The Costa Rican Constitutional Jurisdiction

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* I wish to thank Professor Barker for inviting me to present at the “Constitutional Litigation: Procedural Protections of Constitutionalism in the Americas...and Beyond” international seminar held at the Duquesne University School of Law, and for his long-standing interest in Costa Rica’s evolution on constitutional law and its procedures. These seminars, articles in law reviews, and a selection of articles in the book he has published in the United States, speak to his long-standing interest in Latin America. Incidentally, Professor Barker has also published a third edition of LA CONSTITUCIÓN DE LOS ESTADOS UNIDOS Y SU DINÁMICA ACTUAL [THE UNITED STATES CONSTITUTION AND ITS CURRENT DYNAMICS] in Costa Rica. It is one of the few books published in Costa Rica on the historical and legal developments of judicial review in the United States.
One cannot understand constitutional law separately from other important jurisdictions. A comparative perspective helps us understand that any system of constitutional law both originates and gains nourishment from past, common, conventional behavior and legal traditions.

Modern constitutional control systems around the world must include constitutional and legal provisions to regulate the composition of courts and to list the functions that the judiciary must fulfill. Moreover, there are also other political and legal issues that control systems need to solve. The worldwide trend to implement constitutional tribunals is one of the solutions to such issues, and is one of the most representative phenomena in constitutional and procedural law.

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2. EDUARDO FERRER MAC-GREGOR, LOS TRIBUNALES CONSTITUCIONALES EN IBEROAMERICA (THE CONSTITUTIONAL COURTS IN IBERO-AMERICA) 27 (FUNDAP eds., 1st ed. 2002). The author explains that countries today create constitutional courts, as high courts, within and without the judicial structures, seeking to resolve conflicts arising from the interpretation and application of the constitutional norms. Id. This trend developed after the second half of the twentieth century in Ibero-America. Id. The author then provides examples of countries with different constitutional courts. Id. He highlights those that act independently from the judicial power, such as those in Chile, Ecuador, Spain,
termining the powers that should be granted to such constitutional courts. Furthermore, procedural rules present another issue and should be carefully crafted in constitutional control systems to direct the courts' attention to constitutional breaches involving fundamental rights and liberties or to solve constitutional conflicts between relevant governmental actors within the state. The legal discipline of constitutional procedural law provides the procedures that courts apply when adjudging constitutional infractions according to the functions expressly entrusted to them in the constitution and through legislation. An analysis of constitutional control systems, therefore will certainly include a study of the procedures that protect government structures, along with remedies established to protect individual and social rights at national and international levels, such as the Inter-American system of Human Rights.

This presentation is intended to address the historical origins of Costa Rica's constitutional remedies specifically, and to provide an overview of the type of rights protected in each case, such as standing and ripeness, all as relevant functions and roles of the Costa Rican constitutional control system.

I. THE CONSTITUTIONAL ADJUDICATION SYSTEMS

Constitutions are the highest legal norm of any country. They limit the power of the different branches of government by designing the governmental structure through which authority shall be used for the common good. Furthermore, constitutions provide an enumeration of liberties and social rights that restrain the holders of power.

Latin American countries followed similar paths in determining how to enforce their Constitutions. Their practices, however, differ from the central role that courts play in the United States in protecting the Constitution. Although the constitutionalization in Latin America originally came from traditions of the United States, others came from Europe. The remedies to enforce the

Guatemala, Peru and Portugal. Id. He also highlights independent courts within the judicial power, such as those in Bolivia and Colombia. Id. There are also specialized chambers of the Supreme Courts of Justice, such as those in El Salvador, Costa Rica, Nicaragua, Paraguay, and Venezuela. Id. The other type of court is one with broader subject matter jurisdiction, or an ordinary supreme court, which acts as a constitutional court sharing non-exclusive jurisdiction on constitutional questions, such as those in Argentina, Brazil, Honduras, Mexico, Panama and Uruguay. Id.

