

Minutes

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Ref.: Evaluation of Supreme Court ruling No. 18.080-2025 on the appeal for protection filed by Lotería de Concepción.

The purpose of this memorandum is to develop the most relevant elements of Supreme Court ruling No. 18.080-2025 (hereinafter, the "Ruling") on the appeal for protection filed by Lotería de Concepción, in which Polla Chilena de Beneficencia joined as a third party intervener.

Without prejudice to the in-depth analysis in this Memorandum, our preliminary conclusions are as follows:

- a) The Judgment, in a 3-2 split vote, drafted by a member lawyer in the midst of an unusual composition of the chamber, reaffirmed without major differences the doctrine of the Supreme Court's *Mundo Pacífico* judgment (2023), overturning a solid judgment of the Court of Appeals that adopted the dissent.
- b) It is noteworthy that the ruling does not mention the *Mundo Pacífico* ruling. This reinforces the idea that neither *Mundo Pacífico* nor this ruling operate as precedents in our legal system.
- c) The effects of the ruling are legally limited and strictly confined to the parties and the specific dispute—ordering only the specific blocking of a limited group (12) of online

gambling sites (their URL) by a specific and limited group of ISPs (6)—and the substantive issues may be discussed again in another legal proceeding.

- d) However, it cannot be ignored that such effects have the potential to amplify the public debate, with possible repercussions on the processing of the platform regulation bill currently under discussion in Congress, a possible overreaction by ISPs (as already occurred in connection with the *Mundo Pacífico* ruling in 2023) and the reactivation of new administrative actions by the Superintendency of Casino Gaming ("SCJ") and eventually the Undersecretary of Telecommunications ("Subtel"). We know that both institutions have attempted in the past to amplify and generalize the effects of *Mundo Pacífico*, although without practical results, given the lack of legal authority to do so, which, incidentally, has been widely recognized by these entities in legislative and judicial forums.
- e) Finally, the ruling also has no effect in criminal matters (regardless of the statement made in section 5 of the ruling). The authoritative interpreter in this matter is the Public Prosecutor's Office. And in various administrative and public proceedings (legislative discussions), it has clearly stated that the existing criminal offenses are not applicable in this case. Hence, specific criminal offenses are being regulated and updated in the bill regulating online gambling platforms currently under discussion in Congress (Bulletin No. 14.838-03).

I. Brief summary of background information.

- a) The appeal for protection filed by Lotería: Similar to the appeals filed by Polla Chilena de Beneficencia ("Polla") in 2022 before the Court of Appeals of Santiago (Case No. 99766-22) and Concepción (Case No. 63.620-2022), on July 1, 2024, Lotería filed an appeal for protection before the Court of Appeals of Santiago requesting that the latter order the ISPs to block a list of 12 websites administered by a series of online betting platforms.¹ The premises of the appeal were essentially as follows:
- i. That, as established in Article 63 No. 19 of the Constitution, gambling and betting are economic activities reserved for certain entities, including the appellant, and therefore their unauthorized operation constitutes an illegal activity, prohibited by civil law and punishable by criminal law.

¹ The companies listed are Betano, Betway, Betcris, Coolbet, Juega en Línea, 1xBet, Rivalo, Betsson, RojaBet, BetWarrior, BetSala, and MiCasino.

