the Zamora-Amézquita Report and, specifically, to the alleged violations attributed to the Mexican courts for the manner, terms, and periods of time in which they handled the various proceedings related to the Contracts.

12. In preparing this Report, I relied on: (i) Mexican doctrine, laws, and jurisprudence; (ii) my experience in civil and administrative trials, such as those in dispute in this Arbitration; and (iii) the Contracts, the files and records of the civil and administrative trials initiated by the Claimants and other documents that are part of the file of this Arbitration.

13. Sections III and IV below are centered on the legal analysis of the Contracts and their applicable legal regime. It should be noted that, due to their date of execution, all the Contracts hold an administrative nature and any controversy related to them should have been settled before Mexican administrative courts. Likewise, it should be noted that the clauses of the Contracts reveal the existence of an exorbitant regime, common in all administrative contracts, which explains and justifies the resolutions taken by PEP (*Pemex Exploración y Producción, Subsidiary Productive Company of Petróleos Mexicanos*) during the performance of the Contracts. Finally, the analysis reveals that several of the Claimants' economic claims are incompatible with Mexican law and with the economic consequences agreed within the Contracts.

14. In Section VI, a detailed study of the civil and administrative proceedings initiated by the Claimants before the Mexican is presented. A cross-cutting conclusion from the study of these proceedings is that, based on the analyzed records, there is no evidence of unjustified delays or arbitrary decisions attributable to the Mexican courts. On the one hand, the delay of the proceedings is consistent with their complexity, the plurality of appeals filed by the parties –all available for any litigant under Mexican procedural law–, and the presence of extraordinary circumstances such as the COVID 19 pandemic. On the other hand, the analyzed court decisions are neither arbitrary nor unreasonable, as such determinations are within the margin of judicial discretion and legal interpretation granted to any judge.

15. In reality, the final outcome of the proceedings can be best explained by the performance of the parties than by the conduct of the courts that ruled on them. On the one hand, there are several examples of deficient, unsuccessful, and even omitted objections. On the other hand, PEP litigated the various trials exhaustively and made effective use of the various legal remedies that, like any other litigant, had at its disposal to enforce its rights.

16. In Section VII we present a prompt response to the alleged violations mentioned in the Zamora-Amézquita Report. The analysis presented yields similar conclusions to those derived from the study of the trials; that is, that the Mexican courts did not incur in unjustified delays nor did they issue arbitrary decisions that could be classified as serious violations. The alleged violations are the result of an erroneous understanding of the principles and procedural figures referred to, as well as of opinions that do not correspond with the Mexican litigation practice.

17. Finally, section VIII provides a brief analysis of the clauses and the execution of Contract 424043809 entered into by PEP and Integradora de Perforaciones y Servicios, S.A. de C.V. and Zapata Internacional, S.A. de C.V. dated March 1, 2013 ("Contract 809").

III. THE CONTRACTUAL REGIME AND LEGAL NATURE OF CONTRACTS

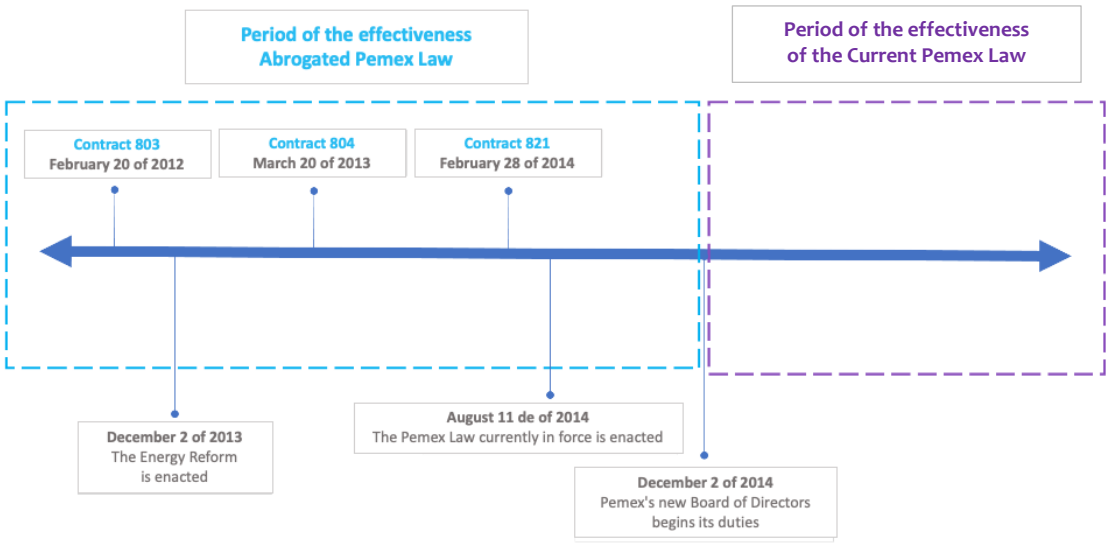
18. The starting point to analyze the legal nature of any contract entered into by Pemex or its subsidiaries is to determine which law governs it. This is due to the fact that, as a result of the amendment to various articles of the Mexican Constitution which is commonly known as the "Energy Reform (*Reforma Energética*)", the Petroleos Mexicanos Law (*Ley de Petróleos Mexicanos*) that had been in effect up to that time ("Abrogated Pemex Law") was derogated and a new Petroleos Mexicanos Law ("Current Pemex Law") was issued, which modified the contracting regime of Pemex and its subsidiaries. Although the Energy Reform was published on December 20, 2013, the Abrogated Pemex Law remained in force until

December 2, 2014, when the Pemex board of directors took office which, in accordance with the transitory regime of the Current Pemex Law, formally brought the latter into force.

19. In this understanding, any contract entered into prior to December 2, 2014 is governed by the Abrogated Pemex Law and its legal nature must be determined in accordance with such law. The Supreme Court of Justice of the Nation ("SCJN") recently confirmed this statement by ruling that the legal nature of the contracts entered into by Pemex and its subsidiaries –such as PEP– depends on the transitory regime of the Current Pemex Law which, as recently explained, entered into force until December 2, 2014.[1] For the purposes of this opinion, we clarify that the Contracts under review entered into between PEP and the Claimants were entered into prior to December 2, 2014, so their legal nature must be analyzed in light of the Abrogated Pemex Law and its contracting regime.

20. For better reference of the Arbitral Tribunal, below is a diagram that graphically shows the period in which the Abrogated Pemex Law and the Current Pemex Law were in force *vis a vis* the date of execution of each one of the Contracts, showcasing that all the Contracts were entered into under the Abrogated Pemex Law and the contracting regime applicable.

[1] *See* thesis of the First Chamber of the SCJN with registry number 2024138, *Pemex Exploración y Producción. The reform by which it was transformed into a state productive enterprise, by itself does not have the scope of modifying the nature of the contracts entered into prior to the reform. Articles 25 and 27 of the Constitution.* **JAH-0001**



21. In light of the foregoing, the contracts entered into by Pemex or its subsidiaries under the Abrogated Pemex Law that relate to its substantive activities –such as the performance of repair, drilling and completion works of oil wells subject of the Contracts– have an exclusively administrative nature, which means that it is neither civil nor commercial. It should be added that the administrative nature of this type of contracts entered into by Pemex or its subsidiaries –i.*e.*, the Contracts– has been expressly recognized by the TFJA (Federal Court of Administrative Justice, *Tribunal Federal de Justicia Administrativa*) which has also confirmed that the contracts' applicable law is the Abrogated Pemex Law.[2]

22. One of the distinctive notes of the administrative nature of the contracts entered into under the Abrogated Pemex Law is the existence of a level of supra-subordination between the contracting entity –i.*e.*, PEP– and the contractor or service

[2] Thesis from the TFJA with code VII-CASR-PE-32, *Contracts entered into by Pemex Exploración y Producción, related to substantive activities of a productive nature. They are of an administrative nature and are governed exclusively by their own provisions (abrogated Petroleos Mexicanos Law)*. **JAH-0002**

provider, from which a series of relevant consequences follow. These consequences can be divided into *substantive* and *procedural*, as explained below.

23. From a *substantive* view, the administrative nature of a contract implies the existence in its clauses of a special regime (usually called "exorbitant"). This means that administrative contracts may, and even must, contain clauses that place the provider or contractor in a subordinate relationship with Pemex, so that the latter may guarantee the fulfillment of the state powers conferred to it, as well as the satisfaction of collective needs.[3] Among other sources, the obligation to establish these clauses in the contracts entered into by Pemex and its subsidiaries derives from a *constitutional* requisite as provided by Article 134 of the Mexican Constitution, reproduced in the Abrogated Pemex Law and in the administrative contracting provisions derived therefrom ("DACS").

24. One of the powers of the contracting entity deriving from the exorbitant regime of administrative contracts is the power to *terminate by itself and before itself* such contracts, that is, without the need for a prior judicial declaration. Depending on its cause, the termination of the contract by the entity may be an administrative termination or an early termination. On the one hand, the *administrative termination* occurs when the contractor or service provider fails to comply with its obligations under the contract, and thus it is unilaterally terminated by the entity, without prejudice to the possibility that the contractor or service provider may object the termination before the competent courts.[4] On the other hand, the *early termination* occurs when the entity terminates the contract before the

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[3] *See* thesis of the Plenary of the SCJN with registry number 189995, *Administrative contracts. They are distinguished by their public order purpose and by the exorbitant civil law regime to which they are subject*. **JAH-0003**

[4] *See* thesis of the Seventh Collegiate Court in Administrative Matters of the First Circuit with registry number 182024, *Authority for purposes of the amparo lawsuit. It is the decentralized public agency of the public administration that unilaterally terminates an administrative contract*. **JAH-0004**

end of its term for causes other than a breach, based on grounds that are expressly provided for in the DACS or in the contract in question.[5]

25. Another power of the contracting entity that is intrinsic to the exorbitant regime of administrative contracts is that of *suspending* its execution. In a similar manner to early termination, the suspension of an administrative contract may be ordered based on the legal or regulatory grounds provided for, as well as those defined in the contract in question.

26. From a *procedural* point of view, the administrative nature of a contract implies that any dispute arising therefrom must be ruled through the administrative courts. In other words, the competent bodies to hear disputes arising from an administrative contract are the administrative courts and, on the contrary, the civil or commercial courts are not competent to hear subject matters related to this type of contract. In line with the foregoing, Mexican federal courts have recognized that the application of administrative jurisdiction is a distinctive feature of any administrative contract.[6]

27. In the same sense, the Mexican federal courts have ruled that claims arising from an administrative contract entered into by a decentralized agency –as were Pemex and its subsidiaries prior to the Energy Reform– must be settled before the administrative courts.[7]

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[5] DACS, art. 75, The decentralized agencies may agree in the contract to early termination in accordance with the needs of the Substantive Project, and may consider, by way of example and not limitation, the following causes: I. Due to an act of God or force majeure, as agreed in the contract; II. Due to the inability to determine the term of the suspension; III. When there are causes that prevent the execution of the contracts; IV. When an exploration and production contract is not profitable or convenient for the Decentralized Agency according to the economic model, and v. When so determined by the Decentralized Agency. **JAH-0005**

[6] *See* thesis of the Third Collegiate Court in Administrative Subject Matters of the Sixth Circuit with registry number 188644, *Administrative contract and civil or business contract. Their differences*. "In private contracts, the jurisdiction to settle controversies falls on the ordinary courts, while in administrative contracts the special jurisdiction intervenes, either in administrative courts, if there are any, or in the administrative venue itself, according to the procedures established by law or as stipulated in the contract itself." **JAH-0006**

This is also consistent with the recent decision of the SCJN that rejected the retroactive application of the Current Pemex Law to contracts entered into prior to its entry into force and, consequently, confirmed that controversies related to contracts entered into by Pemex and its subsidiaries under the Abrogated Pemex Law must be ruled by the administrative courts and not by the civil or commercial courts.[8]

28. The jurisdiction of the administrative courts over administrative contracts is also independent of the type of claim raised. Specifically, and of particular relevance in this matter, the administrative courts will also be competent to hear disputes in which a lack of payment is claimed under an administrative contract. The foregoing was ruled by mandatory case law issued by the SCJN, which states that "disputes arising in connection with the lack of payment provided by administrative contracts must be ruled in the respective administrative proceedings (federal or local) depending on the regime to which those are subject."[9]

29. Under this perspective, when resolving a dispute related to an administrative contract, whether it derives from a breach of payment or from its termination, the correct jurisdiction to file a claim will be the administrative one. In light of this, and without prejudice to the analysis presented in the following sections, it is hereby noted that, with the exception of some controversies initiated by the contractor under Contract 821 –which

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[7] *See* thesis of the Plenary in Civil Matters of the First Circuit with registry number 2017484, *Public work contracts entered into between decentralized agencies and majority state-owned companies. The claim for termination or mandatory performance of such contracts corresponds to the jurisdiction of the Federal Court of Administrative Justice.*" **JAH-0007**

[8] *See* thesis of the First Chamber of the SCJN with registry number 2024138, *Pemex Exploración y Producción. The reform by which it was transformed into a state productive enterprise, by itself does not have the scope of modifying the nature of the contracts entered into prior to such reform. Articles 25 and 27 of the Constitution.* **JAH-0001**

[9] *See* case law of the Second Chamber of the SCJN with registry number 2016318, *Administrative contracts. The failure to pay has an administrative nature*. **JAH-0008**

contained an arbitral agreement– the administrative courts should have been the competent courts to hear about and rule on the controversies arising from the Contracts.

IV. ANALYSIS OF THE CONTRACTS' CLAUSES AND THE CIRCUMSTANCES OF THEIR TERMINATION

30. I had access to and analyzed Contracts 803, 804 and 821. Due to the date of their execution, the three Contracts are governed by the Abrogated Pemex Law, and all hold an administrative nature. The purpose of the three Contracts is essentially the same: PEP would entrust the Claimants with the performance of various works on oil wells, as well as drilling and completion of land wells, through the issuance of work orders that would specify the term to perform the works and the amount to be paid by PEP as compensation. In the following sections we will analyze in detail the most relevant aspects of the clauses of each of the Contracts, as well as the circumstances of their termination.

A. Contract 803

i. Analysis of the relevant clauses of Contract 803

31. Under Contract 803, Bisell and MWS agreed to perform works on oil wells, contractually referred to as "restitution works of production in the assets of the northern region", which Bisell and MWS were to perform under the terms of the work orders issued by PEP. Likewise, the parties agreed on an "Execution Period" from February 20, 2012 to December 31, 2013, during which the work orders under Contract 803 would be issued. This term was extended in accordance with two amendments entered into by the parties. The parties also agreed that the total amount or price of the works to be performed under Contract 803 would be USD $48,000,000.00.

32. Thus, the total amount indicated above would be exercised through the so-called "remunerations" or "prices" that would be indicated in each work order. In terms of Contract 803, the unit prices for the work would include the costs or expenses associated with the performance of the work ordered –i.*e.* direct costs, indirect costs, financing expenses, etc.– as well as a profit component.[10] In other words, the total amount or price of Contract 803 –and therefore the price agreed in each work order– included both (i) the cost borne by Bisell and MWS for the performance of the work ordered, as well as (ii) the profit or gain that they would receive for the performance of the works.

33. Contract 803 establishes in its clauses the figure of "severance payment". As stated in the Memoir of Claim, a severance payment is a transaction[11] by virtue of which the parties terminate any outstanding issues or disputes arising from the contract, including any outstanding balances or debts. According to the DACS, the purpose of the severance payment is to "record the adjustments, revisions, modifications and acknowledgments, as appropriate" and, most notably, "the balances in favor and against, as well as the agreements, conciliations or transactions that may be agreed upon to finalize any controversies that may have arisen."[12] Pursuant to the terms agreed in Contract 803, the severance payment is an integral part of the Contract, and as so it has a binding nature, so that any matter solved under the severance payment would be understood to have been definitively agreed upon by the parties.[13]

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10 *See* Contract 803, article 4.3, Form of Payment. **C-0032 -SPA**

11 *See* Statement of Claim, ¶107. "The severance payment process is essentially a settlement. The parties agree that their reciprocal obligations have been fulfilled, and they agree to any needed adjustments, revisions, modifications, or recognitions, and to any balances owed from one to the other."

12 *See* DACS, art. 76 **JAH-0005**

34. Finally, Contract 803 provides parties' decision to abide by the jurisdiction of the federal courts of the city of Poza Rica de Hidalgo, in the state of Veracruz. This agreement determines the *territorial* jurisdiction of the courts to resolve disputes arising from Contract 803. The *material* jurisdiction over Contract 803 is determined by its legal nature, which is, as explained above, administrative. Thus, the competent courts to resolve disputes arising out of Contract 803, whether for lack of payment or any other cause, would be the federal courts in administrative matters in Veracruz.

ii. Analysis of the termination of the Contract 803 and its economic consequences

35. Based on the documents provided, Contract 803 terminated at the end of its natural term. According to the record of severance payment entered into by the parties, the amount executed and paid by PEP under Contract 803 at the end of its term was USD $26,550,013.81.[14] In such record, PEP acknowledges the existence of an outstanding debt payable to it and to Bisell and MWS for a cost adjustment concept amounting to USD $433,124.00, which is related to the non-recoverable expenses associated to the execution of Contract 803.[15]

36. It is also noted that Bisell and MWS expressly reserved their right to subscribe the record of severance payment to "proceed as it deems appropriate for the claim of non-recoverable expenses, as well as the waiting time and revision of the percentage of indirect and financing".[16] No additional reservation of rights by the parties was provided.