Constitutions and the laws derived from them delegate many functions to constitutional courts around the world. These delegations enable the courts to exercise more or less control over the different branches of government, their policies, and specific governmental actions that affect the people.

Some of the constitutional adjudication systems in the world are the result of a mixture of well-defined and differentiated models of constitutional justice. The American or "diffusive" model of constitutional justice is based on concrete judicial proceedings in which petitioners obtain redress in cases between parties in conflict. Judicial review serves to protect their individual rights. The judgment entered is inter partes. The general effects of such decisions are limited by existing precedent and the principle of stare decisis.

The European system of constitutional adjudication, originating with Kelsen's model of constitutional justice, consists of concentrated and specialized courts that resolve conflicts or controversies between the different branches of government. The grounds of this system, therefore, are founded in the protection of the constitutional order, where the public powers of government are adjudged in abstracto, and not in relation to specific cases regarding individual rights in an ordinary court. The decisions of such bodies have erga omnes effects.

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6. Inter partes is a Latin phrase that is defined as, "[b]etween parties. Instruments in which two persons unite, each making conveyance to, or engagement with, the other . . . ." BLACK'S LAW DICTIONARY 565 (6th ed., 1994). Within the context of this article on judicial proceedings, it should mean the binding consequences of a judicial decision imposed upon the parties in conflict.

7. Jose López Guerra et al., The Role of the Constitutional Court in the Consolidation of the Rule of Law 20 [Council of Europe, 1994]. This author in his speech asserted that "[t]he role and competences of the constitutional court" affirms that "[t]he Kelsenian model of constitutional justice provides for a court which is distinct and separate from the ordinary court system, with a different composition and different procedures, and having the power to examine the constitutionality of norms passed by Parliament and, if necessary, to annul any such norms found to be in conflict with the constitutional text." Id.

Depending upon the system, modern constitutions will be emphasized in varying degrees. It is possible, therefore, to find custom-made combinations that include elements of several systems. For example, the Costa Rican constitutional control system is mainly derived from the European system, but a broader concept of constitutional control systems, finds in Latin American countries an order of common characteristics that give way to the Ibero-american Model of Constitutional Justice.9

A. The Costa Rican System

1. Components of Costa Rica’s Government

The constitution defines Costa Rica as a free, and independent democratic republic,10 with a unitary system of government. According to the constitution,11 the republic consists of three independent branches: the Legislative, the Executive, and the Judiciary. However, the Supreme Electoral Tribunal is also considered to be a branch of government, because of its specific constitutional attributes.12 Consequently, the constitution not only defines the administrative, legislative, and judicial branches of government, but the electoral jurisdiction13 as well.

9. Piza Escalante, supra note 5, at 3-7. The former President of the Constitutional Chamber and former President of the Inter-American Court of Human Rights explains that he shares with Allan Brewer Carías, the existence of an Ibero-american Model of Constitutional Justice, that more or less sprouts from common grounds among these countries. Id. It is highlighted that these countries rely on extensive regulated constitutions; have generous legal treatment in standing; on the coexistence of different forms of diffusive and concentrated systems of judicial review; that popular sovereignty resides in the Constitution through which democracy survives; many of the constitutional remedies (amparo and habeas corpus) are instruments of immediate and direct appeal, not just destined for the final stages of the litigation as happens in Europe; the justiciability of a broader range of fundamental rights. Id. Not only civil and political rights as in Europe, but also economic, social and cultural rights, among others as the performance rights required from the State. Id.


11. Id. at art. 9.


13. Constitución de la República de Costa Rica de 1949 [Constitution] arts. 99 and 102. The Supreme Electoral Tribunal is the highest constitutional body with exclusive jurisdiction and control over the organization of the electoral rights concerning Costa Rican
The Supreme Court of Justice's members are elected by legislators every eight years, and are eligible for reelection.\footnote{CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 156-57.} Members of the Supreme Electoral Tribunal (which organizes, controls and monitors elections to preserve their integrity) are elected by the members of the Supreme Court of Justice for six-year terms.\footnote{\textit{Id}. at art. 99.} The President of Costa Rica has attenuated powers, that is, most of his or her decisions require the concurrence of other public officials, like a minister or cabinet secretary.\footnote{\textit{Id}. at art. 100-01.} This makes the presidential office weak in relation to the strong presidential offices common in other Latin American countries.