- ii. That the principle of net neutrality, enshrined in Article 24 H(a) of the General Telecommunications Law ("LGT"), allows for limitations and requires interference by providers in the event of any "type of legal activity or use carried out through the network," which has recently been affirmed by the Supreme Court (2023) in hearing the appeal of the second of the appeals filed by Polla (Case No. 152.138-2022 or "Mundo Pacífico ruling"), stating that "it should be noted that internet service providers are prohibited from restricting services, content, activities, or legal use, from which it follows that, if they do not meet this qualification, they can and must block them, especially when the request comes from the only entity authorized to carry out the activity in question."
 - iii. The appellant concludes by requesting (i) that the respondents have acted illegally and arbitrarily, and that the websites in question host illegal services, and that, consequently, (ii) the necessary measures should be taken to ensure that the respondents block gambling and gaming sites, as well as (iii) technical aspects that prevent the blocked sites from coming back online. In addition, in another part of its submission, the appellant requests that (iv) a stay of execution be ordered in order to "order the respondents to preventively block websites that host illegal betting or gambling houses."
- b) Ruling of the Santiago Court of Appeals: In the first instance, and having been previously declared inadmissible on July 3, 2024 (overturned by the Supreme Court on August 13, ordering the appeal to be heard), the Fourth Chamber of the Santiago Court of Appeals (case No. 16.665-2024, dated April 30, 2025) rejected the appeal for protection on the basis of the following considerations:
- i. Need for prior declaration (c.9°): The illegality of bets made through websites, as well as civil or criminal penalties, must be declared in advance by the competent court. Thus, *"As has been decided, the illegality of the obligations contracted by virtue of bets made through the sites that the appellant seeks to block, as well as the civil penalties for the acts or contracts from which they arise, must first be declared by the competent court. The same applies in the criminal sphere, with regard to the violations of the laws and regulations relating to lotteries and gambling houses referred to by the appellant, since it will be in the relevant criminal proceedings that the punishable act subject to sanction will be established and, where appropriate, the participation in it of the persons against whom the proceedings are directed. (Court of Appeals of Concepción, Protection Case No. 63.620-2022).*
 - ii. The precautionary measure is inappropriate and there are no undoubted rights (c.10°): The blocking of websites and its application to gambling sites requires a

- wide-ranging debate before the competent body, i.e., Subtel, and the procedure provided for in the General Telecommunications Law (Law No. 18,168).²
- iii. Lack of standing to sue (c.11°): Lotería cannot be classified as a "user" of the respondents' services, and therefore did not fall within the scope of Article 24 H LGT to request the blocking of sites "(...) *therefore, the conflict of interest on which this action is based must be resolved in a broad knowledge procedure, making use of the administrative, civil, or criminal actions provided for in the legal system.*"
 - iv. Relative effect of judgments (c.12°): Fundamentally, the Santiago Court of Appeals, reaffirming the principle of the relativity of judicial rulings and the inadmissibility of using precedents to base administrative acts with direct legal effects on third parties not involved in the proceedings, declares that the Mundo Pacífico ruling "(...) *is not applicable by analogy to this case, considering the provisions of Article 3 of the Civil Code, which refers to the relative effect of judgments. Thus, for an individual to seek to extend the effect of that judgment, in which Polla Chilena de Beneficencia S.A. and Mundo Pacífico S.A. were parties, to the respondents in this case, could constitute an act of self-help.*"
- c) Supreme Court ruling: Resolving the appeals filed by the appellant Lotería y Polla—in its capacity as a third party intervener—the Third Chamber of the Supreme Court, in a divided ruling (3x2) and with an atypical composition, overturned the appealed ruling and upheld the appeal for protection on September 29, 2025 (Case No. 18.080-2025), considering the following:
- i. General prohibition of games of chance (c.7°): For the Supreme Court, both lottery draws and online sports betting are generally prohibited by law, classifying debts incurred in such games of chance as illegal because they have an illegal purpose (Article 1466 of the Civil Code), and also criminally punishing those who enable such activity and those who participate in it (Articles 277, 278, 495 No. 14 of the Criminal Code).
 - ii. Exclusive concession (c.8°): Given that this is an activity that is generally prohibited, the legal system regulates in detail the situations in which it may be carried out by certain legal entities. Thus, "(...) *Lotería de Concepción was authorized by Law No. 18,568 to maintain, operate, and administer a lottery*

² "(...) the facts described in the appeal and, in particular, its requests, exceed the matters that should be heard through this channel, given its precautionary nature, bearing in mind that the existing controversy is not related to undoubted or pre-existing rights that must be protected, since, to do so, this Court would have to determine which websites are illegal, given that the request that was rejected by the appellant refers in very general terms to online gambling sites, which exceeds the scope and nature of this eminently precautionary action" (SCA Case No. 16.665-2024, c.10°).

system. In turn, with regard to Polla Chilena de Beneficencia S.A., sports betting is regulated by Decree Law No. 1,298, cited above, which limits the organization, administration, operation, and control of this system to the appellant in this case (...) and therefore excludes the possibility of carrying out any other similar sports betting initiative without express legal authorization (...)".

