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## ESG ARTICLES

# Fundamental rights of legal entities: an unsettled topic

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This year, a Mexican federal court issued a set of controversial precedents regarding the rights of legal entities. These precedents are not generally binding, but they represent a setback in the protection of fundamental rights and, specifically, with respect to social corporate responsibility.

Under certain circumstances, the *amparo* proceeding has been used in Mexico as a mechanism by which legal entities may defend themselves against acts of authority that they consider to be in violation of their environmental and cultural rights. However, on April 2021 the Eighteenth Collegiate Court situated in Mexico City issued three precedents holding that legal entities cannot defend these rights in court since, in its opinion, the Mexican Constitution only recognizes those fundamental rights of legal entities that are strictly necessary for carrying out their corporate purposes and, therefore, these entities do not enjoy human rights that entail intrinsic or natural characteristics of human beings.<sup>1</sup> Based on this argument, the court concluded

that the rights to a healthy environment<sup>2</sup> and to culture correspond only to the human person because only the human person can enjoy them.<sup>3</sup>

These precedents derive from an *amparo* proceeding filed by the Mexican Academy of Environmental Law (*Academia Mexicana de Derecho Ambiental* or AMDA) against the construction of Mexico City's Metrobus Line 7, which runs along the historic avenue Paseo de la Reforma. Such project apparently began without the relevant authorizations to safeguard historical monuments and the Chapultepec Forest, therefore, the Eighth District Judge in Administrative Matters granted constitutional protection to the plaintiff in the *amparo* lawsuit.

The Eighteenth Collegiate Court reversed the judgment

<sup>1</sup> Thesis I.18o.A.38 K (10a.) with digital registry number 2023049, Collegiate Circuit Courts, Tenth Epoch, Judicial Weekly of the Federation, Book 85, April 2021, Volume III, p. 2204 (Title: "Legal Entities. They are holders of the human rights that are in accordance with their nature").

<sup>2</sup> Thesis I.18o.A.39 K (10a.), with digital registry number 2023046, Collegiate Circuit Courts, Gazette of the Judicial Weekly of the Federation, Book 85, April 2021, Volume III, p. 2202 (Title: "Legal Entities. They are not holders of a human right to a healthy environment and, therefore, lack legitimate interest").

<sup>3</sup> Thesis I.18o.A.40 K (10a.) with digital registry number 2023048, Collegiate Circuit Courts, Tenth Epoch, Gazette of the Judicial Weekly of the Federation, Book 85, April 2021, Volume III, p. 2202 (Title: "Legal Entities. They are not holders of the right to culture").

of the district judge, ordering the dismissal of the lawsuit for lack of legal or legitimate interest of the plaintiff. In the decision issued in the constitutional appeal within the *amparo* proceeding, the collegiate court concluded that AMDA, as a legal entity, was not directly affected by an environmental or cultural rights violation.<sup>4</sup> The court reached this conclusion despite the fact that AMDA's corporate purpose (included in its bylaws) specifically includes the promotion of ecological improvement and the performance of actions for the protection of natural resources and the cultural heritage of the nation.

The resolution from which these precedents derive was issued by a majority of two out of three magistrates in the collegiate court. In a dissenting vote, one of the magistrates held that AMDA had a legitimate interest to file an *amparo* lawsuit for the protection of its social rights, since these rights are related to the purpose for which the association was legally created.

The precedents were issued in such broad terms that they seem to be applicable to all legal entities, not only to civil associations (*asociaciones civiles*), which is the legal form adopted by AMDA.

The standard used by the Eighteenth Collegiate Court seems problematic because it impacts the value of individuals joining efforts and resources through the creation of a legal entity for any purpose other than economic, since, if they do so, such purpose may not be protected by law. It would seem that, in the court's opinion, a legal entity cannot legitimately seek to promote education, a healthy environment or the protection of cultural heritage, since the only rights that will be recognized and protected will be the fundamental individual rights of property, due process, access to justice, etc., not social or collective rights. This could mean that those legal entities that incorporate and promote environmental, social, and corporate governance (ESG) policies and initiatives may not be entitled to safeguard their purpose before the courts.

Behind the precedents issued by the Eighteenth

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<sup>4</sup> Judgment issued on February 20, 2020 within constitutional appeal 93/2019 by the Eighteenth Collegiate Court in Administrative Matters of the First Circuit.

Collegiate Court seems to lie the idea that legal entities, and especially corporations, pursue a limited purpose, which is a preponderantly economic or linked to commercial speculation, and therefore, are only responsible for generating value for their shareholders. This is another problematic aspect of the standard used by the court, since this concept corresponds to the theory known as "shareholder primacy". According to this theory, frequently attributed to the economist Milton Friedman who published a famous opinion piece in *The New York Times* in 1970, corporations exist primarily or exclusively to generate profit. However, this view has drawn fewer followers in recent times.

According to more modern theories which embed corporations' social responsibility (including one commonly referred to as the "stakeholder theory"), company directors and managers should take into account the interests of the different groups involved when making corporate decisions, considering the consequences they may have not only on shareholders, but also on employees, creditors, customers, suppliers and, in general, the communities where the business activity is carried out.<sup>5</sup> Many scholars and corporate leaders who support this view argue that incorporating this comprehensive approach is, in fact, the only way to create value for shareholders in the long run.

The adoption of these theories allows a company to pursue not only the economic benefit of its shareholders, but also that of its employees, the improvement of the conditions of the communities and the preservation of the environment, among other objectives. Now, for a legal entity to be able to effectively pursue these objectives, it is important that such company is legally able to hold certain collective and diffuse rights and defend them in court.<sup>6</sup>

For example, it would be very reasonable for a company dedicated to the generation of wind energy to pursue as part of its corporate purpose the

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<sup>5</sup> Bainbridge, Stephen M., *Corporate Law*, Third Edition, Foundation Press, USA, 2015, p. 245.

<sup>6</sup> While this topic is unsettled in Mexican courts and despite the precedents referred to in this note, in order to maximize their defense opportunities in potential disputes, companies and other legal entities operating in Mexico should consider including in their corporate purpose the ability to carry out activities to promote and defend the environment, social rights and culture.

development and operation of wind farms in order to create value for its shareholders and, at the same time, commit to support a transition to clean energies to protect the environment. As long as the company is not recognized as having a legitimate interest in protecting the right to a healthy environment and to safeguard its rights before the courts, the pursuit of this non-financial objective could potentially be curtailed under this opinion of the majority of judges of the Eighteenth Collegiate Court.

Taking into account the crucial role of the private sector in contributing to sustainable development, it is expected that more and more companies will incorporate ESG (Environmental, Social and Governance) criteria in their business strategy. This

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trend will continue to be fueled by the increased interest from investors, fund managers, regulators, employees, consumers, and other stakeholders when they decide whether to engage with a company and its products or services. Mexican courts, authorities and regulators will have to be part of this conversation and support it through public policies. Therefore, we expect this debate about the fundamental rights of legal entities to gain traction in the years to come.

At Von Wobeser y Sierra, S.C., we would be delighted to share our experience in the legal matters related to this article or any connected issues, as well as our insight with a multidisciplinary ESG (Environmental, Social and Governance) perspective.

VON WOBESER Y SIERRA, S.C.

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*The information contained in this note does not constitute, nor is it intended to constitute, nor shall be construed as legal advice on the topic or subject matter covered herein. This note is intended for general informational purposes only. To obtain legal advice on a particular matter in connection with this topic, please contact one of our attorneys referred to herein.*

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