

## INTERNATIONAL ARBITRATION

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### IN THIS ISSUE

*In a recent court precedent, the Eighth Collegiate Civil Court of The First Circuit ruled that arbitrators are not considered as authorities for amparo claim purposes, in view of Article 5 of the new Mexican Amparo Law. This article explains why arbitrators are not considered as authorities under Mexican jurisdiction.*

### Mexico:

## Arbitrators are not Considered as Authorities for Amparo Claim Purposes

### ABOUT THE AUTHOR



**Cecilia Flores-Rueda** started her dispute resolution boutique “FloresRueda Abogados” in 2015, where she handles complex and high-stake international and domestic arbitration cases and represents clients before federal and local courts. She also represents cross border clients before state and federal courts on a broad spectrum of civil, commercial and administrative matters. Cecilia’s experience both in arbitration and litigation matters enables her to appear before courts in proceedings requesting and enforcing interim measures as well as proceedings seeking the recognition and enforcement of arbitral awards. Her value to clients lies in her ability to frequently draw upon experience in order to formulate creative solutions to complex issues. She advises clients on ethics and compliance matters as well. She can be reached at [cecilia@floresrueda.com](mailto:cecilia@floresrueda.com).

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In a recent court precedent, the Eighth Collegiate Civil Court of The First Circuit ruled that arbitrators are not considered as authorities for *amparo* claim purposes, in view of Article 5 of the new Mexican Amparo Law.

### **The Concept of “Responsible Authority” under the New Amparo Law**

On April 2, 2013, a new Amparo Law went into force in Mexico. A revised concept of “responsible authority” was introduced under Article 5, section II, which reads as follows:

*Article 5.- Are parties to the amparo proceeding:*

...

*II. The responsible authority, being held as such, despite of its formal nature, the one that pronounces, orders, enforces or attempts to enforce the act that creates, modifies, or terminates legal situations in a unilateral and obligatory manner; or fails to perform the act, that if performed, it would create, modify or terminate such legal situations.*

*For the purpose of this Law, private parties will be held as a responsible authority when they perform acts equivalent to those of an authority, that affect rights in terms of this section, and whose functions are determined by a general law.*

...

The question raised was whether arbitrators should be considered as “responsible authorities”, under the new concept introduced by the Amparo Law.

### **Case 195/2014 Tried Question Raised**

The case (*queja*) 195/2014, before the Eighth Collegiate Civil Court of The First Circuit (“Eight Collegiate Court”) tried the question raised in view of the new Amparo Law.

Following are the facts of the case:

Party Y requested for the constitution of the arbitral tribunal before the Thirteenth District Civil Judge in the Federal District (“Thirteenth District Judge”), under articles 1427 and 1466 of the Code of Commerce. The arbitral tribunal was constituted by three arbitrators, appointed by said Thirteenth District Judge.

Party X filed an amparo claim, before the Thirteenth District Civil Judge, for the constitution of the arbitral tribunal. The members of the arbitral tribunal were pointed out as responsible authorities, for the acts carried out aiming to initiate the arbitration proceeding.

The members of the arbitral tribunal filed a complaint before the Eight Collegiate Court, against the Thirteenth District Judge for the admission of the amparo claim filed by Party X. They considered they could not have the nature of responsible authorities since:

- (i) Notwithstanding the arbitrators were appointed by a judge, their powers and appointment is grounded on the parties’ agreement to submit their dispute to arbitration.
- (ii) The arbitrators’ duties and powers are not given by a general law, but

- by the parties' arbitration agreement.
- (iii) The arbitrators perform their duties and exercise their powers as private persons and not as public authorities. For of that reason, arbitrators lack *imperium* to enforce their own determinations and awards.
- (iv) As a result, the arbitrators' acts such as their very acceptance to act as arbitrators and the performance of the actions intended to initiate the arbitration proceeding, are not equivalent to those performed by a responsible authority.

As for the above reasons, the Eighth Collegiate Civil Court ruled that arbitrators cannot be considered as "responsible authorities" under Article 5, section II of the new Amparo Law. Hence, it reversed the admission by the Thirteenth District Judge of *amparo* claim, filed by Party X against the acts of the arbitral tribunal in an arbitration proceeding.

### Court Precedent

This criteria by the Eight Collegiate Court was published on the following court precedent: <sup>1</sup>

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### PRIVATE ARBITRATORS. DO NOT HAVE THE CHARACTER OF RESPONSIBLE AUTHORITIES IN THE AMPARO PROCEEDING.

Articles 1 and 5, section II, of the Amparo Law provide that the Constitutional Trial [*Amparo*] can be filed against private parties' acts and that they have the nature of responsible authorities when their duties are given by a general law and their acts are equivalent to those performed by an authority. Moreover, private arbitration is a proceeding founded on the parties' agreement, who waive the courts' power to try the dispute by entrusting one or more private parties (arbitrator or arbitrators) the resolution of certain or all disputes that may have arisen or may arise between them in regards to a determined contractual relationship. Hence, it should be said that although private arbitrators have the power of solving legal disputes that the parties submit for their consideration, as such power comes from an agreement entered by private parties, the arbitrators' duties are private and the same nature shall have all of the activities they perform in order to solve the dispute dealt with, that is, [arbitrators] are neither public servants from the State, nor they have jurisdiction by their own or delegated,

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<sup>1</sup> Author's translation.

as their powers do not derive from a general law, but from the will of the parties expressed in the agreement that the law recognizes, and as the one which appoints arbitrators and determine the limits of their duties, does not act on sake of the public, that is, with the nature of the State's institution, but on the sake of private parties, logically the duties of such arbitrators are not public, but private, that means that they lack *imperium*, as a result same arbitrators cannot be considered as State's authorities and their acts are not equivalent to such of an authority, therefore the *amparo* proceeding is not admissible against them.

EIGHTH COLLEGIATE CIVIL COURT OF THE FIRST CIRCUIT.

Queja 195/2014. Cecilia Flores Rueda and others. October 29, 2014. Unanimous votes. Writer: Abraham S. Marcos Valdés. Secretary: Patricia Villa Rodríguez.

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