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THE HUMAN RIGHTS OF COMPANIES

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THE HUMAN RIGHTS OF COMPANIES

Currently we have heard the word “Human Rights” very constantly, and for any socially unpleasant event it is said that “Human Rights were affected” entering into the abusive concept on this topic.

Human Rights are those qualitative, quantitative and optional elements that are attached to the very nature of the Human Being and whose objective is to dignify the essence of the human being in his life, integrity and development as a person. This Right cannot be separated from any person or individual because it is inextricably linked to their own nature of Being; in such a way that no Legislative Congress, whether National or State, can legislate on the “creation of Human Rights”, since they are pre-written since the existence of the Human Being; but rather, legislative bodies must recognize through Law these Rights that emanate from the very nature of the Human Being.

Now, to understand the scope of Human Rights, within Legal Science, there are various methods of interpretation or “Hermeneutics”, which help legal scholars obtain results of understanding the Law under disciplined reasoning within the study. .

Now, the study is aided by various principles of understanding the Law, among them we will mention the Principle of Progressivity of the Law on the subject of Human Rights, which means that the scope of Human Rights within the Law must go expanding, for the better protection of said rights. Regarding this criterion, the highest court of our country has issued a mandatory criterion for all Mexican authorities to observe this principle:

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PRINCIPLE OF PROGRESSIVITY OF HUMAN RIGHTS. ITS NATURE AND FUNCTION IN THE MEXICAN STATE.

The principle of progressiveness that governs human rights implies both gradualness and progress. Graduality refers to the fact that, generally, the effectiveness of human rights is not achieved immediately, but rather involves an entire process that involves defining short, medium and long-term goals. For its part, progress implies that the enjoyment of rights must always improve. In this sense, the principle of progressiveness of human rights is related not only to the prohibition of regressivity in the enjoyment of fundamental rights, but also to the positive obligation to promote them in a progressive and gradual manner, since as pointed out by the Permanent Constituent Assembly, The Mexican State has the constitutional mandate to make all the necessary changes and transformations in the economic, social, political and cultural structure of the country, so as to guarantee that all people can enjoy their human rights. Therefore, the aforementioned principle requires all authorities of the Mexican State, within the scope of their jurisdiction, to increase the degree of protection in the promotion, respect, protection and guarantee of human rights and also prevents them, by virtue of its expression of non-regression, adopt measures that, without full constitutional justification, reduce the level of protection of the human rights of those who submit to the legal order of the Mexican State.

Direct protection under review 2425/2015. Grupo Uno Alta Tecnología en Proyectos e Instalaciones, SA de CV August 12, 2015. Unanimity of four votes of Ministers Eduardo Medina Mora I., Juan N. Silva Meza, José Fernando Franco González Salas and Alberto Pérez Dayán. Absent: Margarita Beatriz Luna Ramos. Speaker: Alberto Pérez Dayán. Secretary: Georgina Laso de la Vega Romero.

Protection under review 1148/2016. Lorenzo Torres Vargas. June 21, 2017. Five votes from Ministers Alberto Pérez Dayán, Javier Laynez Potisek, José Fernando Franco González Salas, Margarita Beatriz Luna Ramos and Eduardo Medina Mora I.; Margarita Beatriz Luna Ramos voted against considerations. Speaker: José Fernando Franco González Salas. Secretary: Héctor Orduña Sosa.

Protection under review 249/2018. Ombudsman Training Patrimonial Consulting and Consulting, SC or Ombudsman Training Patrimonial Consulting and Consulting, SA de CV July 4, 2018. Unanimity of four votes of Ministers Alberto Pérez Dayán, Javier Laynez Potisek, José Fernando Franco González Salas and Eduardo Medina Mora I. ; José Fernando Franco González Salas separated from some

considerations. Speaker: Margarita Beatriz Luna Ramos; In his absence, Alberto Pérez Dayán took up the matter. Secretary: Estela Jasso Figueroa.

Direct protection under review 4191/2018. Miguel Ángel Huerta Rodríguez. November 14, 2018. Majority of four votes of Ministers Alberto Pérez Dayán, Javier Laynez Potisek, José Fernando Franco González Salas and Eduardo Medina Mora I. Dissident: Margarita Beatriz Luna Ramos. Speaker: José Fernando Franco González Salas. Secretary: Selene Villafuerte Alemán.

Protection under review 886/2018. HPG Business Solutions, SA de CV January 9, 2019. Five votes from Ministers Alberto Pérez Dayán, Eduardo Medina Mora I., José Fernando Franco González Salas, Margarita Beatriz Luna Ramos and Javier Laynez Potisek; Margarita Beatriz Luna Ramos and with reservation of discretion José Fernando Franco González Salas departed from considerations related to the progressivity study. Speaker: José Fernando Franco González Salas. Secretary: Roberto Fraga Jiménez.

Jurisprudence thesis 35/2019 (10th). Approved by the Second Chamber of this High Court, in a private session on February 6, two thousand and nineteen.