Costa Rica has a fifty-seven member unicameral legislature\footnote{\textit{Id}. at art. 106.} that is responsible for making ordinary legislation, or legislation to approve treaties and to amend the constitution. It has other important functions related to popular representation, the political control of government, and others.

The judiciary is organized into original, appellate, and specialized jurisdictional systems.\footnote{CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 153. This article reads as follows: 
In addition to the functions vested in it by this Constitution, the Judicial Branch shall hear civil, criminal, commercial, labour, and administrative-litigation cases, as well as any other established by law, regardless of their nature or the status of the persons involved; enter final resolutions thereon and execute the judgments entered, with the assistance of law enforcement forces, if necessary. 
\textit{Id}.} For example in civil cases, small claim courts (\textit{Juzgados de Menor Cuantía}) and other courts (\textit{Juzgados de Mayor Cuantía}) have original jurisdiction, according to the territorial circumscription, subject matter, and the estimated value of the litigation. In general, other courts are organized in
specialized jurisdictions, so they may have original subject matter jurisdiction over labor, civil, criminal, or other matters. Costa Rica therefore has agrarian, administrative, criminal, civil, and labor courts, among others.

The decisions of the courts with original jurisdiction can be reviewed by the appellate Superior Courts. Appeals from all courts proceed vertically. Certain errors of fact and/or of law can be reviewed by a timely, direct attack before one of three Chambers of the Supreme Court of Justice. Each Chamber specializes in different subject matters. The First Chamber specializes in administrative and civil matters, the Second Chamber specializes in labor and family law, and the Third Chamber specializes in criminal law issues. The Chambers may repeal or annul the decisions of the lower courts.

Prior to 1989, all members of the three Chambers of the Supreme Court of Justice composed the Plenary Court. The Plenary Court at that time was the head and administrative organ of the judiciary, and was the precursor to the current constitutional court. The promulgation of a fourth Chamber of the Supreme Court of Justice changed this system. The fourth Chamber was created through a constitutional amendment in 1989 to correct the perceived deficiencies of the constitutional control system, as well as the deficiencies of the adjudication of fundamental rights in general.

2. The Creation of the Fourth Chamber

Before the constitutional amendment creating the fourth Chamber, Costa Rica had a “passive” constitutional system of ad-

19. LEY NO. 8 DEL 29 DE NOVIEMBRE DE 1937, LEY ORGÁNICA DEL PODER JUDICIAL [ORGANIC LAW OF THE JUDICIAL POWER] art. 93, 56 (COSTA RICA). There have been several important reforms concerning criminal procedure, in which the Third Chamber shares the jurisdiction with the Superior Courts of Criminal Cassation. This, however, will change in the future with the “Creación del Recurso de Apelación de la Sentencia, otras reformas al Régimen de Impugnación e Implementación de Nuevas Reglas de Oralidad en el Proceso Penal,” Ley nº 8837 del 3 de Mayo de 2010 (Creation of the Appellate Recourse of Rulings, other reforms relating to the System of Appeals and Implementation of the new oral rules on Criminal Procedure), Law No. 8837 of May 3, 2010. This law will enter into force on December 10, 2011.


judication. As a concentrated system, the Supreme Court of Justice had the judicial review of statutes and provisions of the executive power, and the writs of habeas corpus. The criminal judges and one of the Chambers of the Supreme Court of Justice would adjudge the writs of amparo. The individual and social rights were protected in a split system with no appellate recourse; therefore, judicial decisions did not have a higher court to ensure uniform constitutional standards. And many times the lack of legal mechanisms that served as political solving proceedings—perceived as necessary instruments for good governance—to resolve many other conflicts and constitutional questions, among the different branches of Government.