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13 *See* Contract 803, article seventeen, Severance Payment. **C-0032-SPA**
14 *See* severance payment record for Contract 803. **C-0074-SPA**
15 *Id.*

37. Notably, there is not a reserve of rights in the severance payment record related to the *unexercised* amount of the contract compared to the total amount established in it (unlike what can be seen in the reserve of rights provided by the severance payment record of Contract 804, as will be discussed later).[17] Thus, the absence of a reserve of rights with respect to the difference between the amount actually exercised and the total amount agreed, showcases the contractors' agreement with the amount paid and constitutes a waiver of the claim for any additional sum. Moreover, the agreement of both parties on the severance payment record bounds them to its fulfillment.

38. In other words, under the severance payment, all the balances payable to and in favor of the parties under Contract 803 were ultimately agreed upon, with the exception of the final amount of non-recoverable expenses –which the contractors expressly reserved the right to claim later in time–. Therefore, the execution of the severance payment by the contractors means that they are contractually prevented from making any claim related to Contract 803 other than the non-recoverable expenses (with respect to which they reserved their rights), including any claim that may arise from the difference between the total amount agreed upon and the amount actually executed under that contract.

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16 *See* severance payment record of Contract 803, p.7. **C-0074-SPA**

17 *Infra* §**IV**.**B.**

39. Finally, we emphasize that the execution of the severance payment referred to, as well as the fact that the pending claims under Contract 803 derive from it, confirm that the administrative courts had the jurisdiction to hear any dispute related to Contract 803. There are several precedents issued by the SCJN and the Mexican federal courts that confirm that any claim based on or related to the severance payment, must be settled before an administrative court, as it is itself and by nature, an administrative act. [18]

B. Contract 804

i. Analysis of the relevant clauses of Contract 804

40. In terms of Contract 804, Bisell and MWS agreed to execute works related to oil wells, contractually called "integral works for interventions to land wells in the northern region", which were to be executed in terms of the work orders to be issued by PEP. Similarly, to Contract 803, the parties agreed on an "Execution Period" from March 20, 2013 to September 30, 2013, within which the work orders under Contract 804 would be issued. Such period was extended to March 31, 2014 under the second amendment entered into by the parties.

41. Likewise, Contract 804 established that each work order would have a specific execution period –different to the Execution Period of Contract 804–. To this effect, within the so-called Execution Period *per se* PEP would issue work orders, while the period to execute each work order would be specifically determined in it as well as its particular payment conditions.

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[18] *See* thesis of the First Chamber of the SCJN with registry number 2016485, *Severance payment of public works contracts. Its legal nature*. **JAH-0009**; thesis of the Twelfth Collegiate Court in Civil Matters of the First Circuit with registry number 2018385, *Public works contract. When declaring the inadmissibility of the enforcement action of the latter, the modification agreements and those derived from the former follow the fate of the principal.* **JAH-0010**; and thesis of the Fourth Collegiate Court in Civil Matters of the Second Circuit with registry number 2019337, *Commercial trial. It is not applicable when a public entity is sued for the payment of the number of invoices that cover the services rendered in compliance with an administrative contract*. **JAH-0011**

42. Unlike Contract 803, in Contract 804 the parties did not agree on a total amount for the works to be performed by MWS and Bisell. Contract 804 established a *minimum budget* of USD $22,000,000.00 and a *maximum budget* of USD $55,000,000.00. Contract 804 itself clarifies that "the aforementioned budget shall not represent in any way an obligation on PEP to reach the maximum budget established in [Contract 804]".[19] Thus, under Contract 804, PEP was only entitled but not bound to issue work orders no greater than the established *maximum budget*.

43. As in Contract 803, the payment agreed within Contract 804 consisted of the prices set in the individual work orders, to which the unit prices previously agreed by the parties and listed in Exhibit DE-3 of the Contract would apply.[20] Similarly to Contract 803, the unit prices applicable to Contract 804 would include the costs or expenses associated with the performance of the ordered works –i.*e.* direct costs, indirect costs, financing expenses, etc.– as well as a profit component.[21]

44. As in Contract 803, Contract 804 also provides for a process to determine the severance payment.[22] Additionally, its binding nature was established in the same terms as in Contract 803.[23]

45. Contract 804 also provides for a "Good Faith and Equity" clause. This clause firstly refers that the parties will act in accordance with the applicable laws and regulations, as well as to the principles of good faith and equity, mirroring the principle of enforceability applicable to any contract, which makes its reference in Contract 804

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19 *See* Contract 804, article five, Minimum and Maximum Contract Budget. **C-0033-SPA**
20 *See* Contract 804, clause 6.2, Form of Payment. **C-0033-SPA**
21 *See* Contract 804, Exhibit DE-3. **C-0033-SPA**
22 *See* Contract 804, article eighteen, Severance payment. **C-0033-SPA**
23 *Supra* §**IV. A. i.**

redundant.[24] Additionally, the clause refers to certain conducts which are intrinsic to the good faith principle applicable to any contract, without its express reference being necessary. The inclusion of that clause does not alter my conclusions concerning the interpretation of Contract 804, nor of the consequences regarding its termination, which are later explained.

46. Finally, the jurisdiction clause agreed in Contract 804 is essentially identical to that of Contract 803, since the parties chose to abide by the jurisdiction of the federal courts in the city of Poza Rica de Hidalgo, state of Veracruz. Since Contract 804 is an administrative contract governed by the Abrogated Pemex Law, the competent courts to solve any dispute related to it would be the federal courts in administrative matters.

ii. Analysis of the termination of Contract 804 and its economic consequences

47. According to the information provided, Contract 804 terminated naturally, due to the overcoming of its term (in the same way Contract 803 was terminated).

48. Unlike what happened in relation to Contract 803, upon signing the severance payment, both MWS and Bisell reserved their right to claim certain non-recoverable expenses, as well as the payment of 40% of the total amount of the Contract (*i.e.*, the *minimum budget* agreed in Contract 804).

[24] The principle of mandatory nature of contracts is expressly recognized in Article 1796 of the CCF, "Contracts are perfected by mere consent, except those that must be in a form established by law. Once they are perfected, they bind the contracting parties, not only to the performance of what has been expressly agreed, but also to the consequences which, according to their nature, are in accordance with good faith, usage or law."

49. It is questionable whether MWS and Bisell had the right to claim full payment of the *minimum budget* of Contract 804, since that would imply forcing PEP to pay for work not performed. In any case, MWS and Bisell could have claimed the issuance of additional work orders by PEP to reach the *minimum budget*, so that PEP would be bound to pay for work actually performed.

50. Nonetheless, MWS's and Bisell's claims for damages under Mexican law could never equal the *minimum budget*, which is equivalent to a price that reflects both the total costs and the profit associated with the performance of the work.

51. Now, the profits that the contractors would have received if Contract 804 had been executed are not equal to the amount of the *minimum budget* agreed therein. As we indicated, the *minimum budget* would be exercised through works that PEP would pay based on the unit price catalog of Exhibit DE-3, which include a *profit* component –that is, the profit that the contractors would receive– and also a component of *costs* or required for the performance of the works.

52. In view of the foregoing, in the opinion of the undersigned, the lawful profits that the contractors would have received if the *minimum budget* of Contract 804 had been exercised are limited to the *profit* component associated with the unit prices, but in no case can the entire amount of the *minimum budget* be considered as damages or profits not received. The quantification of the profit corresponding to the *minimum budget in* accordance with the agreed unit prices is a technical exercise that is beyond the scope of this Report.

C. Contract 821

i. Analysis of the relevant clauses of Contract 821

53. Under Contract 821, Finley Resources, Inc. ("Finley"), Drake-Mesa, S. de R.L. de C.V. ("Drake-Mesa") and Drake-Finley, S. de R.L. de C.V. ("Drake-Finley") agreed to execute works contractually denominated as "integral drilling and completion works of land wells in the north and south regions of PEP",[25] which the contractors were to execute in terms of the work orders issued by PEP. As in Contract 804, the parties agreed in Contract 821 on an "Execution Period" –identical to the so-called "Execution Period" established in the other Contract– from March 1, 2014 to December 31, 2017, within which the work orders would be issued. The period was extended in terms of different amendments entered into by the parties. As in Contract 804, Contract 821 establishes that each work order would be subject to its own execution period and payment terms.

54. Again, mirroring Contract 804, Contract 821 provides for a *minimum* and a *maximum budget*, expressly clarifying that PEP was not bound to exercise the latter. The *minimum budget* of Contract 821 was USD $168,911,201.10, while the *maximum budget* was USD $418,303,621.55, based on the prices in U.S. dollars approved and agreed upon in Contract 821.[26]

55. The Execution Period constitutes a *period of time* for the issuance of work orders under the 821 Contract. Under Mexican law, the period of time is always presumed to

[25] *See* Contract 821, clause 2, Object of the Contract. **C-0034-SPA**
[26] *See* Contract 821, clause 5, Minimum and Maximum Contract Amount. **C-0034-SPA**

be established in favor of the debtor, unless otherwise agreed.[27] The bottom line of this principle is that the debtor cannot be bound to pay or comply with its contractual obligations in advance.

56. In Contract 821, as well as in the documents that I had before me, there is no indication that the Execution Period was not agreed in favor of PEP. Therefore, PEP could validly use the entire Execution Period to issue the work orders it required, without the contractors being able to require PEP to issue work orders before the end of the Execution Period.

57. Contract 821 contains a "Good Faith and Equity" clause that is essentially the same as the one agreed in Contract 804.[28] My conclusions regarding such clause are the same in both cases, and we therefore refer the Arbitral Tribunal to what was previously referred to in relation to Contract 804.[29]

58. Pursuant to the parties' agreement, all disputes related to Contract 821 were to be solved through a commercial arbitration under the rules of the International Chamber of Commerce, and the seat would be Mexico City.[30]

59. Finally, in consistency with the applicable administrative contractual regime, Contract 821 provides PEP the right to terminate it administratively, unilaterally and without the need of a prior judicial declaration.[31] The right of PEP to terminate administratively

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27 CCF, Article 1958, "The term is presumed to be established in favor of the debtor, unless it results from the agreement or the circumstances that it has been established in favor of the creditor or of both parties." **JAH-0012**

28 *See* Contract 821, article 3, Good Faith and Equity. **C-0034-SPA**

29 *Supra* §**IV. B. i.**

30 *See* Contract 821, article 47.2, Arbitration. **C-0034-SPA**

31 *See* Contract 821, article 15.1 and 15.2, Administrative Termination and Administrative Termination Procedure. **C-0034-SPA**

Contract 821 would be exercised in the event that the contractors incurred in *any* of the situations provided for in clause 15.1 of Contract 821.[32]

60. Once the administrative termination was executed, Contract 821 established that any controversy arising from the administrative termination of the contract would be settled before the federal courts in administrative matters in Mexico City.[33]

ii. Analysis of the termination of Contract 821 and its economic consequences

61. Unlike what happened with Contracts 803 and 804, Contract 821 did not terminate at the end of its natural term. Contract 821 was administratively terminated by PEP. According to the official letter No. PEP-DG-SSE-750-2017, PEP justified the administrative termination of Contract 821 on the following: (i) the failure of the contractors to comply with the written orders of the Works' Resident and (ii) the failure of the contractors to comply with other obligations arising of Contract 821, different from the previous obligation in which the termination was based.[34] With this understanding, if the grounds alleged by PEP did occurred, the administrative termination of Contract 821 is valid under Mexican Law.

62. In fact, all the grounds invoked by PEP are expressly based on clause 15.1 of Contract 821. Likewise, the DACS themselves acknowledge that the occurrence of a contractual cause for termination as well as the non-compliance of the obligations contained within the contract are valid and sufficient grounds for the administrative termination of the contract.[35]

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[32] The possibility of administratively terminating a contract based on the contractually agreed grounds is consistent with the provisions of Article 70 of the DACS, which expressly states that both the non-compliance of the obligations assumed in the contract and "any other [grounds] agreed upon in the contract" shall be sufficient grounds to justify Pemex or its subsidiaries to administratively terminate a contract.

[33] *See* Contract 821, clause 47.3, Jurisdiction. **C-0034-SPA**

[34] The non-compliance cited by PEP include non-compliance of clauses 2, 19, Exhibit DT-2 and Exhibit DT-6, as well as clause 48 and the related PACMA Exhibit.

63. In case of breach by the contractors and the subsequent termination of Contract 821, there is no reproachable conduct or one generating damage attributable to PEP. Therefore, PEP would not be bound to pay the damages –costs and expenses nor the damages earnings associated to the amount pending to be paid within the Execution Period– resulting from the termination of Contract 821.

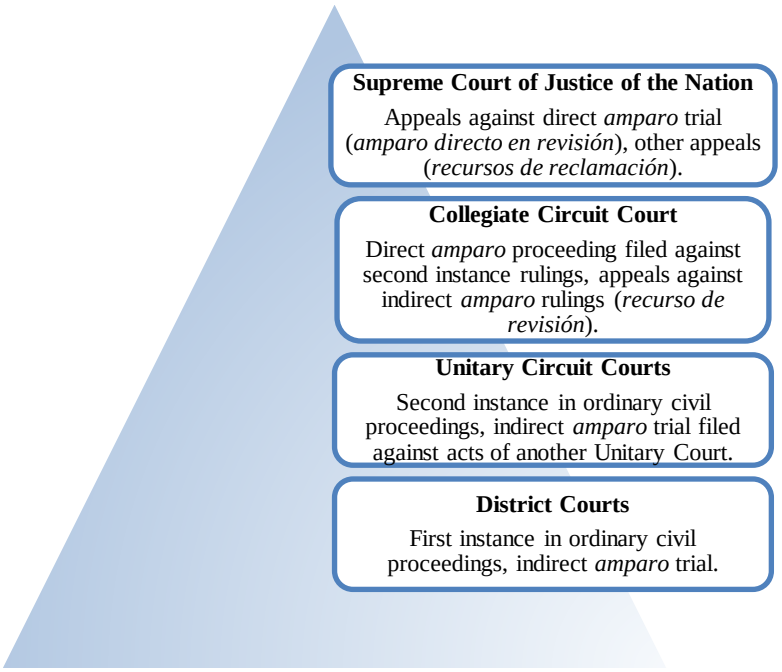
V. THEORETICAL FRAMEWORK OF CIVIL AND ADMINISTRATIVE TRIALS IN MEXICO

A. Ordinary civil trials

i. Organic composition

64. For better reference for the Arbitral Tribunal, below I have included a diagram summarizing the organic composition of the Federal Judicial Power and the claims or appeals heard by each court:

[35] *See* DACS, art. 79. **JAH-0005**



ii. First instance trial

65. In Mexico, civil controversies may be settled in federal or local jurisdiction. The choice of filing the claim in one or the other jurisdiction will depend on whether the parties expressly chose to abide to a particular jurisdiction –whether local or federal–, thus only the judges pertaining to such jurisdiction will be competent to hear the claim.[36]

66. The District Courts of each circuit[37] are the competent courts to hear claims filed in the ordinary civil proceeding within the federal jurisdiction. There is a computerized "turn" system that randomly assigns the claim to a District Court in the circuit in which it is filed. Once the claim is *assigned*, the judge may admit it, dismiss it, or warn the plaintiff in order to clarify, correct or complete the claim in case it is obscure or irregular.[38] The District

[36] *See* jurisprudence of the First Chamber of the SCJN with registry number 164576, *Concurrent Jurisdiction. If in the commercial contract the parties do not specify the jurisdiction of the court to whose competence they chose to abide, their right to resort to the jurisdictional power of either the federal or local court of their choice must be preserved.* **JAH-0013**

[37] This is the name given to the geographic area in which the courts of the Federal Judicial Power may exercise their jurisdiction. In Mexico, there are currently 32 circuits.

Court may dismiss the claim, among other things, for lack of competence to hear the matter.[39]

67. If the lawsuit is admitted, the District Court will order the "summoning (*emplazamiento*)", that is, the notification to the respondent of the existence of a claim against it. As of this notification, the term for the respondent to produce its answer to the claim begins.[40]

68. In the statement of defense, the respondent must respond to all the facts and must raise all the exceptions, both substantive and procedural, that it deems convinient.[41] The procedural defenses –which are aimed at challenging jurisdictional and procedural aspects– are known in legal doctrine as "of prior and special ruling (*de previo y especial pronunciamiento*)",[43] therefore, they are settled prior to the issuance of the final ruling and their main effect is to suspend the proceeding while they are ruled. The foregoing, given that they are not related with the merits of the case and may lead to the termination of the trial without the need for a substantive analysis of the controversy.

