

INAI resumes its activities following a Supreme Court's temporary injunction

Mexico City, August 31, 2023

The Second Chamber of the Supreme Court of Justice (hereinafter, "Second Chamber of the SCJN"), in a session held on August 23rd, 2023, ruled on the Complaint 229/2023-CA, filed by the National Institute of Transparency, Access to Information and Protection of Personal Data (hereinafter, "INAI") against the denial of the temporary injunction requested in the Constitutional Controversy 280/2023, also filed by said Institute.

The following is an analysis of said ruling and its background.

Background of the Constitutional Controversy

On March 27th, 2023, INAI filed a Constitutional Controversy against the inaction of the Senate of the Mexican Congress to appoint new commissioners for said Institute, in terms of the Article 6 of the Mexican Constitution.

Additionally, INAI filed a motion for a temporary injunction, amongst the effects of which was to allow said Institute to validly conduct sessions with the 4 commissioners that currently comprise it, while the Controversy filed before the SCJN was resolved.

In this regard, by means of a court order issued on April 24th, 2023, the Controversy was admitted by Justice Loretta Ortiz Ahlf. On the same date, Justice Ortiz Ahlf denied the temporary injunction requested by INAI.

The denial of the temporary injunction was appealed by INAI through a Complaint, which was submitted to the office of Justice Javier Laynez Potisek under file number 229/2023-CA.

Session of the Complaint

After the admission and examination of the aforementioned Complaint, it was resolved in the session of August 23rd, 2023 by the Justices of the Second Chamber of the SCJN.

In the session, by a majority of 3 votes (with one vote against by Justice Yasmín Esquivel Mossa and the absence of Justice Loretta Ortiz Ahlf), the Chamber determined to revoke the appealed resolution and granted INAI the requested injunction, temporarily disapplying the content of Article 33 of the Federal Law on Transparency and Access to Public Information, which provides for a minimum quorum of 5 commissioners for the validity of the determinations adopted by the Plenary of INAI.

Reasons for the ruling

In a statement released through its media channels, the SCJN stated that the ruling was based on the fact that the current blockage of INAI's functions implied a repeated violation of the human rights of access to public information and personal data protection of thousands of members of society.

For the time being, since the publication of the ruling is pending and due to the lack of discussion by the Justices of the Second Chamber of the SCJN in the aforementioned session, it is not possible to know the rest of the arguments that led the Justices to grant the requested suspension.

Effects of the ruling

Until the Supreme Court of Justice of Mexico resolves on the merits of the Constitutional Controversy 280/2023, INAI's Plenary is enabled to continue voting on matters with its current 4 members.

The temporary injunction granted means that the matters being handled by INAI whose resolution had been prevented due to the lack of Commissioners may be resolved in the following days.

At Galicia Abogados we are prepared to assist you in any proceeding related to the effects of the SCJN ruling discussed in this note.

* * *



This document is a summary for disclosure purposes only. It does not constitute an opinion and may not be used or quoted without our prior written permission. We assume no responsibility for the content, scope or use of this document. For any comments regarding it, please contact any partner of our firm.