- iii. Interpretation of the principle of net neutrality (c.9°): On this matter, the Court points out that the provider (ISP) is prohibited from restricting legal services and that, therefore, if they do not meet this requirement, it can and must block them *"(...) even more so when the request comes from an entity authorized to maintain, operate, and administer a lottery system."*
- iv. The failure to block affects the Lottery's property rights (paras. 12 and 13): In short, for the Court, the respondents' failure to block the sites, especially when it involves an illegal activity, constitutes an illegal and arbitrary act that affects the Lottery's property rights (Art. 19 No. 24) over its exclusive and exclusive authorization.³

II. Comparison with the Supreme Court ruling in case No. 152.138-2022 (*Mundo Pacífico*).

In substantive terms, both Supreme Court rulings are equivalent in that they are based on identical regulatory premises, recognize the general prohibition of online gambling, interpret the principle of net neutrality in the sense that it only protects legal activities, and, in short, order the blocking of the websites reported by the appellants, as entities legally authorized to carry out this type of activity. Notwithstanding the foregoing, it is important to note that the ruling does not cite *Mundo Pacífico* as a directly binding precedent.

Table 1. Comparison of rulings.

Ruling	Polla vs Mundo Pacífico (Case No. 152.138-2023)	Lotería vs ISPs (Case No. 18.080-2025)
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³ *"(...) the fact that the respondent facilitates the provision of a betting system that is contrary to the current legal system and the consequent refusal to block the aforementioned websites, especially when it is an illegal activity, identified and reported by the Superintendent of Casinos to the Public Prosecutor's Office, seriously affect the exercise of its right of ownership over the exclusive and exclusive authorization to operate online sports betting, which is disrupted by the unlawful offer made by internet companies through the respondent internet service provider."* (SCS Case No. 18.080-2025, c.12°).

Appealed	Mundo Pacifico S.A.	Claro, ENTEL, GTD, Telefónica, WOM, and VTR
First instance ruling (Court of Appeals)	The Court of Concepción considered that the preliminary injunction was not an appropriate means of resolving the dispute. ⁴	The Santiago Court based its decision on the grounds that (i) the illegality of betting and its penalties must be declared in advance by (ii) Subtel via a public hearing procedure, (iii) Lotería is not a "user" of ISP services and therefore lacks standing to sue, and (iv) the Mundo Pacifico ruling has no precedential value and therefore cannot be applied by analogy or with respect to third parties who are not parties to the case, given the relative effect of judgments.
Supreme Court Decision	In both rulings, the Supreme Court overturned the appealed judgment and ordered ISPs to immediately block the listed websites, 23 sites in the first case and 12 in the second. The specific order in both rulings is identical: that the respondents may not transmit or promote gambling, unless they can prove legal authorization and authorization from the administrative authority, and must <u>therefore</u> immediately block all websites requested by the appellant in these proceedings.	
Key rationale	The fundamental basis of both rulings, citing equivalent regulations, is the same: online sports betting is prohibited under the law, as it involves illegal debts and is also a criminally punishable activity. Consequently, the law only authorizes this activity in certain specific cases.	
Interpretation of Article 24 H LGT ⁵	ISPs are prohibited from restricting legal content or uses, which means that if they do not meet this requirement, they can and must be blocked, especially when the request for blocking comes from entities authorized to carry out the activity.	
Fundamental guarantees affected	Property rights (Article 19 No. 24) over the exclusive concession of the activity.	

Source: Own elaboration.