69. Once the statement of defense is produced, the evidentiary phase begins, in which all the evidence submitted within the respective statements is presented.[44] Once the evidentiary phase is concluded, the parties have the possibility of presenting closing statements[45] and subsequently, the judge will issue a final ruling[46] in which he awards or dismisses, in whole or in part, the claim raised.[47]

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38 *See* Federal Code of Civil Procedure ("CFPC"), article 325. **RZ-002**

39 *See* CFPC, article 14. **RZ-002**

40 *See* CFPC, article 327. **RZ-002**

41 *See* Ovalle, José, *Teoría General del Proceso*, 6th ed., Oxford, Mexico, p. 174, "By exception it is understood the subjective procedural right of the defendant to contradict or oppose the action or claim asserted by the plaintiff." **JAH-0014**

42 *Ibid.*, p. 174.

43 *See* CFPC, article 334. **RZ-002**

44 *See* CFPC, article 337. **RZ-002**

iii. Appeals

70. The parties may object the judge's resolutions through the appeal or reconsideration (*recurso de revocación*), depending on the nature of the ruling. The appeals are a mean to challenge both the resolutions issued by the judge within the proceedings as well as the final ruling. The main characteristic of the appeals is that they are filed and ruled within the same process, and they are classified depending on the nature of the rulings they intend to challenge.

71. Thus, in a civil trial the parties may file *appeals* or *reconsiderations*. The appeal may be filed against (i) the final ruling issued by the District Court that puts an end to the trial, and (ii) against the procedural orders –*i.e.*, the rulings issued within the process other than the final ruling, which do not end the trial– that are expressly provided for in the CFPC (Federal Code of Civil Procedure). For example, the CFPC establishes that an appeal may be filed against a procedural order dismissing the claim.[48]

72. The appeal must be filed before the District Court that issued the ruling within five days after it takes effect, in the case of rulings, or three days, in the case of procedural orders issued during the trials.[49] The District Court must refer the appeal to the court of appeal, this is, the Unitary Circuit Courts. [50]

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45 *See* CFPC, article 334. **RZ-002**
46 *See* CFPC, article 347. **RZ-002**
47 *See* CFPC, article 348. **RZ-002**
48 *Supra* §**V. A. ii.**
49 *See* CFPC, article 241. **RZ-002**

73. On the other hand, the reconsideration may be filed against those resolutions that, by exclusion, cannot be objected through an appeal and will be ruled by the same judge who issued the challenged ruling.[51] The reconsideration must be filed, at the latest, at following business day of the date in which the party was notified of the resolution.[52] Once the reconsideration is admitted, the counterparty will have a term of three business days to express its opinion on the matter and, subsequently, the District Court will resolve on it.[53]

iv. Motions

74. Additionally, during the course of the trial, the parties may file motions (*incidentes*). Motions are proceedings that are followed within the same process[54] to resolve accessory issues related to the main case.[55] The same District Court is in charge of hearing and solving the motions through an *interim* rulings (*sentencia interlocutoria)*.[56] If the purpose of the motion is to challenge an issue that must be settled before the issuance of the final ruling, then the main proceeding will be suspended until the motion is ruled.[57]

75. The proceeding for a motion is conducted in a similar manner to the main proceeding, as the counterparty has the opportunity to respond to the claim for which the motion was filed, as well as to submit evidence.[58] If the judge considers that such evidence is

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50 *See* CFPC, article 242. **RZ-002**
51 *See* CFPC, articles 227 and 231. **RZ-002**
52 *See* CFPC, article 228. **RZ-002**
53 *See* CFPC, article 229. **RZ-002**
54 Ovalle, José, *Teoría General del Proceso*, p. 308. **JAH-0014**
55 *See* CFPC, Article 358. **RZ-002**
56 Ovalle, José, *General Theory of Process*, p. 296. "[...] two types of judgments: interim, in which a motion is ruled on, and final, in which the merits of the case are solved." **JAH-0014**
57 *See* CFPC, article 359. **RZ-002**

necessary, then the evidentiary phase continues and the evidence is presented in a hearing before the judge,[59] during which the parties are allowed to present their closing arguments.[60] Subsequently, the judge must issue the ruling –an interim ruling– that solves the motion.[61]

v. Second instance trial

76. Once the District Court issues the final ruling solving the merits of the case and finalizing the first instance trial, the parties may file an appeal against the final ruling.[62] The appeal is ruled by a Unitary Court to which the appeal is assigned, and the sense of its ruling will be to confirm, revoke or modify the first instance ruling. The ruling issued by the Unitary Court is normally known as the second instance ruling and will replace the first instance ruling issued by the District Court.[63]

vi. Amparo claim

77. The Mexican legal system provides for the *amparo* claim. The *amparo* claim is a proceeding in which the constitutionality of any act of authority may be challenged. In accordance with the nature of the challenged acts, the *amparo* claim may be direct or indirect. The *indirect amparo* is filed against a procedural order or a ruling different from the final one that causes a damage impossible to repair.[64] If the indirect *amparo* is filed against the ruling of a District Court, then the *amparo* trial is heard and ruled by another District Court; if the

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58 *See* CFPC, article 360. **RZ-002**
59 *Idem.*
60 *See* CFPC, article 361. **RZ-002**
61 *Idem.*
62 *Supra* §**V. A. iii.**
63 *See* CFPC, article 258. **RZ-002**
64 *See Amparo* Act *(Ley de Amparo),* article 107, section II. **RZ-003**

amparo is filed against a decision of a Unitary Court, it will be ruled by another Unitary Court.[65] Differently, the *direct amparo* claim is filed against the final ruling and is solved by the Collegiate Circuit Courts.[66] The *amparo* claim must be filed within fifteen days from the day following the date in which the challenged act or ruling was notified to the party filing it –called the claimant (*quejoso*)–.[67]

78. The *amparo* proceeding allows the claimant to request an interim measure known as a *suspension*, whereby the judge or court orders that the effects of the challenged act of authority are suspended until the *amparo* trial and its means of challenge are definitely solved.[68] In order for the suspension to proceed, the *amparo* judge only needs to perform a *prima facie* analysis of the controversy presented before him.

79. In an indirect *amparo* proceeding, the parties have the opportunity to submit evidence presented at a hearing and to express concluding arguments. In this hearing, the District Court –in its capacity as *amparo* judge– issues a final ruling in which it determines whether or not to grant the *amparo* relief to the claimant against the challenged act. In the substantiation of the direct *amparo* trial, the parties only have the opportunity to express concluding arguments or file an adhesive *amparo* –if the party is a third party to the trial, but has an interest in the outcome and wants to strengthen the reasons that support the second instance ruling that was favorable to its interests–.[69]

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65 *See Amparo* Act, articles 36 and 38. **RZ-003**
66 *See Amparo* Act, article 170. **RZ-003**
67 *See Amparo* Act, article 182. **RZ-003**
68 *See Amparo* Act, article 125. **RZ-003**
69 *See Amparo* Act, article 181. **RZ-003**

80. The Collegiate Court solves the direct *amparo* trial through a ruling that is drafted by one of the three judges of the court, the draft is discussed in a session in which all the judges participate and in which they unanimously or by majority vote determine whether or not to grant the requested *amparo* relief.[70] In the event that the direct *amparo* ruling determines the modification or revocation of the ruling issued in the second instance, the Collegiate Court will establish the guidelines to be considered by the appellate court so that, with full jurisdiction, it issues a new ruling. This is usually known as "*amparo* for effects".

81. Once a final ruling is rendered in the *amparo* proceeding, the parties have the opportunity to file an appeal. In the case of indirect *amparo* proceedings, the appeal is heard by the Collegiate Circuit Courts. In the case of *direct amparo* proceedings, the appeal is an *exceptional* mean of challenge since it is only admitted when, in the opinion of the SCJN, the case is of exceptional interest in constitutional or human rights matters. The appeal is normally ruled by one of the two chambers of the SCJN, each composed of five justices, depending on the matter of the case.[71]

B. Administrative trials

i. Organic composition

82. For a better reference of the Arbitral Tribunal, the following graphic summarizes the organic composition of the TFJA and the instances followed in administrative trials:

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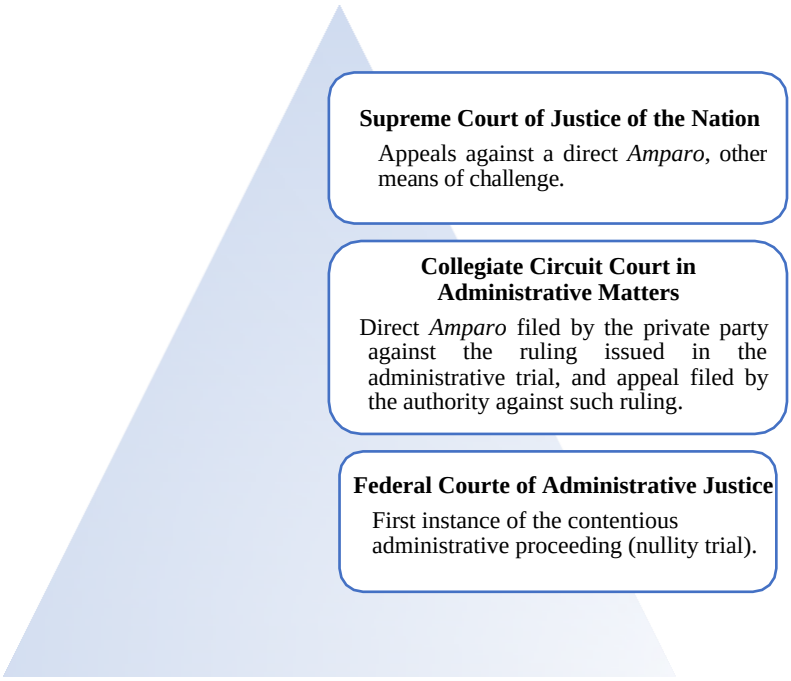
70 *See Amparo* Law, articles 184 to186. **RZ-003**

71 *See Amparo* Law, article 81 Section II. **RZ-003**



ii. First instance

83. The Federal Court of Administrative Justice[72] ("TFJA") is competent to hear claims filed against administrative final resolutions, acts and proceedings provided for in the Organic Law of the Federal Court of Administrative Justice.[73] Among the cases in which the TFJA holds jurisdiction are the resolutions, acts and procedures related to the interpretation and compliance of public contracts, public works, acquisitions, leasing and services entered into by the agencies and entities of the centralized and state-owned Federal Public Administration –as was Pemex before the Energy Reform–, the productive companies of the State, as well as those under the responsibility of the public entities.[74]

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72 Prior to the publication on July 18, 2016 of the Organic Law of the TFJA in the Official Gazette of the Federation, such court was called the Federal Court of Tax and Administrative Justice.

73 *See* Organic Law of the TFJA, article 3. **JAH-0015**

74 *See* Organic Law of the TFJA article 3, section VIII. **JAH-0015**

84. The claim requesting the annulment of the act, ruling, or procedure –commonly referred to as "claim for annulment (*demanda de nulidad*)"– must be filed before the TFJA within 30 days after, among other things, the notification of the challenged act has taken effect or it has begun to be effective.[75] The claim is randomly designated to a Regional Chamber of the TFJA based on territory, which will be in charge of processing the contentious claim and solving it.[76]

85. Once the claim is admitted, the authority that issued the challenged administrative act or ruling is notified to answer the claim within thirty days from the date the notification becomes effective.[77] In its answer to the claim, the respondent authority must file any prior and special ruling motion that may be asserted in relation to the claim, among which are: (i) lack of jurisdiction over the matter, (ii) the accumulation of claims, (iii) the annulment of notifications, and (iv) the recusal due to impediment. These motions suspend the proceeding while they are ruled by the same Regional Chamber.[78]

86. During the administrative trial, the parties have the opportunity to offer the evidence they deem necessary to prove their claims.[79] Once the evidence offered by the parties has been submitted and presented, the parties will have a period of five days to file concluding arguments and, thereafter, the proceeding will be called to an end –with the "closing of instruction"– and the Regional Chamber will proceed to issue a ruling.[80]

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75 *See* Federal Law of Contentious Administrative Proceedings ("LFPCA"), article 13**.**
76 *See* LFPCA, article 30. **RZ-004**
77 *See* LFPCA, article 19. **RZ-004**
78 *See* LFPCA, article 39. **RZ-004**
79 *See* LFPCA, article 40. **RZ-004**
80 *See* LFPCA, article 47. **RZ-004**

iii. Power of Attraction

87. The Plenary or the Sections of the TFJA have a power of *attraction*, which allows them to hear claims that have special characteristics. In order to exercise this power, it is required that these claims: (i) are considered of interest and transcendence due to the matter they correspond to, the merits of challenge or quantity, or (ii) if, in order to solve them, it is necessary to establish a new interpretation criteria.[81] The request to exercise the power of attraction must be filed by the Regional Chamber or the judge in charge of the case before the closing of the instruction.[82]

iv. Appeals

88. Within the administrative trial, the parties may file an appeal (*recurso de reclamación* and *recurso de revisión*) to object the resolutions of the Regional Chamber that solves the claim. The *reclamación* is admissible against the resolutions that (i) admit, dismiss or declare as not filed the claim, the answer, the extension of both or any evidence, (ii) decree or deny the dismissal of the claim before the closing of the instruction, and (iii) admit or reject the intervention of a third party.[83] The appeal is filed before the respective Chamber or Section within ten days following the date on which the notification of the objected resolution takes effect and is ruled by the same Chamber or Section.[84]

89. Differently, a *recurso de revisión* may only be filed by the respondent authority and proceeds, among other cases, against resolutions issued by the Superior Chamber Sections or Regional Chambers that decree or deny the early termination, or against the final ruling of the trial in which the annulment of the challenged act is determined.[85]

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81 *See* LFPCA, article 48. **RZ-004**
82 *Id.*
83 *See* LFPCA, article 59. **RZ-004**
84 *Id.*

The *recurso de revision* is heard by a Collegiate Circuit Court in the Plenary, Section or Regional Chamber of the TFJA that originally heard the claim. The *recurso de revisión* is heard by a Collegiate Circuit Court in the same seat as the Plenary, Section or Regional Chamber of the TFJA that originally ruled on the administrative trial. This appeal is filed before the authority that issued the ruling, within fifteen days following the date on which the respective notification becomes effective.[86] All parties that have intervened in the contentious-administrative trial must be notified of the appeal filed, so that they may appear before the collegiate court to defend their rights.

v. Amparo claim

90. While the respondent authorities have the right to appeal the final ruling through a *recurso de revisión*, the private party who was part of the administrative trial may also challenge the final ruling through a direct *amparo* claim.[87] A Collegiate Circuit Court in Administrative Subject Matters is competent to hear a direct *amparo* lawsuit. The *amparo* lawsuit must be filed by the claimant before the Regional Chamber or Section of the TFJA that issued the ruling, within fifteen days following the date on which the notification of the ruling becomes effective.[88] As in civil trials, the parties in the direct *amparo* trial may file an appeal before the Supreme Court of Justice of the Nation against the ruling that resolves that *amparo*; however, the admission of this review is subject to the extraordinary requirements established for such purpose.[89]

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85 *See* LFPCA, article 63. **RZ-004**
86 *Id.*
87 *Supra* §**V. A. iv.**
88 *See* LFPCA, article 63. **RZ-004**
89 *Supra* ¶81.

VI. CIVIL AND ADMINISTRATIVE CLAIMS ARISING FROM THE CONTRACTS ENTERED INTO BETWEEN PEP AND THE CLAIMANTS

A. Claims arising from Contract 803

i. Ordinary civil lawsuit 75/2015

91. On October 13, 2015, Bisell and MWS Management filed a claim against PEP in an ordinary civil proceeding before the District Courts of the State of Veracruz, in which they claimed the payment of, among others, the following remedies: (i) USD $13,736,540.15 for the daily cost of equipment that was available within the term of Contract 803 and was not used, (ii) USD $1,713,286.32 for expenses of available personnel within the term of Contract 803, (iii) USD $2,576,286.28 for profit from the unexercised amount of Contract 803, (iv) USD $146,335.08 for the cost of financing provided for in Exhibit G-1 of Contract 803, and (v) USD $237,062.06 for additional charges.[90] The claim was assigned to the Eleventh District Court in Veracruz ("11th JD" for its acronym in Spanish). Through an order issued on October 15, 2015, the 11th JD dismissed the lawsuit, considering that the proposed trial by the claimants could not proceed and that, instead, the claim should have been filed in the administrative jurisdiction.[91]

92. On November 20, 2015, Bisell and MWS Management filed an appeal against this order, alleging that the nature of the legal action brought against PEP was of a civil nature, and therefore the ordinary civil proceeding chosen was correct.[92] The appeal was filed to the Fourth Unitary Court of the Seventh Circuit ("4th TUC", for its acronym in Spanish), which on December 30, 2015 issued a ruling in which it ruled the appeal was

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90 Dismissal order dated October 15, 2015, ordinary civil trial 75/2015. **JAH-0016**
91 Dismissal order dated October 15, 2015, ordinary civil trial 75/2015. **JAH-0016**
92 First Appeal Ruling CP-803, pp. 6-7. **RZ-007**

grounded, revoking the dismissal order and ordering the admission of the civil in an ordinary civil proceeding.[93] In compliance with this ruling, on January 6, 2016, the 11th JD admitted the claim and ordered PEP to be summoned to the trial –notified of the claim filed against it– .[94] From the date of the notification, PEP had a period of 9 business days to answer the claim.[95] It should be noted that PEP had not appeared in the trial at any previous time, given its unawareness of the claim.