Ousting the old constitutional control system through amendments would improve the constitution and, therefore, the legal system, even though some critics thought that simply changing the interpretation and opinion of the judges would solve many problems. The truly detrimental effect of the old constitutional control system was the high voting requirement. This caused the endurance of statutes and executive decrees if they were not annulled by the members of the Supreme Court, which created an intended presumption of the constitutionality of legislative and executive provisions. Statutes of limitation prevented further judicial review attempts if the final decision did not declare the provision unconstitutional. Nevertheless, in a small number of cases, the Plenary Court struck down several conflicting laws on constitutional grounds, which had very positive implications for all political parties.

22. The Fourth Chamber (Sala Cuarta or Sala IV) as it is known in Costa Rica will be mentioned and treated hereon as the Constitutional Chamber.
23. The writ of amparo is a summary proceeding designed to discuss claims involving fundamental right breaches (individual and social rights), it provides for an injunction relief with the exception of those rights relating to personal liberty, that are protected by the writ of habeas corpus.
25. CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 10. See also, BARKER, supra note 4, at 9-11. Professor Barker explains with great accuracy the historical moments of art 10. Id. He has translated the original provision as follows: Dispositions of the Legislative Power or of the Executive Power which are contrary to the Constitution shall be absolutely null. [...] The Supreme Court, by vote of no less than two-thirds of all its members, has the power to declare the unconstitutionality of dispositions of the Legislative power and decrees of the Executive Power. It shall be determined by statute which tribunals shall have the power to hear claims of unconstitutionality of other dispositions emanating from the executive power.
26. GUTIÉRREZ, supra note 24, at 44.
A constitutional moment, however, came after this long period of judicial inactivity under a deficient legal structure. In 1989, the Legislative Assembly enacted new constitutional provisions. It amended the powers of judicial review by removing it from the Plenary Court and placing it in a specialized and concentrated judicial body, along with the other preexisting Chambers of the Supreme Court of Justice.

Article 10 of the amended constitution states that:

A specialized Chamber of the Supreme Court of Justice shall declare, by an absolute majority vote of its members, the unconstitutionality of provisions of any nature and of acts subject to Public Law. The jurisdictional acts of the Judicial Branch, the declaration of the elections by the Supreme Electoral Tribunal and any other acts established by law cannot be challenged following this procedure.

This Chamber shall also:

a) Settle any conflicts of jurisdiction between State branches, including the Supreme Electoral Tribunal, as well as any other entities or bodies established by law.

b) Hear any consultations on constitutional amendment bills, ratification of international agreements or treaties and other bills, as provided by law.

The judicial body would be concentrated and specialized, with original jurisdiction and no other hierarchical court above it. To declare legislation and other provisions of law unconstitutional would require an absolute majority vote of the Chamber, instead of the two-thirds required in the previous constitutional provision. Concomitant with the constitutional amendments, a new law would follow regulating constitutional jurisdiction. The new law created constitutional remedies and reinforced preexisting ones, along with the new Chamber of the Supreme Court.

Other articles of the constitution were also amended. Article 48 of the constitution provides for the writ of *habeas corpus* and the writ of *amparo*. Furthermore, the Law of the Constitutional Ju-

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27. LEY NO. 7128 DE 18 DE AGOSTO DE 1989 REFORMA CONSTITUCIONAL (CREACIÓN DE LA SALA CONSTITUCIONAL) [CONSTITUTIONAL AMENDMENT (CREATION OF THE CONSTITUTIONAL CHAMBER)] art. 10, 48, 105, 128 (COSTA RICA).


29. *Id.* at art. 48.
jurisdiction\textsuperscript{30} regulates in greater detail not only the writ of \textit{amparo}, but also the judicial review of legislation (actions of unconstitutionality),\textsuperscript{31} the advisory jurisdiction,\textsuperscript{32} and competence to settle conflicts between different, constitutionally-relevant entities or branches of government.\textsuperscript{33} Some of these remedies were introduced in these amendments for the first time, such as certain types of \textit{amparo}, the advisory jurisdiction, and the competence to settle conflicts.