Thus, the ruling consolidates the *Mundo Pacifico* doctrine (2023) in the following aspects, although with nuances that must be weighed:

- a) Although the ruling would seem, in principle, to aggravate the judicial impact by ordering the blocking of websites to a much larger group of ISPs simultaneously, thus solidifying the general application of the doctrine throughout the industry, such a conclusion must

⁴ "That the appealed judgment, in rejecting the constitutional action brought, essentially states that the very nature of the constitutional and precautionary action established in Article 20 of the Political Constitution of the Republic and the inquisitorial procedure provided for its processing determine that this remedy is not appropriate for discussing and resolving matters such as those underlying the action, as they are specific to other procedures, since the appellant, who does not have the status of a user, does not fall within the hypothesis described by the law and in which case the respondent could block access to certain content, applications, or services; so it is in this type of procedure—through the proper evidence—that the legal conflict of interests on which the action is based must be resolved; since it is there that the appellant company can make use of the actions provided for in the legal system that it deems appropriate to reverse the situation it seeks to challenge through this channel." (SCS Case No. 152.138-2023, c.2°)

⁵ Law No. 18,168, Article 24 H, letter a) - "They may not arbitrarily block, interfere with, discriminate against, hinder, or restrict the right of any Internet user to use, send, receive, or offer any legal content, application, or service through the Internet, as well as any other type of legal activity or use carried out through the network."

be tempered by the de facto activism of the SCJ and Subtel's actions following *Mundo Pacífico*. In effect, both made significant efforts aimed precisely at ordering a series of ISPs that were not parties to the appeal to block the websites identified by the appellant, thereby irregularly extending the scope of a court ruling. Thus, following the *Mundo Pacífico* ruling, under pressure from the SCJ, Subtel issued Circular Letters No. 502 and No. 515, in which it not only communicated the content of the ruling, but also instructed a group of providers to report on how they had complied with the ruling (Letter No. 502) and subsequently ordered the blocking of various online gaming platforms, under threat of administrative action (Circular No. 515). However, it should be noted that the ruling only extended to ISPs ordered to block access, not to the list of websites.

- b) Despite the dissent, the ruling consolidates the primacy of the Supreme Court's criteria over the considerations of the Courts of Appeals (Concepción first, and Santiago later) in the following:
- i. *Per se* illegality: As we have seen, the Santiago Court had rejected Lotería's appeal on the grounds that illegality must first be declared by a competent court. The Supreme Court, in overturning this decision, reinforced this position by validating the argument of Lotería and Polla (co-defendant) that unauthorized betting is illegal *per se* (under Article 1466 of the Civil Code, the Criminal Code, and the Constitution).
 - ii. The nature of "user": The first instance ruling in Lotería (2025), as in Polla (2023), had rejected the appellant's standing to sue on the grounds that it was not a "user" of the respondents' services under Article 24 H of the LGT. The fact that the Supreme Court upheld the appeal aggravated the position by reaffirming that protection applies to the legally authorized entity whose concession is impaired, regardless of whether it is a direct "user" of the particular internet service being blocked.
 - iii. Interpretation of the principle of net neutrality: As we have seen, both rulings agree that the restriction on blocking content and uses only applies to legal content (Art. 24 H LGT).

III. Evaluation and effects of the ruling.

- a) **Limited effects of a protective order in our legal system: effects with respect to the case and the parties. They have no general effects and do not constitute precedent.** Judgments in Chile, including protective judgments, do not have erga omnes (general) effects. Nor do they constitute precedent. This was clearly and explicitly confirmed in the judgment of the Santiago Court of Appeals,

which rejected Lotería's appeal in the first instance, explicitly mentioning the *Mundo Pacífico* judgment (in terms of not being considered precedent). Judgments handed down in protection proceedings do not produce *res judicata*, nor can they be considered binding precedents for other courts, much less a source of law for administrative bodies. In this sense, invoking the ruling as if it were a "declaration of illegality with normative effect" constitutes an unacceptable distortion of the scope of that judgment. This means that matters resolved in decisions such as the ruling under analysis may be discussed again in a different type of legal proceeding, particularly substantive issues (such as the legal status of online gaming and gambling). In effect, the majority doctrine understands the appeal for protection as a precautionary, provisional action, a "mere palliative" in the face of threats or disturbances of constitutional guarantees,⁶ and not as a definitive jurisdictional declaration of the law.⁷ Hence, a precautionary ruling, due to its provisional nature, logically produces only formal *res judicata*, and that is because "(...) it lacks an adequate 'adversarial' process that allows the parties to discuss the disputed right in greater or lesser detail, in terms of closing the debate forever; this summary nature of the discussion increases the degree of possible judicial error."⁸