93. In its response, PEP opposed as a procedural exception (*excepción procesal*) the *lack of jurisdiction by declinatory* (*excepción de incompetencia por declinatoria*) of the 11th JD,[96] in which PEP essentially argued that: (i) since PEP was not aware of, nor participated in the ruling of the appeal by the 4th TUC –because it had not yet been notified of the claim– it had not yet been heard and defeated in court regarding the admissibility of the trial and the competence of the judge, (ii) any controversy arising from Contract 803 was of an administrative nature, which was why the competent court to hear of the claim was the TFJA, and (iii) the ruling derived from a conciliatory process carried out after the termination of Contract 803 and the severance payment record constituted administrative acts that revealed that the claim should have been filed before administrative courts.[97]

94. According to the CFPC, this exception had to be processed as a motion –that is, as an ancillary proceeding to the main trial–.[98] On January 22, 2016, the 11th JD admitted the motion, granted the claimants a period of three days to respond to PEP's arguments, and

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93 *Ibid.*, p. 14.

94 Admission order January 6, 2016, civil ordinary trial 75/2015. **JAH-0017**

95 *Id.*

96 Pursuant to article 34 of the CFPC, jurisdictional motions or exceptions may be promoted by *inhibitory* or *declinatory*. In the case of the latter, the dispute is ruled by the judge hearing the claim, *i.e.*, the judge himself determines whether he has jurisdiction to hear and resolve the first instance trial.

97 Motion of incompetence by declinatory filed by PEP. **JAH-0018**

98 *Supra* §**V. A. iv**.

ordered the suspension of the trial.[99] Although Bisell and MWS Management filed a reconsideration seeking to revoke the ruling of the 11th JD that admitted the motion and suspended the trial, on March 2, 2016 the Judge dismissed such reconsideration, so the motion continued in its process.[100]

95. The *incompetence* motion was ruled through the interim ruling issued on July 14, 2016, in which the 11th JD agreed with the arguments presented by PEP in the sense that the trial to solve the dispute was the administrative contentious proceeding and, based on the new scenario and evidence provided by PEP, it determined to declare itself incompetent to hear the claim.[101] With this ruling, the 11th JD terminated the ordinary civil trial and ordered that the file was sent to the Regional Chamber of the TFJA.

96. Bisell and MWS Management filed an appeal against the ruling dated July 14, 2016, which was assigned to the 4th TUC. However, the 4th TUC noticed that there were certain aspects in the ruling process in the motion proceeding that made it impossible for it to admit the appeal, so the file was returned to the 11th JD in order for it to order again the ruling of the motion proceedings.[102] On September 21, 2016, the 11th JD again issued the ruling that solved the incompetence motion and that reproduced in all its terms the ruling dated July 14, 2016.[103]

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99 Order dated January 22, 2016, ordinary civil trial 75/2015. **JAH-0019**
100 Interim ruling of March 2, 2016, civil ordinary trial 75/2015. **JAH-0020**
101 Interim ruling of July 14, 2016, civil ordinary t trial 75/2015. **JAH-0021**
102. Interim ruling of September 21, 2016, civil ordinary trial 75/2015, p. 3. **JAH-0022**
103. Interim ruling of September 21, 2016, civil ordinary trial 75/2015. **JAH-0022**

97. The claimants' appeal against this new ruling was admitted by the 4th TUC on October 18, 2016.[104] While this appeal was being processed, the ordinary civil trial remained suspended because the ruling had dismissed the claim in the proposed terms. On January 26, 2017, the 4th TUC determined that the appeal was grounded, thus revoking the interim ruling of September 21, 2016 in which the 11th JD declared itself incompetent to hear the claim.[105]

98. Against such ruling, PEP filed an indirect *amparo* claim –an extraordinary and constitutional trial–, which was heard by the First Unitary Court of the Seventh Circuit ("1st TUC"). In its *amparo* claim, Pemex requested the definitive suspension of the challenged act which, as it consisted in the ruling of the 4th TUC, implied that the ordinary civil trial would remain suspended.[106] Bisel and MWS could have objected the granting of the definitive suspension through an appeal, and thus reactivate the civil proceedings but, to the best of my knowledge, the Claimants refrained from filing such appeal.

99. Through the ruling issued on May 2, 2017, the 1st TUC considered that the admissibility of the trial should be determined based on the nature of the action sought –lack of payment– and not on the document on which the claim is based, therefore, it rejected PEP's arguments, denied the *amparo* and confirmed the ruling issued by the 4th TUC.[107] PEP filed an appeal against the *amparo* ruling, which was heard and ruled by the First Collegiate Court in Civil Subject Matters of the Seventh Circuit ("1st TCC").[108] During the substantiation of

104 *See* SISE 36/2016. **RZ-011**
105 *Amparo* Ruling CP-803, pp. 1 and 2. **RZ-008**
106 *See* SISE 4/2017. **RZ-012**
107 *Amparo* Ruling CP-803, p. 28. **RZ-008**
108 Ruling on Appeal CP-803. **RZ-013**

this appeal, the definitive suspension remained *in effect*, that is to say, the ordinary civil lawsuit remained suspended.

100. Finally, on May 10, 2018, the 1st TCC dismissed the appeal filed by PEP, thus confirming the denial of the *amparo*.[109] With this ruling, it was firmly and definitively determined that the 11th JD was the competent judge to hear Bisell and MWS Management's claim and that it should be processed in the ordinary civil trial. As a result, on June 11, 2018, the 11th JD ordered the resumption of the trial, as the definitive suspension granted to PEP in the *amparo* trial ceased in its effects.

101. It should be noted that, at the time of this proceeding, the SCJN had not yet confirmed that all disputes arising from an administrative contract –i.*e*., lack of payment– should be settled through administrative proceedings, regardless of the nature or type of action claimed. At this time, there were isolated discrepant criteria that still did not determined definitively and mandatorily the appropriate proceeding for such purpose.

102. When the trial was resumed before the 11th JD, it was confirmed that PEP timely answered the claim, the judge gave the claimants the opportunity to reply to PEP's answer and opened the trial to the evidentiary phase.[110] Subsequently, the claimants filed an extension to their initial claim, in which they claimed as additional remedies: (i) the payment of USD$21,449,986.20 as the unexercised amount under Contract 803 –*i.e.*, the difference between the amount exercised and the final amount agreed in the contract–, and (ii) the non-recoverable expenses derived from the suspension of 6 pieces of equipment.[111] The extension was admitted on August 22, 2018 by the 11th JD, who in turn ordered that PEP was

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109 *Id.*

110 *See* SISE 75/2015, agreement of August 3, 2018. **RZ-009**

111 Extension of claim filed on August 19, 2018, civil ordinary lawsuit 75/2015. **JAH-0023**

summoned to answer the extension of the claim.

103. The parties offered their respective evidence and the trial continued in the evidentiary phase, particularly in the disclosure of the evidence. I have identified that the development of the expert evidence in engineering matters was prolonged until December 2019, since the 11th JD determined that the appointment of a *third party* expert in engineering was necessary due to the disparity of what was sustained by the parties' experts.[112] This practice is common in expert evidence involving a higher level of technical and specialized knowledge, given that the Mexican law provides for the power of the judges to invoke this figure in those cases in which the opinions rendered by the experts appointed by the parties are essentially contradictory.[113]

104. From the summary of the file that is available for public access, it is clear that the claimants well as PEP challenged several orders issued during the evidence phase.[114] Particularly, in December 2019 PEP filed an appeal against a determination of the 11th JD that dismissed some documentary evidence previously admitted, which suspended the main proceeding until the appeal was ruled.[115] The suspension of the proceeding prevented the evidentiary hearing scheduled for January 17, 2020 to be carried out.[116]

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112 *See* SISE 75/2015, for example, agreement of November 11, 2019. **RZ-009**

113 CFPC, article 152, "Once the expert opinions have been rendered, within three days following the last one submitted, the court shall examine them, and if they disagree on any or some of the essential points on which the expert opinion must be based, it shall order, *ex officio*, that, by personal notification, they be made known to the third party expert, delivering copies of them to the third party expert, and preventing him/she from rendering his/her own within the term indicated by the court. If the term fixed is not sufficient, the court may agree, at the request of the expert, to extend it. The third expert is not obliged to adopt any of the opinions of the other experts." **RZ-002**

114 *See* SISE 75/2015. **RZ-009**

115 *See* SISE 75/2015, agreement of January 9, 2020. **RZ-009**

105. Subsequently, due to the pandemic caused by the SARS-CoV-2 virus –known as COVID-19–, the Federal Judicial Power ("PJF" for its acronym in Spanish) suspended all of its duties, halting the continuation of procedural deadlines and trials heard by all courts and tribunals as of March 18, 2020.[117] In September 2020, the 11th JD resumed proceedings, following the lifting of the pandemic-related general suspension of the PJF's operation.[118] Although Bisell and MWS Management filed a motion withdrawing their claim dated March 18, 2021, the 11th JD ordered through a ruling dated March 22, 2021 that their representative had to appear in Court to ratify the content of said withdrawal, a matter which, to the best of my knowledge, was never undertaken. Therefore, the withdrawal was deemed not to have been filed.[119]

106. As a result of this circumstance, Bisell and MWS Management ceased to move forward with the proceeding, since there was no subsequent petition, brief or motion to continue the trial. This resulted that, in October 2021, the 11th JD decreed the expiration of the instance (*caducidad de la instancia*), which implies that, in the absence of requests or *substantive* pleadings from the parties, the judge extinguishes the process in advance, so that all procedural acts that had been carried out are left without effect.[120]

116 *See* SISE 75/2015, agreement of January 17, 2020. **RZ-009**
117 General Agreement 04/2020 of the Plenary of the Federal Judiciary Council ("CJF"). **JAH-0024**
118 *See* SISE 75/2015, agreement of September 28, 2020. **RZ-009**
119 Brief of the plaintiffs and agreement of March 22, 2021, ordinary civil lawsuit 75/2015. **JAH-0025**
120 Ovalle, José, *General Theory of Process*, p. 289. **JAH-0014.**

B. Trials arising from Contract 804

i. Ordinary civil trial 120/2015

107. On December 8, 2015, Bisell and MWS Management filed a claim against PEP in an ordinary civil trial before the District Courts in the State of Veracruz, in which they claimed the payment of USD $22,000,000.00 as the minimum amount not exercised under Contract 804, together with the payment of other ancillary concepts.[121] This claim was also assigned to the 11th JD, who determined to dismiss it through the ruling dated December 9, 2015.[122] Essentially, the 11th JD considered that an ordinary civil trial was not the adequate forum for the plaintiffs' claims, and that the claim should have been filed before an administrative court, by virtue of the nature and object of Contract 804.[123]

108. Bisell and MWS Management filed an appeal against the ruling dated December 9, 2015, in which they argued –as in the ordinary civil trial 75/2015[124]– that the requirements needed to consider that the suit ought to be filed before an administrative court were not met and that the action brought against PEP was of a civil nature, so that the proposed ordinary civil proceeding was appropriate.[125] On January 7, 2016, the appeal was admitted by the Third Unitary Court of the Seventh Circuit ("3rd TUC"), and on February 12, 2016, the 3rd TUC issued a ruling in which it denied the appeal and confirmed the dismissal of the claim on the grounds that the claim should have been brought before an administrative court instead of a civil one (contrary to what happened in the civil proceeding related to Contract 803).[126]

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121 Dismissal order dated December 9, 2015, civil ordinary trial 120/2015, p. 12. **RZ-017.**
122 Dismissal order dated December 9, 2015, civil ordinary trial 120/2015. **RZ-017**
123 *Id.*
124 *Supra* §**VI. A. i.**
125 Appeal Ruling CP-804. **RZ-018**
126 Appeal Ruling CP-804. **RZ-018**

109. On March 2016, the plaintiffs filed an *amparo* against the second instance ruling, which was assigned to the 1st TCC. The Court denied the *amparo* and, therefore, confirmed that the civil action was not appropriate through the ruling issued on October 7, 2016.[127] In essence, the 1st TCC highlighted that Bisell and MWS Management had *deficiently* appealed the ruling of the 3rd TUC, given that their arguments focused on establishing the competence of the 11th JD, instead of combatting the considerations set forth by the Unitary Court regarding the procedural validity. With this decision, the dismissal of the lawsuit arising from Contract 804 became *res judicata*.

ii. Administrative trial 5403/19-17-06-5

110. In March 2019, Bisell and MWS Management filed a CLAIM before the administrative courts, which was referred to the Sixth Metropolitan Regional Chamber of the TFJA ("Sixth Chamber").[128] The claimants based their claim on the following: (i) PEP's breach of Contract 804 by virtue of the fact that the minimum agreed amount was not exercised, and (ii) the record of the conciliation hearing held within the conciliation proceeding number UR-DPEP-R-CONC-23/2018.129. Among the respondent authorities, Bisell and MWS Management named the Ministry of Public Administration (*Secretaría de la Función Pública*), the Responsibilities Unit of Pemex, the Responsibilities Unit in PEP, the General Director of Pemex, and the Director of PEP.

111. On March 11, 2019, the Sixth Chamber dismissed the lawsuit for being notoriously frivolous.[130] The claimants filed a complaint appeal against this dismissal, which was partially founded, thus, the claim was only admitted in relation to one

127 Amparo Ruling CP-804. **RZ-016**
128 Initial statement of claim, administrative lawsuit 5403/19-17-06-5. **JAH-0026**
129 *Id.*
130 Order dated January 2, 2020. **RZ-021**

the claims, this is, the breach of Contract 804.[131] The lawsuit was admitted in these terms on October 1, 2019, so the Sixth Chamber ordered to summon the Responsibilities Unit of PEP as the defendant authority.[132]

112. Against the court's decree admitting the lawsuit, PEP's Responsibilities Unit filed an appeal (*recurso de relamación*) challenging its incorporation to the lawsuit as defendant authority, given it had not participated or intervened in Contract 804. Although on February 4, 2020 PEP's Responsibilities Unit answered the lawsuit, the Sixth Chamber determined that it would not rule on such answer until a ruling on the recourse filed against the admission of the lawsuit was issued.[133]

113. The Sixth Chamber found the recourse to be partially grounded as per its ruling dated August 20, 2020, as it considered that the defendant authority could not be the Responsibilities Area of the Delegation of the Responsibilities Unit in PEP since the latter did not enter into Contract 804, therefore, the defendant authority should be PEP instead. The Sixth Chamber determined to partially revoke the decree dated October 1, 2019 and to issue another agreement in which PEP was considered the defendant authority.

114. In compliance with the foregoing, on December 1, 2020, the Sixth Chamber admitted the claim against PEP and admitted the evidence offered by Bisell and MWS Management along with its initial brief. In March 2021, after being summoned, PEP filed another recourse against such decree, arguing that the admission of the record of the conciliatory proceeding number UR-DPEP-R-CONC-23/2018 had been illegal.[134]

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131 Order dated July 2, 2019. **RZ-019**. Order dated October 1, 2019. **RZ-020**

132 *Id.*

133 Order dated February 4, 2020. **RZ-022**.

As mentioned,[135] this type of recourse is admissible when any evidence filed along with lawsuit is admitted or dismissed. The appeal was granted in December 2021, as the Sixth Chamber did not admit the claim regarding the record issued during the conciliatory proceeding –the objection to the record was dismissed–, therefore it was not necessary to order PEP to submit the record derived thereof.[136]

115. On February 2022, the Sixth Chamber admitted PEP's answer and the expert evidence that accompanied it and considered PEP's request for the two records to have been complied with.[137] Although in the expert opinion on Mexican law dated June 8, 2022 submitted by the Claimants (the "Zamora-Amézquita Report") they mentioned that the Claimants filed their withdrawal from the administrative lawsuit in March 2021, this date does not coincide with their own narrative nor with the lawsuit records to which the undersigned has had access to.[138] According to the TFJA's Electronic Bulletin, the dismissal of the administrative lawsuit was filed by Bisell and MWS Management on June 3, 2022 [139] and was ratified on June 14, 2022.