These amendments benefited democracy and the rule of law in Costa Rica. They aimed to enhance and support the supremacy of the constitution, in a nation where the law and fundamental rights were not historically taken for granted by public officials. Moreover, these amendments were important for ordinary citizens. This evolution characterized Costa Rica's early years, as a prestigious jurist would claim.\textsuperscript{34}

3. \textit{The Importance of Costa Rica's Fundamental Rights and the Rule of Law}

The same year that Costa Rica acquired its independence in 1821, it adopted a Cadiz Constitution-like document to entrust its government to uphold the rule of law and regulate fundamental rights. This was an important event in 1821 for a Central American country, as other countries would have to wait longer for their constitutions. Guatemala integrated its constitution in 1823, Honduras did so in the Federal Constitution of Central America in 1825, El Salvador did so in 1824, and Nicaragua did so in 1826.\textsuperscript{35} The pure reliance on the rule of law provides an answer to the puzzling question of why Costa Rica developed differently from

\begin{footnotesize}
\begin{enumerate}
\item \texttt{LEY 7135 DE 11 DE OCTUBRE DE 1989 LEY DE LA JURISDICCION CONSTITUCIONAL [LAW OF THE CONSTITUTIONAL JURISDICTION].} This is the Costa Rican Constitutional Procedural Code. \textit{Id.} It contains in one law, all of the jurisdictional procedures built to guarantee the principle of supremacy of the Constitution, its immediate and effective enforcement. \textit{Id.} It endows the Constitutional Chamber with extraordinary powers to deem the breaches to the State structure held in the Constitution, fundamental rights and international instruments applicable to the Republic, and take the necessary measures to correct them. \textit{Id.}
\item \texttt{LAW OF THE CONSTITUTIONAL JURISDICTION at art. 73-95.}
\item \textit{Id.} at art. 96-108.
\item \textit{Id.} at art. 109-11.
\item \textit{Id.} at supra note 24, at 22. The author cites a previous paper where he analyzed the philosophical underpinnings of the 1825 Constitution. \textit{Id.}
\end{enumerate}
\end{footnotesize}
the rest of Central America, despite common historical backgrounds.

In general, along with the other Latin American countries, Costa Rica's constitutional control system evolved under the civil law tradition. It was highly influenced by the French Revolution and to another degree, by the Constitution of the United States.\textsuperscript{36} Beginning with the first constitution, the Costa Rican legal system expresses an excessive respect to the legislative branch of government.

4. The Effect of the Amendments

The rule of law had always been one of the fundamental underpinnings of the Costa Rican constitutional process. Prior to 1989, the lack of constitutional standards and legislative provisions were often deemed to be unavoidable restraints on the constitutional control system.\textsuperscript{37} The 1989 amendments had an apparent solid political base and consensus to enhance the constitutional adjudication system. These amendments provided the new judicial body with the power to reestablish the long forgotten supremacy of the constitution. The consequences of these amendments were vastly felt in the life of the national population.

Through the amendments, the jurisdictional law was furnished with a rich mixture of constitutional and legal mechanisms. It would not only adjudge individual rights questions, but it also would allow for standing to defend the constitutional order. Through these and other procedural mechanisms, the Constitutional Chamber was immediately inserted into a political minefield where it had to coexist with other branches of government (including the rest of the judiciary). Under these circumstances, the beginning of the Constitutional Chamber was difficult, having

\textsuperscript{36} Id. at 20-21. The Constitution of the United States was a clear source of inspiration behind the Latin American constitutional movement, because it regulated an orderly and legal evolution of a country from a colony to an independent nation. It was an especially important constitutional source for the Central American Federal Republic and Costa Rica's version of the "Ley Fundamental del Estado de Costa Rica" in 1825 [Fundamental Law of the Costa Rican State].

