

## **MEXICAN SUPREME COURT UPHOLDS THE CONSTITUTIONALITY OF THE MEXICAN ARBITRATION STATUTE**

Teléfonos de México, S.A. de C.V. (“Telmex”) brought a constitutional (“amparo”) suit alleging that the Mexican arbitration law was unconstitutional. The Mexican Supreme Court, in a landmark case, held otherwise.

### **The Challenge**

The challenge (*Amparo en Revisión 759/2003*) stemmed from a court resolution during an award enforcement proceeding which Telmex stood to lose.

Importantly, the Mexican arbitration law (Title IV, Book Fifth of the Federal Commercial Code) is inspired in the UNCITRAL Model Law on international Commercial Arbitration.

Telmex claimed that article 1435 of the Mexican arbitration statute failed to pass constitutional muster on two separate grounds:

1. The provision in question failed to accord essential procedural formalities; and
2. It granted unlimited authority.

Each shall be succinctly explained.

### ***Failure to include essential procedural formalities***

Telmex referenced Supreme Court jurisprudence which established the due process requirements that all procedural laws must abide by in order to withstand constitutionality scrutiny. The requirements were:

- a) Notice of the initiation of the proceeding and its consequences;
- b) The opportunity to offer and produce the evidence involving the claims and defenses the parties may wish to rely on;
- c) The opportunity to plead; and
- d) The issuance of a resolution that solves the debated issues.

Telmex alleged that Article 1435 of the Arbitration Law (an almost verbatim copy of Article 19 of the UNCITRAL Model Law on International Commercial Arbitration), failed such constitutionality test inasmuch as it only stated:

“Subject to the provisions of this title, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

Failing such agreement, the arbitral tribunal may, subject to the provisions of this title, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitration tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”

The Supreme Court dismissed the argument. The Court found the claim to be unsupported given that Article 1435 is but part of an integral law which, if analyzed in its entirety, met the said Constitutional requirements.

### ***Unbound authority***

Telmex posited that the arbitration tribunal's authority to *conduct* ("dirigir" is the Spanish word) an arbitration procedure vested omnipotent authority on arbitrators and was hence unconstitutional.

The Supreme Court rejected the claim. In doing so it echoed the reasons for dismissing the first ground: no unbridled authority was granted inasmuch as the said proviso formed part of an integral law which contained due process limitations sufficient to conform with Constitutional standards.

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