134 Order dated August 18, 2021. **RZ-024.**
135 *Supra* §**V. B. iv.**
136 Order dated December 2, 2021. **RZ-025**
137 Order dated February 17, 2022, administrative trial 5403/19-17-06-5. **JAH-0027**
138 Zamora-Amézquita Report, ¶101.
139 TFJA Electronic Bulletin, order dated July 13, 2022. **JAH-0028**

C. Lawsuits arising from Contract 821

i. Ordinary civil trial 200/2016

116. On April 29, 2016, Finley, Drake-Mesa and Drake-Finley filed a lawsuit through an ordinary civil proceedings against PEP, derived from disputes arising in connection with Contract 821. In this lawsuit, the plaintiffs claimed, among others: (i) the payment of USD $120,856,548.84 for the minimum amount not exercised under Contract 821, and (ii) the payment of the non-recoverable expenses from the work suspensions occurred during the execution of Contract 821.[140] The lawsuit was assigned to the Eighth District Court in Civil Subject Matters in Mexico City ("8th JD" for its acronym in Spanish), that admitted the lawsuit on May 3, 2016 and ordered the summons of PEP.[141]

117. On July 4, 2016, PEP filed its answer, and in September of the same year, the 8th JD admitted the evidence submitted by the parties.[142] Subsequently, on November 23, 2016, Finley, Drake-Mesa and Drake-Finley filed an extension to their claim, in which they essentially claimed the payment of additional concepts as damages derived from PEP's default of Contract 821.[143] The extended claim was answered by Pemex on December 12, 2016.[144]

118. Once the evidentiary phase of the lawsuit was concluded and the hearing was held, the 8th JD issued a final ruling dated November 8, 2017.[145] In this ruling, the 8th JD found it lacked jurisdiction to hear the lawsuit, as pursuant to clause 47 of Contract 821,[146] the parties

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140 First *Amparo* Ruling CP-821, pp. 3-11. **RZ-0031**
141 *See* SISE 200/2016. **JAH-0029**
142 *See* SISE 200/2016. **JAH-0029**
143 Extension of claim filed on November 23, 2016, civil ordinary trial 200/2016. **JAH-0030**
144 *See* SISE 200/2016. **JAH-0029**
145 Ruling of the District Court. **RZ-026**

agreed to submit any controversy arising from the interpretation or execution of the contract to arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce, and therefore the judge concluded that an arbitral tribunla was the only competent authority to hear the dispute and left the rights of the plaintiffs unhindered to assert them in the aforementioned instance.[147]

119. Dissatisfied with this ruling, both parties filed an appeal. The appeals were referred to the Third Unitary Court in Civil, Administrative Matters and Specialized in Antitrust, Broadcasting and Telecommunications of the First Circuit ("3rd TUMCA").[148] On February 6, 2018, due to the workload of the 3rd TUMCA, the appeals´ files were referred to the Auxiliary Unitary Court in Acapulco ("Auxiliary Court") for the purpose of ruling on the appeals.[149]

120. It is common practice for federal courts-particularly those belonging to the first circuit (Mexico City)-to refer some cases to the auxiliary courts so that they may be the ones to draft and issue the necessary rulings in order to alleviate workloads and be more expeditious. Given that the number of cases ruled by a court such as the 3rd TUMCA is excessive, as such court is responsible for hearing controversies arising from more than two different subject matters (civil, administrative, antitrust, broadcasting and telecommunications), the Federal Judiciary Council ("CJF") even ordered the creation of these

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146 Contract 821, clause 47.2, Arbitration, "All disagreements, discrepancies, disputes or controversies arising out of or relating to the interpretation or execution of this Contract, which have not been ruled by any of the mechanisms provided for in the Contract, shall be finally settled by arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce in force on the date of filing of the request for arbitration, by three arbitrators appointed in accordance with said Rules of Arbitration." **C-0034-SPA**

147 Ruling of the District Court. **RZ-026**

148 *See* SISE 898/2017. **RZ-028**

149 *See* SISE 898/2017, order dated February 6, 2018. **RZ-028**

auxiliary courts whose purpose is to cooperate in rendering the rulings of the pending lawsuits filed before unitary courts.[150]

121. On April 19, 2018, the Auxiliary Court issued a final ruling of second instance, in which it confirmed the ruling of the 8th jd. As a consequence of the foregoing, both parties filed *amparo* lawsuits against such second instance rulings. The *amparo* claims were admitted on June 7, 2018 by the Tenth Collegiate Court in Civil Subject Matters of the First Circuit (the "10th TCC").[151]

122. The 10th TCC ruled the *amparo* claims in a public session held on February 8, 2019, and determined to grant the *amparo* to Finley, Drake-Mesa and Drake-Finley.[152] In consideration of the 10th TCC, despite the existence of the arbitration agreement in Contract 821, PEP tacitly consented to the jurisdiction of the 8th jd –and, in general, of the Mexican courts–, since it failed to request the referral to arbitration in its first pleading in the lawsuit, i.e., in its answer to the suit.[153] Therefore, by means of the *amparo* ruling, the 10th TCC ordered the 3rd TUMCA to revoke the second instance ruling and, in its place, to issue a new decision in which it would decide on the controversy anew under the premise that PEP effectively waived the arbitration, that is to say, that the 8th Circuit did have jurisdiction to hear the plaintiffs' claim.[154]

150 General Agreement 20/2009 of the CJF Plenary. **JAH-0031**
151 *See* SISE 898/2017. **RZ-028**
152 First *Amparo* Ruling CP-821. **RZ-031**
153 First *Amparo* Ruling CP-821. **RZ-031**
154 First *Amparo* Ruling CP-821. **RZ-031**

123. On April 2, 2019, the 3rd TUMCA –in compliance with the order of the 10th TCC in the direct *amparo* lawsuit– revoked the previous second instance ruling and issued a new one in which, based on the premise that it had jurisdiction to hear the lawsuit, it evaluated the evidence that had already been presented by the 8th TD and ruled on the merits.[155] In this new ruling, the Court dismissed plaintiff's claims, since it considered that PEP was not obliged to exercise the minimum budget foreseen in Contract 821, and therefore the plaintiffs did not prove their action.[156]

124. Although Finley, Drake-Mesa and Drake-Finley had the opportunity to challenge this new second instance ruling through a new *amparo* lawsuit, the plaintiffs refrained from doing so. Unlike the plaintiffs, PEP did file an *amparo* action against the ruling, given that the 3rd TUMCA failed to order the plaintiffs to pay for the legal fees.[157] Therefore, the substantive issues ruled in such ruling and, particularly, PEP's acquittal of all the claims became *res judicata* due to plaintiffs' refraining from challenging such rulling through an *amparo*. The second *amparo* lawsuit –related to legal fees– was also heard and ruled by the 10th TCC through the ruling dated August 22, 2019, in which the *amparo* was granted to PEP to the effect that the 3rd TUMCA would analyze the merits of the award of costs under the guidelines imposed by the Collegiate Court.[158]

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155 Ruling of April 2, 2019, issued in file 898/2017. **JAH-0032**

156 Ruling of April 2, 2019, issued in file 898/2017. **JAH-0032**

157 CFPC, Article 7, "The losing party must reimburse the opposing party for the costs of the proceeding. A party is deemed to lose when the court accepts, in whole or in part, the claims of the opposing party. If two parties lose reciprocally, the court may exempt them from the obligation imposed by the first paragraph, in whole or in part; it may impose a partial reimbursement against one of them, according to the reciprocal proportions of the losses. The costs of the proceedings consist of the sum which, in the opinion of the court and in accordance with the tariff provisions, the successful party should or ought to have paid, excluding the expense of all acts and forms of defense deemed superfluous. Any useless expense is to be borne by the party who has caused it, whether he wins or loses the lawsuit." **RZ-002** Second *Amparo* Ruling CP-821. **RZ-032**

158 Second *Amparo* Ruling CP-821. **RZ-032**

125. In compliance with this ruling, on September 9, 2019, the 3rd TUMCA issued a third second instance ruling in which it yet again acquitted the plaintiffs from paying any legal fees. Both PEP and the plaintiffs filed their respective *amparo* claims; however, the claim of Finley, Drake-Mesa and Drake-Finley was filed out of time –outside the 15 business day period provided for this purpose by law– and was therefore dismissed outright.[159] By this time, the ruling of the merits had become final and binding due to the failure of the attorneys for Finley, Drake-Mesa and Drake-Finley to challenge such ruling.

126. The 10th TCC again granted *the amparo* to PEP to the effect that the 3rd TUMCA rule on the issues related to the legal fees of the proceeding.[160] It was only in the fourth second instance ruling issued by the 3rd TUMCA –fifth second instance ruling of the proceeding– that the plaintiffs were finally ordered to pay PEP the legal fees associated to the proceedings.[161]

127. Consequently, the ordinary civil lawsuit 200/2016 derived from Contract 821 concluded by *res judicata* resolutions ordering: (i) the acquittal of PEP of all of Finley's, Drake-Mesa's and Drake-Finley's claims, and (ii) payment in favor of PEP of the legal fees associated to the proceedings. The ruling acquitting PEP became final and binding –i.e., it was not subject to appeal– due to the failure of the plaintiffs to file a timely and proper challenge against the second instance ruling, despite the fact that they had the opportunity to do so.

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159 SISE file 898/2017, order dated November 6, 2019. **RZ-028**. SISE 875/2019, order dated November 13 of 2019. **RZ-034**

160 Third *Amparo* Ruling. **RZ-035**

161 Fourth Ruling of the Court of Appeals. **RZ-033**

ii. Administrative trial 20356/17-17-12-2

128. On August 28, 2017, Pemex issued Ruling no. PEP-DGSSE-759-2017 by which Contract 821 was terminated.[162] Against this ruling, on September 4, 2017 Finley, Drake-Mesa and Drake-Finley filed an administrative lawsuit before the TFJA seeking to annul PEP's ruling, which was assigned and admitted by the Twelfth Metropolitan Regional Chamber ("Twelfth Second Chamber") on September 5, 2017.[163] On that same date, the Twelfth Second Chamber ordered the summons of PEP to the lawsuit as defendant authority, and admitted various evidence submitted by the plaintiffs.

129. On October 3, 2017, the judges of the Twelfth Chamber requested the Superior Chamber of the TFJA ("Superior Chamber") to exercise its power of attraction due to the quantum of the case, since it exceeded the amount of five thousand times the minimum wage.[164] PEP filed its response to the lawsuit on November 10, 2017.[165]

130. On November 16, 2017, the Superior Chamber informed the Twelfth Chamber that it would exercise its power of attraction.[166] As I understand it, this phase took several months since the disclosure of the expert evidence on cost engineering offered by the plaintiffs involved the appointment of a third party expert in discord, by virtue of the contradictions between the opinions rendered by the parties' experts.[167] In June 2018, the parties filed their respective pleadings and the Superior Chamber finalized the parties' participation in the proceedings.[168]

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162 *Supra* §**IV. C. ii.**
163 Admission order dated September 5 of 2017, administrative trial 20356/17-17-12-2. **JAH-0033**
164 *Supra* §**V. B. iii.**
165 Ruling of the Administrative Court CP-821. **RZ-039**
166 Ruling of the Administrative Court CP-821. **RZ-039**
167 Ruling of the Administrative Court CP-821. **RZ-039**
168 Ruling of the Administrative Court CP-821. **RZ-039**

131. The Superior Chamber issued a final ruling on October 4, 2018, in which it dismissed the plaintiffs' claims and, therefore, upheld the validity and legality of the administrative ruling that terminated Contract 821.[169] Finley, Drake-Mesa and Drake-Finley, dissatisfied with this ruling, filed a direct *amparo* lawsuit on January 18, 2019.[170]

132. The *amparo* lawsuit was assigned to the Fourteenth Collegiate Court in Administrative Subject Matters of the First Circuit ("14th TCC"). In March 2019, the lawsuit was assigned to the magistrate in charge of making a draft ruling that would then be voted by the other magistrates.[171] Finally, the 14th TCC ruled through a session held on January 30 of 2020 to deny the *amparo*, since it considered that their arguments, in addition to being novel, did not address the considerations set forth by the Superior Chamber in the challenged ruling.[172]

133. Although the plaintiffs alleged that the ruling of the Superior Chamber failed to interpret various articles of NAFTA in accordance with the *pro homine* principle, the 14th TCC determined that these principles only apply in relation to international human rights treaties, and therefore were not applicable to the interpretation of NAFTA, since the latter only provides for rights and prerogatives of a commercial nature.[173] Consequently, the Collegiate Court concluded that the NAFTA articles cited actually establish rules of treatment in trade or investment matters, which have not been contemplated or hierarchized at the level of human rights.[174]

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169 Ruling of the Administrative Court CP-821. **RZ-039**
170 *Supra* §**V. B. v.** Ruling dated January 30 of 2020. **RZ-040**
171 *See* SISE 74/2019. **RZ-043**
172 Ruling dated January 30 of 2020. **RZ-040**
173 Ruling dated January 30 of 2020, pp. 30-32. **RZ-040**
174 *Id.*

134. The Claimants filed an appeal for review before the Mexican Supreme Court of Justice against the final ruling of the Fourteenth Circuit Court of Appeals.[175] In this appeal for review, the Claimants reiterated that, in their opinion, the Superior Chamber should have determined that the rescission of Contract 821 was illegal because it violated to their detriment certain articles of NAFTA, which were applicable to them as foreign companies that made investments in Mexican territory. According to the Claimants, under a *pro homine* (or more favorable) interpretation of NAFTA in their favor as investors, the Superior Chamber would have concluded that PEP's actions had been illegal. On March 17, 2020, the Court dismissed the motion for review, as it did not comply with the procedural requirements of admission established for these cases.[176] The Claimants did not object the dismissal of the motion for review through the recourse of claim provided in Article 104 of the *Amparo* Law; thus, consenting to the dismissal of March 17, 2020.

VII. RESPONSE TO SECTION ENTITLED "IRREGULARITIES OF MEXICAN AUTHORITIES"

135. After analyzing the judicial proceedings related to the Contracts, I find that in general they were all carried out and resolved by the different judicial authorities that intervened in an ordinary manner, according to the complexity of the cases. It is important to point out that, in the opinion of the undersigned, the parties effectively exercised their procedural rights through the promotion of the various legal recourses at their disposal. The judicial authorities were obliged to resolve each one of the appeals and means of objection presented throughout the judicial proceedings. The undersigned did not notice any circumstance in which any of the parties was denied the use of these available recourses.

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175 *Supra* ¶81.

176 *See* SISE 74/2019, order dated June 7 of 2021. **RZ-043**

136. Moreover, the undersigned does not notice that there have been delays that are not accompanied by a reasonable explanation, nor decisions of the authorities that are atypical or egregiously erroneous. What happened in the proceedings is in accordance with the established judicial practice and it seems to me contrary to ordinary litigation practice to categorize the issues referred to in the Zamora-Amézquita Report as atypical and even unprecedented. Notwithstanding the foregoing, in the following sections we will present a concrete response to the most relevant alleged violations or irregularities referred in the Zamora-Amézquita Report.

A. Alleged excessive delays throughout the trials

137. In consideration of what has been analyzed, the duration of the civil and administrative lawsuits filed by the Claimants was not excessive, extraordinary or unusual.[177] On the contrary, these proceedings were conducted in an ordinary time frame according to their nature and complexity, as well as the workload faced by the Mexican courts, in addition to a pandemic caused by COVID-19.

138. Mexican courts have found that the time periods established by law for the processing of a lawsuit do not always correspond to reality and this does not constitute a violation of due process.[178] Mexican courts have ruled that delays in the proceedings are justified by the complexity of the matter, the procedural activity of the interested party, the conduct of the judicial authorities (*i.e.*, excessive workload), and the

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177 Zamora-Amézquita Report, ¶177.

178 *See* jurisprudence of the Third Collegiate Court in Labor Matters of the Third Circuit with registry number 2013301, *Procedural delay. Scope of the concepts "open delay of the proceeding" or "total stoppage of the proceeding", as an exception to the rule of inadmissibility of the indirect amparo, established in article 107, section v, of the law of the matter*. **JAH-0034**

legal situation of the person involved in the process is affected.[179] In this sense, the generalized experience in Mexico is that the processes before the courts and tribunals are not as expeditious as any litigant would like them to be.[180]

139. In my professional experience, litigating mainly in the first circuit (Mexico City), which concentrates 20.3% of the total number of judges and magistrates assigned to the Federal Judicial Branch in Mexico,[181] the processing of a lawsuit, considering only three instances, in average lasts 36 months. Of course, this term is subject to several factors that may influence its extension, as I have even participated in commercial *executive* lawsuits that have taken longer than the above mentioned. In my opinion, there are several factors that influence the length of lawsuits in Mexico.

140. First, the length of proceedings is influenced by the composition of the judiciary. For example, in comparison to the international average of 17 judges per 100,000 inhabitants, Mexico has only 2.17.[182] Moreover, the organic division of the courts among the circuits is *uneven* because, unlike other circuits, in the Seventh Circuit (which corresponds to Veracruz) –and where some of the lawsuits initiated by the Claimants were processed– the District Courts and the Unitary Circuit Courts do not specialize in a single subject matter, which implies that the same court gets to hear administrative, civil, criminal and labor matters, without exception.

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179 *See* thesis of the Fourth Collegiate Court in Administrative Matters of the First Circuit with registry number 2002350, *Reasonable term to resolve. Concept and elements that constitute it under the perspective of international human rights law*. **JAH-0035**

180 Ramos, Irma, Herrera, José Carlos, Cortés, Francisco, "The human right to an expeditious, prompt, complete, free and impartial justice", *Fundamental Rights under Debate*, 2018, State Human Rights Commission Jalisco, p. 55. **JAH-0036.**

181 National Census of Federal Justice Administration 2021, INEGI, July 1, 2021. **JAH-0037**

182 Le Clercq, Juan Antonio, Rodríguez, Gerardo, *Global Impunity Index 2020*, UDLAP. At the end of 2020, only 4,783 magistrates and judges were reported in federal courts for the entire federation (32 circuits). Of this number, 4,188 (87.6%) were assigned to first instance courts and 595 (12.4%) to second instance courts. **JAH-0038**

141. This has contributed to the excessive workload faced by the federal courts in Mexico. In 2016 alone, 21,601 (twenty-one thousand six hundred and one) matters were admitted to the 17 (seventeen) District Courts in the seventh circuit, while in the same period 1,427 matters were admitted to the 4 unitary courts of the same circuit.[183] Twenty-seven percent of the cases filed before the District Courts were civil matters.[184] Therefore, at least 5,000 lawsuits were processed that year, which, like the proceedings initiated by the Claimants, involved several phases and procedural acts.