This thesis was published on Friday, February 15, 2019 at 10:17 a.m. in the Judicial Weekly of the Federation and, therefore, is considered mandatory application as of Monday, February 18, 2019, for the purposes provided for in the seventh point of the Plenary General Agreement 19/2013.

In the present case, within Business Law, every person has the right to associate to establish a company, obviously Human Rights protect the person as a partner, but under the Progressive method of the Law, the protection of Rights must be extensive. Humans, not only to the partners as Human Beings, but also to the company, since it is the face of the partners before society to carry out business activities; and it is in this way that the Human Rights of Companies in Mexico are currently recognized. This criterion is also endorsed by the highest court of our country, by upholding the following jurisprudence, which is a mandatory criterion for all Mexican authorities to interpret the Law in that sense:

Epoch: Tenth Epoch

Registration: 2008584

Instance: Plenary

Thesis Type: Jurisprudence

Source: Gazette of the Judicial Weekly of the Federation

Book 16, March 2015, Volume I

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PRINCIPLE OF INTERPRETATION MOST FAVORABLE TO THE PERSON. IT IS APPLICABLE REGARDING THE RULES RELATING TO THE HUMAN RIGHTS OF WHICH LEGAL PERSONS ARE OWNER.

Article 1. of the Political Constitution of the United Mexican States, by providing that in the United Mexican States all people will enjoy the human rights recognized in said Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for its protection does not provide any distinction, so it must be interpreted in the sense that it includes both natural persons and legal entities, who will enjoy those rights to the extent that they are in accordance with their nature and purposes . Consequently, the principle of interpretation most favorable to the person, which the second paragraph of the aforementioned precept establishes as imperative, is applicable with respect to the norms relating to the human rights enjoyed by legal entities, so they must be interpreted favoring in the broadest protection at all times, provided that these are not rights whose material content can only be enjoyed by natural persons, which will have to be determined in each specific case.

Contradiction of thesis 360/2013. Among those supported by the Second Collegiate Courts in Administrative Matters of the Seventh Circuit and Second in Administrative Matters of the Fourth Circuit. April 21, 2014. Unanimity of eleven votes of the Ministers Alfredo Gutiérrez Ortiz Mena, José Ramón Cossío Díaz, Margarita Beatriz Luna Ramos, José Fernando Franco González Salas, Arturo Zaldívar Lelo de Larrea, Jorge Mario Pardo Rebolledo, Luis María Aguilar Morales, Sergio A. Valls Hernández, Olga Sánchez Cordero de García Villegas, Alberto Pérez Dayán and Juan N. Silva Meza. Speaker: Margarita Beatriz Luna Ramos. Secretary: Guadalupe M. Ortiz Blanco.

Thesis and/or competing criteria:

Thesis VII.2o.A.2 K (10a.), entitled: "HUMAN RIGHTS. LEGAL PERSONS DO NOT ENJOY THEIR OWNERSHIP.", approved by the Second Collegiate Court on Administrative Matters of the Seventh Circuit and published in the Judicial Weekly of the Federation and its Gazette, Tenth Era, Book XVIII, Volume 3, March 2013, page 1994, and the one supported by the Second Collegiate Court on Administrative Matters of the Fourth Circuit, when resolving the direct protection 315/2012.

Note: From the sentence that fell under direct protection 315/2012, resolved by the Second Collegiate Court on Administrative Matters of the Fourth Circuit, the isolated theses IV.2o.A.30 K (10a.) and IV.2o.A. 31 K (10a.), of headings: "LEGAL PERSONS. THEY ARE HOLDERS OF HUMAN RIGHTS AND THE GUARANTEES ESTABLISHED FOR THEIR PROTECTION, IN THOSE CASES IN WHICH THIS IS APPLICABLE, ACCORDING TO THEIR NATURE." and "EFFECTIVE JUDICIAL PROTECTION. THE CONSTITUTIONAL TREATMENT OF THIS

RIGHT SHOULD BE EQUAL FOR NATURAL AND LEGAL PERSONS", published in the Judicial Weekly of the Federation and its Gazette, Decima Época, Book XXIV, Volume 3, September 2013, pages 2628 and 2701, respectively.

The Plenary Court, on February 24, approved, with number 1/2015 (10th), the above jurisprudential thesis. Mexico, Federal District, on February twenty-four, two thousand fifteen.

This thesis was published on Friday, March 6, 2015 at 9:00 a.m. in the Judicial Weekly of the Federation and, therefore, is considered mandatory application as of Monday, March 9, 2015, for the purposes provided for in the seventh point of the Plenary General Agreement 19/2013.

With these foundations of our presentation, it is clear that in our country, any company can defend itself and protect itself for violation of its Human Rights against acts of authorities (share capital, its right of defense, its right to a hearing, its company assets, etc.), so in Mexico, if there is effective protection for companies regarding their Human Rights as such, they only have to know how to enforce them through legal and constitutional means.

For questions or comments about this article, please write to us in your language at Grupomosqueda@gmail.com and we will be happy to answer your questions.

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