- b) Specific effects of the ruling (what the ruling does order).** The ruling orders, in accordance with the appeal, the specific blocking of a limited group (12) of online gambling sites (their URL) by a specific and limited group of ISPs (6). Specifically, and similar to the *Mundo Pacífico* ruling, the Court mandates "(...) that the respondents may not transmit or promote games of chance, unless they can prove legal authorization and authorization from the administrative authority, and must therefore immediately block all websites requested by the appellant in these proceedings." Consequently, it does not order all ISPs to block all URLs for all online platforms, as Polla's lawyer erroneously claimed in a national media outlet. Furthermore, the ruling does not order the other requests included in the

⁶ "(...) it has been understood as a specific, emergency action, with a quick and informal procedure, which therefore requires that the right that is said to have been violated be "legitimate," that is, that it be based on clear de facto situations that allow this special procedure to restore the rule of law. Hence, it has been argued that it is inadmissible to use it to seek a ruling on substantive situations that are widely known, since it is a precautionary measure aimed at promptly resolving factual situations that at a given moment are altered, or threatened with being altered, by a third party, to the detriment of the person bringing the action (...)" in Emilio Pfeffer Urquiaga, *The remedy of protection and its effectiveness in the protection of constitutional rights in Chile*, Constitutional Studies, vol. 4, no. 2, November 2006, p. 97.

⁷ Alejandro Romero Seguel, *Res judicata in Chilean civil proceedings. Doctrine and case law*, Editorial Jurídica de Chile, 2002, p.75.

⁸ *Ibid.*, p. 77.

Lottery's petition, namely, to implement technical measures to prevent the blocked sites from coming back online.

- c) **Ineffectiveness of the claim of monopolistic exclusivity in favor of Polla and Lotería (it may be challenged in court before the same higher courts of justice or the TDLC).** The Constitution does not prohibit online gambling. The ruling's interpretation of the meaning of Article 63 No. 19 of the Constitution has no place in our constitutional system. We know that there is no express legal prohibition (except for physical casinos, which is explicit). In this context, the Court's interpretation that both Law No. 18,568, which regulates the activities of Lotería de Concepción, and DL No. 1298, which creates the sports betting system under which Polla operates, grant exclusivity for the development of online sports betting activities, is incorrect. In the case of DL No. 1298, this legal body is imperative for the authorization of a public company to carry out business activities under Article 19 No. 21 inc. 2 of the Constitution. On the contrary, DL No. 1298 does not establish that it is a single, exclusive system that establishes a legal monopoly in favor of Polla. Consequently, it may coexist with other online betting platforms in accordance with the Constitution and Chilean law.
- d) **Neither the SCJ nor Subtel have jurisdiction over online betting platforms or their activities.** In the case of the SCJ, its jurisdiction is restricted to Law No. 19,995, and it lacks the authority to interpret regulations outside that scope. The Superintendency has attempted to base its public statements and official communications on Article 42 of the aforementioned law, which grants it powers of sectoral regulatory interpretation and coordination with other State bodies. However, in numerous public instances and administrative acts, it has indicated that it does not have the authority to intervene in the development, operation, or supervision of online betting platforms. Something similar occurs with Subtel, an agency that, in extending the effects of the *Mundo Pacífico* ruling, did not act as a passive executor of a court order, but rather assumed a regulatory function without legal authorization or jurisdictional support, unduly extending the effects of an individualized ruling to the industry as a whole.
- e) **The ruling has no effect in criminal matters (regardless of the statement made in section 5 of the ruling).** The authoritative interpreter in this matter is the Public Prosecutor's Office. And in various administrative and public proceedings (legislative discussions), it has clearly stated that the existing criminal

offenses are not applicable in this case.⁹ Hence, specific criminal offenses are being regulated and updated in the bill that regulates them.

⁹ For example, in the recent decision not to pursue the case by the Public Prosecutor's Office, communicated at a hearing before the 8th Guarantee Court of Santiago on July 11, 2025.