142. Second, the term of the proceedings is also influenced by the ruling of the recourses available to the parties throughout a trial, which sometimes even suspend the main proceeding, which leads to a prolongation of the procedure. Those recourses that must be ruled by a higher judicial body (*i.e.,* the Unitary Courts and the Collegiate Courts) tend to generate more delays, because their ruling involves several prior steps such as the transfer of the file from one court to another, the confirmation that the essential formalities have been complied with, such as the due notification to the parties involved, and the prior study of the complete file. Furthermore, the scope of competence of these bodies is not limited to hearing a single objection proceeding.[185]

143. Third, four of the five proceedings initiated by the Claimants were still ongoing at the time of the COVID-19 pandemic, forcing all judicial authorities to suspend activities.[186]

183 2016 Statistical Annex for the Seventh Circuit. **JAH-0039**

184 *Id.*

185 For example, the Unitary Courts function as courts of second instance in federal lawsuits and are also competent to resolve indirect appeals against acts of authority issued by a different unitary circuit court.

This led to a halt in the processing of all lawsuits not identified as urgent for more than 5 months, until the courts and tribunals were able to resume their activities.[187] Proceedings even faced delays after the general suspension was lifted, as the courts had to modify their modus operandi, which, until before the pandemic, operated entirely on a face-to-face basis.

144. All these factors, together with the complexity of the existing disputes between PEP and the Claimants and the ongoing discussion on the appropriate remedy for claims of this nature, contributed to the lengthy term of the civil and administrative trials relating to the Contracts. However, I do not consider that their term was extraordinary or unjustified, since in each case there are sufficient reasons why their processing was longer than expected.

i. Duration of the ordinary civil trial 75/2015 arising from Contract 803

145. From the analysis of evidence available to me,[188] the delay in this trial was mainly due to the means of objection and recourses filed by the parties. In particular, PEP's motion regarding the court's lack of jurisdiction suspended the proceedings until it was ruled in the last instance by the 1st TCC.[189] The substantiation of this motion was fully legal; I did not identify any atypical or improper conduct by the relevant courts, since Mexican law allows this type of motions to suspend the main proceedings as it pertains to an essential element of the proceeding –jurisdiction of the judge– which requires a prior and special pronouncement. Crucially, the Claimants did not challenge the stay of proceedings, despite the existence of an appeal available to them to do so.[190]

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186 General Agreement 04/2020 issued by the CJF Plenary. Pursuant to Article 6 of said General Agreement, the matters to be processed under an *urgent* mode would be those, for example, related to medical care by the third health echelon (hospitalization), segregation and torture. **JAH-0024**

187 *Id.*

188 *Supra* §**VI. A. i**.

189 *Supra* §¶¶96-98.

146. Generally, there were several particularities during the first instance of the trial that delayed its processing, but I do not consider them to be violations of the Claimants' right to prompt justice, since these are ordinary factors that affect the vast majority of lawsuits heard by the Federal Judicial Branch. Among these factors are, in addition to the PEP's motion relating to the lack of jurisdiction, the extension of the claim by Bisell and MWS Management, the submission of expert evidence and recourses (appeals and revocations) filed by both parties.[191]

ii. Duration of the administrative trial 5403/19-17-06-5 arising from Contract 804

147. This administrative trial does not present an excessive or prolonged duration as referred to in the Zamora-Amézquita Report.[192] The time elapsed to rule the appeals filed in this proceeding was ordinary. In any case, the only delay I notice stemmed from the decision made by Bisell and MWS Management to sue authorities other than PEP (*i.e.*, the Ministry of Public Administration, the General Director of Pemex and the Head of the Responsibilities Area of the Delegation of the Responsibilities Unit in PEP), that resulted in multiple appeals aimed at determining which authority should be part of the proceeding.[193] Thus, the delays alleged by the Experts are attributable to the controversial decision to include, as part of the lawsuit, authorities external the contract´s execution.

190 *Supra* ¶68.
191 *Supra* §VI**. A. i**.
192 Zamora-Amézquita Report, ¶184.
193 *Supra* §VI**. B. ii.**

iii. Duration of ordinary civil trial 200/2016 arising from Contract 821

148. The period of approximately 18 months that elapsed for the substantiation of the first instance of the proceeding is an *ordinary* and adequate duration for the processing of a first instance in a federal trial, mainly considering that the plaintiffs filed an extension to their original claim.[194] The second and third instances were substantiated in a period of approximately 6 and 8 months, respectively, from the admission of the recourses, which again is circumscribed to the ordinary duration for the substantiation of those instances.[195]

149. Although the Zamora-Amézquita Report stated that it took more than three years to "solve the disputes over jurisdiction," the undersigned does not consider that the jurisdictional discussion would have significantly delayed the proceedings.[196] Although the 8th JD found in its first ruling that it lacked jurisdiction, the parties nevertheless submitted all of their evidence and made their arguments in relation to the merits. Therefore, after the 10th TCC ruled the jurisdictional issue and returned the file to the 3rd TUMCA, the latter issued a final ruling on the merits in a relatively short period of time.[197] Consequently, the delays of the proceedings due to the jurisdictional discussion were actually marginal, given that by April of 2019 a final second instance ruling had already been issued, which ruled the merits of the case and acquitted PEP of all claimed benefits. [198]

194 *Supra* §VI**. C. i.**
195 *Id.*
196 Zamora-Amézquita Report, ¶180.
197 *Supra* ¶123.

150. Although there was a subsequent discussion on the appropriateness of the referral to arbitration –which went as far as the direct *amparo* proceeding–, once this discussion was setttled, a ruling was rendered denying the plaintiffs' claims on the merits, without the plaintiffs having filed the appropriate means of appeal against such ruling -direct *amparo* proceeding–, with which they consented the ruling.[199]

iv. Duration of the administrative trial 20356/17-17-12-2

151. The first instance of this proceeding, as well as the direct *amparo* trial which derived thereof, lasted approximately 12 months.[200] This is a reasonable period of time and in accordance with both the complexity of the controversy and the courts' workload. As a reference, in 2019, 168,781 cases were filed before the 24 Collegiate Courts in Administrative Matters of the First Circuit, thus extending the duration for the ruling of the appeals and trials heard by these courts,[201] This does not represent a differentiated treatment to the detriment of Claimants.

B. Alleged violation of the principle of *res judicata* and inconsistency among rulings

152. The Zamora-Amézquita Report alleges that one of the most serious violations committed by the Mexican courts was the alleged contravention of the principle of *res judicata* in the ordinary civil trial related to Contract 803.[202] In this case, it is stated that the declaration of lack of jurisdiction made by PEP after its summons was illegal, because it had previously

198 *Id.*
199 *Supra* ¶¶124-127.
200 *Supra* §VI**. C. ii.**
201 Statistical Movement in Administrative Matters in Collegiate Circuit Courts, available at: https://www.dgej.cjf.gob.mx/resources/estadisticas/2019/19_AN_GRAF_COL_MAT_A.pdf. **JAH-0040**
202 *See*, Zamora-Amézquita Report, ¶¶145-152.

been determined that the 11th JD had *material jurisdiction* over the lawsuit, which supposedly implied a *res judicata* determination that could not be re-examined.

153. I do not share the experts' opinion. In my opinion, there is no violation of the principle of *res judicata*, considering the determination of the 4th TUC was a decision made before PEP was summoned and could challenge the court's jurisdiction. Hence, such decision could be challenged by those who were affected by it and still had not been given a chance tu rebut it. Particularly, this decision could be challenged upon the submission of new evidence or arguments, like those provided by PEP. This is so because, according to the precedents of Mexican courts, as a general rule, it is understood that the initial decisions regarding a lawsuit are made without hearing the other party and are thus *prima facie* and, therefore, may be subject to modification in light of new evidence or arguments presented at lawsuit by the affected party upon learning of the decision.

154. A clear example of the application of this general rule is found in *amparo* subject matters, probably the most widely analyzed by Mexican courts. There are two types of suspensions (a form of preliminary injunctions) in the *amparo* trial: a *provisional suspension*, issued at the beginning of the trial without hearing the other party and for the granting of which the judge relies only on the facts narrated in the lawsuit; and a *definitive suspension*, which is issued after all parties have been summoned and have presented their position, in which the *provisional* stay may be confirmed or revoked in light of the complete picture presented by the parties who had not had the opportunity to be heard when the provisional suspension was issued.

155. In some cases a provisional suspension is denied, and that denial is challenged before a higher court that may reverse the denial and order that the provisional suspension is to be granted. Although ordinarily the lower judge follows the criteria of its superior regarding

the provisional suspension when ruling the definitive suspension , judicial precedents coincide in that the lower judge can "freely" decide on the definitive suspension without the lower judge being bound to what its superior ruled when granting or denying the provisional suspension.[203] The reason for this is the aforementioned general rule, as the ruling on the definitive suspension is made against the backdrop of a *different scenario* in which the other parties have already been summoned and have provided evidence and arguments different from those that were considered when ruling the provisional suspension, which justifies that the lower judge is not bound to the "*res judicata*" finally ruled by its superior.[204]

156. Another example that can be found in the decisions on the *basic elements of the proceedings*, which, like jurisdiction, are considered a *procedural requirement.*[205] According to the SCJN, the judge must study such elements *ex officio*, because they constitute procedural requirements of public order.[206]

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[203] *See* thesis of the Third Collegiate Court in Administrative Matters of the First Circuit with registry number 226173, *Definitive suspension, full jurisdiction of the district court to rule on the, even if the collegiate court has revoked the order that ruled on the provisional suspension.* **JAH-0041**; thesis of the Second Collegiate Court of the Sixth Circuit with registry number 203320, *Provisional suspension. Of the objected act, concession of the, does not prevent it from being ruled denying the definitive one*. **JAH-0042**; thesis of the First Collegiate Court in Administrative Matters of the First Circuit with registry number 252581, *Provisional suspension*. **JAH-0043**

[204] Note the similarity between the case of Contract 803 and the precedents described above. The provisional suspension is a determination made without a hearing and only in light of the facts narrated in the *amparo* claim, just as the assumption of jurisdiction by the 11th JD was made, in the first instance, only in light of what MWS and Bisell narrated in their claim. In *amparo*, that *prima facie* decision is subject to review by a higher court, just as the 11th JD's decision denying jurisdiction was subject to review by the 4th TUC. This decision must be considered *prima facie* and validly modifiable by the lower judge upon receipt of new evidence or arguments after the parties that had not been heard until they are summoned and appear at the trial. In the same way, the 11th JD validly modified its determination without violating *res judicata* by denying it was competent to hear the claim given the arguments and evidence provided by PEP in its motion for lack of jurisdiction.

[205] *See* thesis of the Third Collegiate Court in Civil Matters of the First Circuit with registry number 161681, *Competence of the judge. It must be considered as a procedural requirement even when it is not expressly contemplated as such in the Code of Civil Procedures for the Federal District, due to its legal nature*. **JAH-0044**

Based on the foregoing and according to the judicial precedents on the subject, even if there is a ruling that has admitted the claim and the defendant has not objected such decision, this does not prevent the judge from subsequently analyzing the that the applicable procedural requirements for the suit's admissibility have been met when issuing the final ruling, after the evidence and arguments have been presented by the parties.[207]

157. Finally, the Mexican federal courts recently ruled on the question of whether a judge whose jurisdiction has already been established by its superior may subsequently deny jurisdiction in light of a change in the situation on the ground of which such jurisdiction was upheld. The answer of the federal courts is affirmative. Even if a superior court had previously determined that a judge had material jurisdiction to hear a certain case, the judge must declare himself incompetent if "*during the course of the lawsuit an event occurs that modifies the situation which prevailed and which directly influences its competence".* [208]

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[206] *See* jurisprudence of the First Chamber of the SCJN with registry number 178665, *Admissibility of a claim in the proposed terms. It is a procedural requirement that must be studied ex officio before resolving the merits of the issue raised*. **JAH-0045** In relation to this point, it is notable that the Experts adduce as the "first violation" within the alleged irregularities related to civil proceedings that the "issues regarding competence or jurisdiction were raised by the authority *ex officio.*" (*See*, Zamora-Amézquita Report, ¶¶135-137). Although it is not clear, it seems that the Experts consider that there was an alleged violation by the 11th JD on this point in relation to one of its jurisdictional decisions regarding Contract 803, which may refer to the initial decision of dismissal, or to the decision of lack of jurisdiction in the motion filed by PEP. If the Experts refer to the latter, it does not make sense to speak of an *ex officio* determination, since it was precisely PEP who requested through its motion that the lack of jurisdiction be declared. If it is the initial decision, it is clear that the competence as any other procedural requirement must be studied *ex officio* by the judge, more so in the initial determination. For example, if a person files a civil lawsuit before a criminal judge, the latter will dismiss it even if the lawsuit does not mention competence, precisely because the judge has the obligation to analyze his competence to hear a case.

[207] *Id*. "Consequently, even if there is an order admitting the claim and the remedy proposed by the petitioner, without the respondent having objected it through the corresponding appeal or by means of an exception, this does not imply that, because of the alleged consent of the governed, the remedy established by the legislature should not be considered [....].Therefore, the judge, in order to guarantee the legal certainty of the parties in the process, must always make sure that the trial chosen by the applicant for justice is the appropriate one, at any time of the dispute, even at the time of issuing the final ruling, so he must carry out an *ex officio* study of the appropriateness of the trial, even if the parties had not previously objected it."

The court justified its decision on the general rule we have analyzed above, by reasoning that the initial decision on jurisdiction was made when only the facts narrated in the lawsuit were available, but that different elements subsequently emerged during the trial that revealed that the judge was in fact incompetent which the higher court had not been able to consider.[209]

158. In view of the foregoing, there is no violation of the *res judicata* principle. Thus, even if it is true that the 4th TUC had revoked the initial determination of the 11th JD denying the jurisdiction, this was a *prima facie* decision that was made without evaluating the arguments of PEP, and which was thus solely based on the arguments and evidence provided by MWS and Bisell with their initial claim.

159. Specifically, PEP reasoned that there were two administrative acts that were not considered in MWS and Bisell's lawsuit and that they were sufficient to demonstrate the the 11th JD's lack of material jurisdiction: (i) the denial of payment of certain non-recoverable expenses in the context of a conciliation process that followed the termination of Contract 803 and (ii) the settlement document ("*finiquito*").[210] These two acts that PEP highlighted in its motion were used by the 11th JD as the basis for the ruling and, therefore, the judge expressly

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[208] *See* thesis of the Sixth Collegiate Court in Criminal Matters of the First Circuit with registry number 2025452, *Conflict of competence by subject matter between amparo district judges. Even when a previous decision had been made in which it was determined that the one who should hear the matter was the judge in criminal matters, if during the proceedings of the lawsuit an event occurs that modifies the situation that prevailed and that directly influences its competence, it must declare itself incompetent with respect to the acts of a different nature after the constitutional hearing was held*. **JAH-0046**

[209] *Id.*

[210] Regarding this second act, let us recall that judicial precedents have determined that actions derived from a severance payment must be settled before administrative judges, precisely because the settlement has an administrative nature. *See also* thesis of the First Chamber of the SCJN with registry number 2016485, *Severance payment of public works contracts. Its legal nature.* **JAH-0047**; thesis of the Twelfth Collegiate Court in Civil Matters of the First Circuit with registry number 2018385, *Public works contract. When declaring the inadmissibility of the enforcement action of the latter, the amending agreements and those derived from the former follow the fate of the principal*. **JAH-0048**; and thesis of the Fourth Collegiate Court in Civil Matters of the Second Circuit with registry number 2019337, *Commercial trial. It is improper when a public entity is required to pay the number of invoices for services rendered in compliance with an administrative contract.* **JAH-0049**

emphasized that its ruling was not contradicting the higher court's decision, precisely because "there are new elements and evidence that demonstrate the lack of jurisdiction of this court to hear the claims of the plaintiff companies".[211]

160. Therefore, the 11th JD was not bound to follow the criteria of the 4th TUC. There was no violation of the *res judicata* principle because, we insist, the existence of new evidence and arguments provided by PEP in the motion for absence of jurisdiction implied a *change of scenario* with respect to the one presented by MWS and Bisell in their claim.

161. The Zamora-Amézquita Report highlights a second alleged violation related to the jurisdictional decisions of the 11th JD and its superiors, which is that the decisions made by the unitary courts in the civil lawsuits related to Contracts 803 and 804 are "inconsistent with each other".[212] The Claimants' experts refer that it is "interesting and alarming" that in the lawsuit related to Contract 803 the 4th TUC reversed the dismissal of the lawsuit ordered by the 11th JD, while in the lawsuit related to Contract 804 the 3rd TUC confirmed the dismissal of the lawsuit due to the judge's absence of jurisdiction.

162. There is neither alarm nor surprise in the fact that two judges reach different determinations. In Mexico, several requirements must be met for a court to be bound by the criteria when ruling different lawsuits, as the lawsuits relating to Contracts 803 and 804, which are not met in relation to two courts of the same hierarchy, such as the 4th TUC and the 3rd TUC. Even if there is a hierarchical relationship, the superior's criteria must have acquired the character of jurisprudence, which is the name given in Mexico to binding judicial criteria.[213]

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211 *See*, interim ruling issued by the 11th JD on July 14, 2016, p. 3. **JAH-0021**

212 *See*, Zamora-Amézquita Report, ¶138.

Unlike a Common Law system, Mexico has a Civil Law system in which the binding nature of precedents are subject to their compliance with meeting the formal requirements needed to be considered *jurisprudence*. The Unitary Courts do not have the power to issue jurisprudence, so there is no scenario in which the criteria of a unitary court are binding in a different lawsuit before its hierarchical inferiors and, much less, before another unitary court with which it shares the same hierarchical level.

163. Furthermore, the possibility of discrepant decisions existing between different jurisdictional bodies is confirmed by the fact that, under Mexican law, the possibility of settling the discrepancy is institutionalized. Indeed, the figure of the *contradiction of thesis* allows the hierarchical superior of the bodies that issued the discrepant criteria (normally the SCJN) to resolve the contradiction and establish a binding precedent. However, as long as there is no mandatory criteria issued at the time of the contradiction, the different dissenting criteria are equally valid.

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[213] Under Mexican law, the jurisprudential criteria become mandatory for all courts in Mexico –regardless of their hierarchy or whether they are local or federal courts– based on the following systems: (i) by binding precedents, (ii) by reiteration, and (iii) by contradiction of thesis. With respect to the first, Articles 222 and 223 of the *Amparo* Law determine that "[t]he reasons that justify the decisions contained in the rulings issued by the Plenary of the Supreme Court of Justice of the Nation constitute binding precedents for all jurisdictional authorities of the Federation and of the federal entities when they are issued by a majority of eight votes." On another note, according to Article 224 of the *Amparo* Law, the reiteration system implies that the criteria sustained by collegiate circuit courts in five uninterrupted rulings will be binding for the lower courts. Finally, Article 225 of the *Amparo* Law provides that the contradiction of thesis "is established when elucidating the discrepant criteria sustained among the chambers of the Supreme Court of Justice of the Nation, among the regional plenary courts or among the collegiate circuit courts, in matters within their jurisdiction." **RZ-003**

C. ***Ex parte* communications and knowledge by PEP of judicial resolutions**

164. The Zamora-Amézquita Report refers to alleged irregular situations that they consider indicative of a biased treatment in favor of PEP. One of the most emphasized points is the existence of alleged *ex parte* communications, in which PEP supposedlu met with the Magistrates of the Superior Chamber of the TFJA and that in such meetings the Magistrates informed it beforehand of a certain ruling of the administrative trial relating to Contract 821.[214] It is not clear to the undersigned whether the violation referred to by the experts is the mere fact that PEP had communications with the Magistrates or, rather, that in the specific communications the Magistrates informed PEP in advance of the content of the ruling.

165. If the violation highlighted is that the mere fact of having a communication with a judge denotes irregular conduct and biased treatment, I do not agree with such assertion since it is completely detached from Mexican litigation practice. Although the undersigned knows that in other jurisdictions this type of communication is prohibited, in Mexico the possibility of meeting with a judge or magistrate without the presence of the opposing party is widely followed by all litigants and is openly permitted by all judicial bodies at all levels, from a local judge of first instance to a justice of the SCJN. This is a widely known and recognized fact in Mexico within the legal profession.

[214] *See* Zamora-Amézquita Report, ¶¶189-192.

166. Given the predominantly written and impersonal courts system in Mexico, these interviews are seen by litigants as an opportunity to present their cases orally and synthetically to judges and magistrates. However, in no way is the mere fact of having this type of communication interpreted in Mexico as an indication of misconduct or of the existence of biased treatment or influence peddling. On the contrary, in the forum it is considered that if a litigant does not attend to his matter personally through interviews with judges and magistrates, he is neglecting his cases and incurring in professional negligence.

167. Certainly, if anyone were to visit any Mexican court or tribunal for inspection, they could observe countless litigants holding and arranging appointments with judges and magistrates. The daily occurrence of this practice was especially evident during the pandemic, when there were restrictions to physically attending courts. Considering the possibility of meeting with judges is considered a fundamental aspect of litigants' practice in Mexico, the state and federal judiciaries institutionalized the possibility of scheduling appointments electronically.[215] In my professional experience, I have handled lawsuits in which both my clients and the opposing counsel have made use of the appointment system and requested to schedule a date and time to meet with judges and magistrates. In response to those requests,

[215] *See* "General Agreement 21/2020 of the Plenary of the Council of the Federal Judiciary, regarding the resumption of deadlines and the staggered return of the tribunals due to the COVID-19 virus contingency". **JAH-0050**. See, for example, also the agreements on the appointment system in the states that, as in the case of Baja California Sur, expressly states "Appointments for interviews, with Magistrates, Judges or Secretaries of Agreements, as well as with Counselors and the Magistrate President of the H. Superior Court of Justice and the Judiciary Council, General Secretariat, Auxiliary and Technical Secretariats of the Presidency, shall be requested by telephone, expressing the reason for the same; and shall be attended by the same means as possible; considering the urgency, particular circumstances or exceptionality of the matter, face-to-face appointments may be scheduled, according to the agenda of the public servant with whom the interview is requested. **JAH-0051**

the courts and tribunals always agreed and set a date and time for the interviews to take place.[216]

168. For the foregoing reasons, I do not consider that the mere fact that PEP had communications with the judges of the Superior Chamber of the TFJA reveals the existence of any misconduct. This is a common practice that any diligent Mexican litigator would engage in and that, presumably, Claimants' counsel would also have engaged in in the prosecution of the lawsuits in which they were involved.

169. Also, the Zamora-Amézquita Report refers to the Code of Ethics to argue the alleged irregularity of the aforementioned communications. However, from the reading of the articles of the Code cited by the Experts, nowhere do they prohibit those communications.[217] The Code of Ethics generically prohibits undue privileges or preferential treatment to any of the parties, which, as explained above, is not incompatible with the possibility of having this type of communications according to the judicial practice in Mexico.

170. The expert report also indicates that in the *ex parte* communications that PEP had, it was informed of the content of the ruling. In my experience, judges and magistrates do not inform litigants of the content of their rulings when they hold an interview. Also, in the documents I have seen, I have not been able to find any evidence that PEP was informed in advance of the content of the decision. Given the atypical nature of the situation pointed out

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[216] As an example, this report is accompanied by two requests, one submitted by my office and the other by our counterparty, requesting an *ex parte* interview with judges and magistrates. Likewise, the ruling of the authorities is presented, which was communicated to both parties, in which in both cases the request was granted, and a date and time was set for the *ex parte* communication to take place. **JAH-0052**

[217] *See* Zamora-Amézquita Report, ¶190.

by the Experts, it seems to me that it is extremely risky to assert that the Magistrates of the TFJA informed the content of a ruling before-hand based solely on a testimonial statement such as Mr. Kernion's which, moreover, as I understand refers to alleged facts of which he had knowledge from a third party, that is to say, a "hearsay witness" as it is commonly called in Mexican legal jargon.

171. The alleged violation regarding PEP's communications is closely related to another alleged violation highlighted by Claimants' experts, which is that PEP received preferential treatment by having "knowledge of a proceeding of which it should not have had knowledge, since Pemex had still not been summoned.[218] Again, I consider that the opinion of Claimants' experts ignores basic aspects about the functioning of the Judiciary, which are of general knowledge to any lawyer litigating in Mexico.

172. Despite the fact that unrestricted access to a case file is reserved to the duly notified parties, Mexican federal courts –like all the courts that heard Claimants' lawsuits– daily publish "lists of decrees", which are basically lists containing summaries of all the resolutions adopted in each lawsuit under their charge, which also include identification data, like the names of the parties or the identification number of the case files.[219] By way of example, below is a screenshot of a list of decrees published by the 11th JD, the judge who heard the first instance of the lawsuit related to Contract 804:

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218 *See* Zamora-Amézquita Report, ¶139.

219 *See* the website with the "list of orders" of all the federal courts in Mexico, which can be freely consulted by court or by file number, available at the following link: https://www.cjf.gob.mx/micrositios/dggj/paginas/serviciosTramites.htm?pageName=servicios%2FlistaAcuerdos.htm

Servicios y trámites / Lista de acuerdos

Lista de acuerdos

Juzgado Décimo Primero de Distrito en el Estado de Veracruz
Lista del acuerdo publicado el día 14 de noviembre del 2022

AMPARO						
No.	Tipo	Expediente	Nombre del Quejoso	Autoridad(es)	Fecha del Acuerdo	Síntesis
1	Principal	149/2018	SERVICIOS INDUSTRIALES Y PETROLEROS DEL GOLFO SOCIEDAD ANÓNIMA DE CAPITAL VARIABLE A TRAVÉS DE SU REPRESENTANTE LEGAL GABRIEL OLVERA HERNÁNDEZ.	JUEZ CUARTO DE PRIMERA INSTANCIA, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el oficio 2907 del J...Ver Síntesis
2	Principal	314/2019	SANA INTERNACIONAL SOCIEDAD ANÓNIMA DE CAPITAL VARIABLE .	JUEZ CUARTO DE PRIMERA INSTANCIA, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el oficio 2908 del J...Ver Síntesis
3	Principal	368/2019	SANA INTERNACIONAL SOCIEDAD ANÓNIMA DE CAPITAL VARIABLE .	JUEZ CUARTO DE PRIMERA INSTANCIA, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el estado procesal q...Ver Síntesis
4	Principal	407/2020	MARÍA EDITH MALDONADO GARCÍA.	JUEZ CUARTO DE PRIMERA INSTANCIA, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto; el escrito de la qu...Ver Síntesis
5	Principal	194/2021	HORACIO PALACIOS CASTELLANOS.	MAGISTRADOS INTEGRANTES DE LA QUINTA SALA DEL TRIBUNAL SUPERIOR DE JUSTICIA DEL ESTADO, XALAPA, VERACRUZ .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el oficio 2624 remit...Ver Síntesis
6	Principal	390/2021	ÁNGEL OLMEDO SANTES.	JUEZ OCTAVO DE PRIMERA INSTANCIA ESPECIALIZADO EN MATERIA FAMILIAR, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el oficio 311/2022-C...Ver Síntesis
7	Incidental	506/2021	LUIS GABRIEL SANTIAGO GARCÍA.	JUEZ DE CONTROL ADSCRITO AL JUZGADO DE PROCESO Y PROCEDIMIENTO PENAL ORAL, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el estado procesal q...Ver Síntesis
8	Principal	553/2021	CLUB DE LEONES DE POZA RICA, ASOCIACIÓN CIVIL.	JUEZ CUARTO DE PRIMERA INSTANCIA, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Vista la certificación sec...Ver Síntesis
9	Principal	121/2022	JUNIOR JIMÉNEZ PÉREZ.	JUEZ DE CONTROL Y ENJUICIAMIENTO ADSCRITO AL JUZGADO DE PROCESO Y PROCEDIMIENTO PENAL ORAL, CON RESIDENCIA EN ESTA CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el estado procesal q...Ver Síntesis
10	Principal	131/2022	MARÍA GUADALUPE REYES MONCAYO, EN REPRESEMTACIÓN DEL MENOR D.C.S.R..	JUEZ SEXTO DE PRIMERA INSTANCIA ESPECIALIZADO EN MATERIA FAMILIAR, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto; el escrito del auto...Ver Síntesis
11	Principal	154/2022	ILSE ESTEFANIA ESCOBAR MOLINA.	CONGRESO DEL ESTADO DE VERACRUZ, XALAPA, VERACRUZ .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el estado procesal q...Ver Síntesis
12	Principal	167/2022	CLAUDIA LIZET HERERRA GARCÍA.	JUEZ SEXTO DE PRIMERA INSTANCIA ESPECIALIZADO EN MATERIA FAMILIAR, CIUDAD .	28/10/2022	UNICO. La Justicia de la Unión AMPARA y PROTEGE a ******, en contra del acto reclamado y por la au...Ver Síntesis
13	Principal	167/2022	CLAUDIA LIZET HERERRA GARCÍA.	JUEZ SEXTO DE PRIMERA INSTANCIA ESPECIALIZADO EN MATERIA FAMILIAR, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Vista la razón del actuari...Ver Síntesis
14	Principal	184/2022	MÁXIMO HERNÁNDEZ SOLÍS.	JUEZ DE CONTROL ADSCRITO AL JUZGADO DE PROCESO Y PROCEDIMIENTO PENAL ORAL, CIUDAD .	11/11/2022	Poza Rica de Hidalgo, Veracruz, a once de noviembre de dos mil veintidós. Visto el oficio remitido d...Ver Síntesis
15	Principal	277/2022	JESÚS HERNÁNDEZ BASILIO.	ENCARGADO DEL REGISTRO PÚBLICO DE LA PROPIEDAD Y DEL COMERCIO DE LA SÉPTIMA ZOAN REGISTRAL, CIUDAD .	28/10/2022	UNICO. La Justicia de la Unión AMPARA y PROTEGE a ******, en contra del acto reclamado y por la au...Ver Síntesis

173. Thanks to these search systems, it is relatively easy to have knowledge of the lawsuits that are being processed by any federal court or tribunal, as well as to know the relevant data of the lawsuit and even the summary of all the resolutions that have been issued in each lawsuit. These summaries are the same ones that the Claimants' experts accompany their report, which they were able to access without the need to be formally summoned as a party to any of the lawsuits between PEP and the Claimants.[220]

174. Likewise, there are private and public search systems that make it possible to identify among all the lawsuits in the country if there is one in which a specific defendant has been named, and even place alerts to inform as soon as a lawsuit is filed against a certain person. For the reference of the Arbitral Court, a video illustrating the operation of these systems is attached to this Report.[221] With the assistance of these systems, which are used by the vast majority of lawyers in Mexico, PEP could easily have learned of the existence of a lawsuit filed against it –the lawsuit related to Contract 804– and then have formed a fairly complete idea of the status of the proceeding through the summaries published by the Judicial Branch.

220 *See*, for example, **RZ-009**, **RZ-010**, **RZ-011**, **RZ-012**, **RZ-015**, **RZ-028**, **RZ-029**, **RZ-030**, **RZ-034**, and **RZ-043**.

221 *See* **JAH-0053**

Therefore, I do not find it strange that PEP had knowledge of the lawsuit related to Contract 804 before being summoned.

175. For the foregoing reasons and based on the evidence before me, I do not consider that there is evidence of any alleged misconduct that would indicate that PEP had received privileged treatment vis-à-vis the Claimants. Both the communications with the TFJA Magistrates and PEP's knowledge of the Contract 804 lawsuit are ordinary circumstances and explainable based on a *minimal* knowledge of the functioning of the Judiciary and the professional practice of litigants in Mexico. For this reason, I do not consider that there are any violations or irregularities attributable to the Mexican courts in relation to the issues analyzed in this section.

D. ***Ex officio referral* to arbitration**

176. The Experts identify as an alleged violation the decision of the 8th JD to refer the dispute arising from Contract 821 to arbitration, although neither of the parties requested it and in fact both parties filed appeals and *amparo* actions to dispute this decision[222]. In the opinion of the undersigned, the alleged violation does not exist, since under Mexican law a valid argument can be made that a judge may refer the parties to arbitration without any of them having requested it in their first brief on the merits, when one of the parties is a foreigner.

177. Indeed, according to Article 1424 of the Commercial Code, in those cases in which a foreign resident has executed an arbitration agreement and is a party to a dispute, the judge *must* refer the parties to arbitration *ex officio*, i.e., the judge must act *in accordance with Article* 1424 of the Commercial Code. [223]

[222] *See* Zamora-Amézquita Report, ¶¶141-144.

Therefore, the decision of the 8th JD can be based in the Mexican *lex arbitri* since, according to Contract 821, Finley –one of the plaintiffs in the lawsuit– is a foreign resident company,[224] which bound the 8th JD to refer the dispute to arbitration.

178. Regardless of the foregoing, even if it were considered that the decision of the 8th JD to refer the parties to arbitration is not supported by Mexican law, the fact remains that such alleged violation was significantly mitigated by the fact that the ruling issued by the 8th JD was revoked, finally resulting in a ruling that acquitted PEP in the merits.[225] Since the 10th TCC sided with Claimants' arguments on PEP's tacit submission to the jurisdiction of the Mexican courts and its consequent waiver to arbitration, said Court ordered, through the direct *amparo* ruling 425/2018, that the 3rd TUMCA revoke the ruling of referral to arbitration and, in its place, issue another one in which it ruled on the merits of the claim. With this *amparo* ruling, any possible irregularity or violation was remedied.

E. Non-application of the *suplencia de la queja* principle

179. The Zamora-Amézquita Report also pointed out an alleged violation of the principle of the *suplencia de la queja* principle applicable in constitutional matters, specifically the 10th TCC that ruled the amparo derived from the ordinary civil lawsuit

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223 Commercial Code, Article 1424, "[...] Without prejudice to the provisions of the first paragraph of this article, when a resident abroad has expressly submitted to arbitration and attempts an individual or collective dispute, the judge shall refer the parties to arbitration". **RZ-044**

224 Contract 821, statement 2.1, "Finley Resources, Inc. is a corporation legally incorporated and with legal existence in accordance with the legal provisions of the United States of America, as evidenced by the Articles of Incorporation registered under File 128506900 dated September 20, 1993 (one thousand nine hundred and ninety-three), certified by the Office of the Secretary of State of Texas, John Steen, in Austin, Texas, United States of America. [...]" **C-0034-SPA**

225 *Supra* ¶¶124-127.

120/2015 –arising from Contract 804–, and it considered that such Court had the obligation to apply this principle in favor of Bisell and MWS Management and, in spite of this, it refrained from doing so.[226] Likewise, it is argued that this principle obliged the 10th TCC to consider the *novel* arguments of the complainants –which had not been asserted in previous instances–, and to complement or substitute those deficient arguments presented in their *amparo* lawsuit, which were not aimed at combating the challenged ruling, but resulted in a mere reiteration of previous arguments.

180. The interpretation of the scope of this principle and its application in the specific case is untenable. Contrary to what has been held, the principle of *suplencia de la queja* does not imply that the constitutional authorities must always prioritize the ruling of disputes over all essential procedural formalities, allowing judges to make up for the deficiencies in the claims of individuals and to rule on procedurally untenable arguments.[227]

181. Rather, in civil, commercial and administrative cases, the principle of *suplencia de la queja* constitutes an exception to the general rule that imposes the argumentative burden of demonstrating the unconstitutionality of the challenged act on the complainant.[228] The SCJN has determined that these subject matters are governed by the principle of strict law,[229] so Judges cannot substitute themselves in the complainant's place to

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226 *See* Zamora-Amézquita Report, ¶¶ 153-157.

227 *See* Zamora-Amézquita Report, ¶157.

228 *See* thesis of the First Chamber of the SCJN with registry number 2021518, *Pleading of the Complaint in civil, mercantile, and administrative proceedings. Article 79, Section vi, of the amparo law, which establishes that the amparo can only proceed when there are evident violations of the law that have left the plaintiff without defense, does not violate the right of access to justice*. **JAH-0054**

229 López, Neófito, "Suplencia de la Queja en Materia Civil", in *The principle of strict law. Collection of the Consejo de la Judicatura Federal* 2017, p. 84, "that same principle of strict law constitutes a technical legal obstacle during the amparo trial or the appeal, which as a general rule prevents the *amparo* judge from gathering evidence *exofficio* on the legal interest of the complainant, correcting deficiencies in its burden of proof, and at the time of ruling, analyzing *exofficio* the

improve, correct or invoke arguments in any case in which the complainant has expressed a deficient or insufficient claim.[230] Except in certain exceptional cases expressly provided for by law or case law, in civil and administrative subject matters the judge is not obliged to apply the principle of *suplencia de la queja*.[231]

182. From the analysis of the *amparo* lawsuit that derived from the ordinary civil trial related to Contract 804, I do not see that there is an exception case that justifies the application of this principle to remedy the Plaintiffs' deficient arguments. The 10th TCC dismissed Bisell and MWS Management's request for relief because the arguments expressed in their complaint: (i) were *novel* since they were not raised since the appeal that was ruled by the 3rd TUC,[232] and (ii) they did not controvert the reasons of the 3rd TUC's ruling to confirm the dismissal of the claim, since they were a mere reiteration of arguments that had already been addressed and dismissed in the appellate ruling.

183. Under Mexican law, if the arguments were not asserted in the first instance of the trial and, instead, are sought to be incorporated in the second instance or in the *amparo*, then these arguments are considered *novel* and, therefore, untenable by the appellate court or the *amparo* court.[233] This figure is known as the *inoperancia* of plaintiff's arguments, and implies that such arguments are considered novel and, therefore, unassailable by the appellate court or the *amparo* court. The arguments are insufficient to combat the considerations of the

constitutionality of the act objected in the *amparo* action, or the ruling objected through the appeal for review, complaint or claim." **JAH-0055**

230 *Id.*

231 *See* thesis of the First Chamber of the SCJN with registry number 2008557, *Substitution of the deficient complaint in civil and administrative matters (interpretation of article 79, section vi, of the Amparo law)*. **JAH-0056**[232] **RZ-016**, p. 19.

233 *See* jurisprudence of the First Chamber of the SCJN with registry number 176604, *Inoperative grievances. They are those that refer to issues not invoked in the complaint and that, therefore, constitute novel aspects in the recourse*. **JAH-0057**

challenged ruling and, therefore, cannot lead to its modification or revocation.[234]

184. On the other hand, the 10th TCC also determined that the arguments of the plaintiffs were insufficient as they did not challenge all of the reasons supporting the challenged and, instead, were limited to reiterating issues already addressed by the 3rd TUC that were dismissed, given that they focused on defending the competence of the 11th JD and not on arguing on the merits of the civil proceeding. Similarly, according to Mexican law, the reiteration of the same arguments expressed in a first instance to challenge the decision issued in a second instance, leads to the arguments being declared *inoperantes*.[235]

185. Although the experts assert that the *suplencia de la queja* principle should have been applied to remedy the ineffectiveness of the complainants' arguments, the truth is that this principle does not have this scope. The supplementation of the complaint only allows the judge to analyze violations not alleged by the plaintiff and to correct this omission,[236] but it does not exempt him from complying with the essential formalities of the appeal filed, such as expressing grievances aimed at controverting the ruling that is considered illegal. [237]

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234 *Amparo* Ruling CP-804, p. 29-31. **RZ-016**

235 *See* thesis of the First Collegiate Circuit Court of the Auxiliary Center of the Fourth Region with registry number 2018415, *Remate. The concepts of violation in the indirect amparo are ineffective if the same violations raised in the appeal filed against the decision that approved that proceeding are reiterated, without challenging the motives and grounds expressed by the second instance authority*. **JAH-0058**

236 *See* jurisprudence of the Second Collegiate Court in Administrative Subject Matters of the Fourth Circuit with registry number 2003771, *Substitution of the deficient complaint in the amparo trial. Its scope as a result of the constitutional reforms of June 10 of 2011.* **JAH-0059**

237 *See*, for example, jurisprudence of the First Chamber of the SCJN with registry number 169923, *Inoperative violation concepts. They have this quality if they refer to issues that were not raised in the grounds of the appeal and the appellant was not left without defense.* **JAH-0060**; thesis of the Third Collegiate Court in Civil Subject Matters of the First Circuit with registry number 163725, *Complaint Substitution. Its origin and scope in relation to the principle of definitiveness.* **JAH-0061**; and thesis of the Second Chamber of the SCJN with registry number 164180, *Inoperative grievances. They are inoperative in the inconformity if they do not object the order that considered the execution to have been complied with, even if it is about agrarian matter*. **JAH-0062**

F. Alleged violations of the principles of comprehensiveness, correspondence, and motivation

186. Finally, the Zamora-Amézquita Report alleges a series of violations in the administrative trial 20356/17-17-12-2 –derived from Contract 821– to the principles of completeness, congruence and the duty of substantiation and motivation by the TFJA. According to the opinion, these violations derive from the alleged irregularity in the ruling of this lawsuit, since it is considered that the Superior Chamber: (i) did not perform an exhaustive analysis of the termination clause of Contract 821,[238] (ii) did not *motivate* –or justify– its reasoning to conclude that the suspension of the works under said contract and the insolvency of Pemex did not prevent the Claimants from complying with the work orders,[239] and (iii) reached contradictory conclusions regarding the possibility of exercising the minimum amount of Contract 821 within 30 days.[240]

187. It must be said that these alleged irregularities do not constitute violations of the aforementioned principles. First, the omissions and irregularities noted do not constitute a violation of the fundamental rights of the Claimants under Article 17 of the Constitution, since they are not flagrant or serious violations that imply a complete lack of completeness, coherence, and reasoning. Rather, such arguments are aimed at challenging the interpretation of the Superior Chamber and highlighting the way in which, in their opinion, they would have liked the dispute to have been ruled, without this leading to a clear violation of the principles and rights that are enunciated.

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238 *See* Zamora-Amézquita Report, ¶¶ 161-164.
239 *See*, Zamora-Amézquita Report, ¶172.
240 *See*, Zamora-Amézquita Report, ¶¶174-175.

188. Secondly, as previously noted, Finley, Drake-Mesa and Drake-Finley filed a direct *amparo* lawsuit against the ruling issued in the administrative lawsuit, which was heard and ruled by the 14th TCC.[241] This *amparo* lawsuit operates as a *second* instance, in which the Collegiate Court reviews the constitutionality of the decision made by the responsible authority –in this case the Superior Chamber– and, in case it determines that it violates a constitutional right of the plaintiff, then revokes it and orders the authority to issue another one under certain guidelines that ensure that the violation is not repeated.[242]

189. Therefore, if the Claimants considered that the Superior Chamber incurred in these violations, they had the opportunity to state them in their *amparo* petition so that the 14th TCC could determine whether they existed and, consequently, correct them. However, from the analysis of the record of the lawsuit, it does not appear that the Claimants have asserted such violations in their *amparo*,[243] and for this reason, the same are consented and firm.

190. In fact, the arguments of the Claimants in such *amparo* lawsuit were declared *inoperantes* by the 14th TCC since, among other things, they sought the interpretation of NAFTA, which was beyond the scope of such lawsuit.[244] Therefore, although the Claimants had the opportunity to challenge the violations referred to in the Zamora-Amezquita Report, their *amparo* lawsuit focused on issues that were finally dismissed by the 14th TCC because they were untenable and insufficient to object the ruling of the Superior Chamber.

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241 *Supra* §**VI. C. ii.**
242 *Supra* §**V. B. v.**
243 Ruling dated January 30 of 2020. **RZ-040**
244 *Supra* ¶¶133-134.

VIII. CONTRACT 809 BETWEEN PEP E INTEGRADORA DE SERVICIOS, S.A. DE C.V. AND ZAPATA INTERNACIONAL, S.A. DE C.V.

191. Claimants refer in this arbitration to alleged discriminatory and disparate treatment against U.S. investors in favor of Mexican contractors.[245] Specifically, the Claimants have raised certain allegations in relation to Contract 809 between PEP and Integradora de Perforaciones y Servicios, S.A. de C.V. and Zapata Internacional, S.A. de C.V.[246] Therefore, Mexico requested me to analyze the terms of Contract 809 and the circumstances under which it was terminated.

192. The content of Contract 809 is similar to Contract 804, the only differences that the undersigned was able to identify are related to the date of execution and the amount of the minimum and maximum budget (Contract 809 provides for a minimum budget of USD $24,000,000.00 and a maximum budget of USD $60,000,000.00). Given that the rest of the clauses of Contract 809 are identical to those of Contract 804, I refer to the analysis previously made of said contract in this Report.[247] A notable difference to be considered is that, according to the termination agreement, the parties entered into a modification agreement with the purpose of extending the term of the contract, thus extending it to December 31 of 2013.[248]

193. Now, it is clear from the documents examined that, as of August 23 of 2013 and until December 9 of2013,[249] a suspension of the drilling works under Contract 809 was decreed due to an act of God or force majeure.[250] The suspension of works resulted, according

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245 *See* Statement of Claim, ¶ 231.
246 *Ibid*. ¶¶227-231.
247 *Supra* §IV**. B. i.**
248 *See* Contract 809 termination minutes, p. 1. **JAH-0063**
249 Official letter 227-21000-21600-2907-2013 dated December 10, 2013, by which PEP notified the resumption of the activities under Contract 809. **JAH-0064**
250 Official letter 227-21000-21600-2546-2013 dated September 2, 2013, by which PEP notified the

to the contractor, certain debts for non-recoverable expenses. [251] Likewise, according to the termination certificate, works were performed for an amount equivalent to USD $8,432,522.30.[252] In this certificate, PEP clarified that there were no work orders pending to be issued and executed to reach the minimum budget agreed in Contract 809.[253]

194. On June 25, 2018, the parties executed the administrative act of extinction of rights and obligations of Contract 809, in which they fixed as non-recoverable expenses payable by PEP the amount of USD $15,054,705.64.[254] Through said act, the parties granted each other the broadest settlement with respect to the remaining obligations and debts derived from Contract 809.

195. Under this context, the differences in the execution and termination of the Contracts and Contract 809 are evident. From the analysis carried out, it is not evident that PEP had committed to pay the difference between the minimum budget and the amount effectively exercised under Contract 809; on the contrary, the amount that would be covered by PEP corresponds only to non-recoverable expenses and was determined based on the circumstantial record of April 9 of 2018.[255]

[Illegible signature]
Jorge Asali Harfuch
December 2 of 2022, Mexico City, Mexico

suspension of activities under Contract 809. **JAH-0065**

251 *See* Contract 809 termination minute, p. 6. **JAH-0063**

252 *Ibid*., p. 5.

253 *Ibid*., p. 7.

254 *See* administrative act of extinction of rights and obligations of Contract 809, p. 2. **JAH-0066**

255 *Id.*

IX. INDEX OF ANNEXES

Annex Number	Document
Annex A	Glossary of defined terms
Annex B	Jorge Asali Harfuch's CV
JAH-0001	Thesis with registration number 2024138
JAH-0002	Thesis with registration number VII-CASR-PE-32
JAH-0003	Thesis with registration number 189995
JAH-0004	Thesis with registration number 182024
JAH-0005	DACS
JAH-0006	Thesis with registration number 188644
JAH-0007	Thesis with registration number 2017484
JAH-0008	Thesis with registration number 2016318
JAH-0009	Thesis with registration number 2016485
JAH-0010	Thesis with registration number 2018385
JAH-0011	Thesis with registration number2019337
JAH-0012	Federal Civil Code
JAH-0013	Thesis with registration number 164576
JAH-0014	"Teoría General del Proceso", José Ovalle Favela
JAH-0015	Organic Law of the TFJA
JAH-0016	Order dated October 15, 2015 issued in ordinary civil trial 75/2015.
JAH-0017	Order dated January 6, 2016 issued in the ordinary civil trial 75/2015
JAH-0018	Motion of lack of jurisdiction filed by PEP in the ordinary civil trial 75/2015
JAH-0019	Order dated January 22, 2016 issued in the ordinary civil trial 75/2015
JAH-0020	Interim ruling of March 2, 2016 rendered in ordinary civil trial 75/2015.
JAH-0021	Interim ruling of July 14, 2016 rendered in ordinary civil trial 75/2015.
JAH-0022	Interim ruling of September 21, 2016 rendered in the ordinary civil Trial 75/2015.
JAH-0023	Extension of claim filed in ordinary civil lawsuit 75/2015
JAH-0024	General Agreement of the CJF Plenary 04/2020
JAH-0025	Brief of the plaintiffs and agreement of March 22, 2021 issued in the ordinary civil trial 75/2015.
JAH-0026	Initial statement of claim in administrative trial 5403/19-17-06-5
JAH-0027	Settlement of February 17, 2022 issued in the lawsuit administrative 5403/19-17-06-5
JAH-0028	TFJA Electronic Bulletin
JAH-0029	SISE 200/2016

JAH-0030	Extension of claim filed in the ordinary civil trial 200/2016
JAH-0031	General Agreement of the CJF Plenary 20/2009
JAH-0032	Ruling of April 2, 2019 issued by the 3rd TUMCA.
JAH-0033	Order dated September 5, 2017 issued in administrative trial 20356/17-17-12-2.
JAH-0034	Jurisprudence with registration number 2013301
JAH-0035	Thesis with registration number 2002350
JAH-0036	"The human right to expeditious, prompt, complete, free and unbiased justice", Irma Ramos.
JAH-0037	National Census of Federal Justice Administration 2021
JAH-0038	Global Impunity Index 2020
JAH-0039	2016 Statistical Annex for the Seventh Circuit
JAH-0040	Statistical Movement in Administrative Subject Matters in the Collegiate Circuit Courts
JAH-0041	Thesis with registration number 226173
JAH-0042	Thesis with registration number 203320
JAH-0043	Thesis with registration number 252581
JAH-0044	Thesis with registration number 161681
JAH-0045	Thesis with registration number 178665
JAH-0046	Thesis with registration number 2025452
JAH-0047	Thesis with registration number 2016485
JAH-0048	Thesis with registration number 2018385
JAH-0049	Thesis with registration number 2019337
JAH-0050	CJF Plenary General Agreement 21/2020
JAH-0051	Appointment system agreements
JAH-0052	Requests for interviews with judges and magistrates
JAH-0053	Illustrative video of lawsuit search systems
JAH-0054	Thesis with registration number 2021518
JAH-0055	"Suplencia de la Queja en Materia Civil", Neófito López.
JAH-0056	Thesis with registration number 2008557
JAH-0057	Thesis with registration number 176604
JAH-0058	Thesis with registration number 2018415
JAH-0059	Thesis with registration number 2003771
JAH-0060	Thesis with registration number 169923
JAH-0061	Thesis with registration number 163725
JAH-0062	Thesis with registration number 164180
JAH-0063	Contract 809 termination act
JAH-0064	Official letter 227-21000-21600-2907-2013 dated December 10, 2013.
JAH-0065	Official letter 227-21000-21600-2546-2013 dated September 2, 2013.
JAH-0066	Administrative act of extinction of the rights and obligations of the Contract 809