\textsuperscript{37} Francisco Castillo González, Derecho de Impugnación de la Sentencia Condenatoria y Derechos Humanos [The Right to Appeal a Conviction and Human Rights], 41 REVISTA DE CIENCIAS JURIDICAS 32 (1980). The article shows at the time, that one of the main obstacles to guarantee the full extent of the due process clause was an apparent omission in the Constitution to state the right to appeal, which only operated during serious crimes under the Criminal Procedure Code, but not for lesser infractions. Id.
to confront unconstitutional behavior from all government agencies, including the judicial branch, of which it was a part.

This new, efficient constitutional system began changing all cross-sections of government and of society. It operated directly from amended articles 10 and 48, which provided basically for the same remedies as the 1949 constitution, but now provided a concentrated and specialized judicial body with a rich base of substantive individual and collective rights.38

A very recent study, conducted by the Christian Michelsen Institute in Norway, concluded that Costa Rica’s amendments to the constitution and subsequent adoption of the Law of the Constitutional Jurisdiction, encompassed a well-built and well-structured court, and had strong support from all sectors of Costa Rican society. The study stated that:

The court’s accountability function was broadly and vigorously applied to all governmental branches only after the creation of the Constitutional Chamber of the Supreme Court in 1989. Before 1989, even though the constitution granted the Supreme Court judicial review powers and considerable levels of political and financial (operational) independence, the court was unable or unwilling to fulfill its accountability functions. The nature of the magistrates (training, class, and so on) was insignificantly different from magistrates who served on the pre-reformed Supreme Court.39

According to the researchers, the consequences of enacting the 1989 constitutional amendments took many of the framers by surprise.40 Still today, repercussions of the powers given to the court aggrieve some key political actors who complain loudly about the court’s behavior. Nevertheless, the demand for constitutional jus-

40. Id. at 67. The authors stated the following:
In 1989, during the final parliamentary debate on the constitutional amendment (Law 7,128), deputies voted by a margin of 43 to 6 in favor of creating the new court (Murillo 1994: 40). The puzzle of deputies voting to create an institution that would diminish their own policy-making sovereignty seems, on the surface, to be confusing. However, interviews with leading actors in the debate over the new court reveal that many deputies failed to grasp the potential significance of the court they were creating . . .

Id.
tice is constant and has popular support. In fact, there is a general, growing trend for constitutional justice, ever increasing since 1989.

One aim of the adjudication system was to bring the citizen closer to the constitutional justice system. This was ensured through the procedures that would allow open access to this court. This, however, is also one of today's main concerns. Open access to the court has resulted in the Constitutional Chamber working on hundreds of cases each month. In the year 2010 alone, the Chamber worked on close to twenty thousand cases.\textsuperscript{41}

The figure in the Appendix represents the historical, growing trend of writs of \textit{habeas corpus}, \textit{amparo} and judicial review cases from 1989 to 2009, showing that the writ of \textit{amparo} is the major source of the Constitutional Chamber's caseload.\textsuperscript{42}

In 2010 alone, the Constitutional Chamber has rendered 19,320 decisions of various types.\textsuperscript{43} The writ of \textit{amparo} represents the highest count with 17,477 rulings, comprising, over ninety percent (90.46\%) of the decisions of the justices.\textsuperscript{44} The writs of \textit{habeas corpus} follow, with 1,482, which represents just over seven percent (7.67\%) of all the decisions rendered.\textsuperscript{45} Concerning the judicial review of statutes or actions of unconstitutionality there were 277, giving a total close to one and a half percent (1.43\%) of the decisions taken by the Constitutional Chamber.\textsuperscript{46} Other provisions of law comprise 191 decisions, totaling approximately one percent (0.98\%) of the total decisions rendered.\textsuperscript{47} Finally, the advisory jurisdiction encompassed only 0.08\% of a percent of the 21,038 total decisions.\textsuperscript{48}

Consequently, the early success of the Constitutional Chamber can be found in its procedures, because they guarantee easy availability and accessibility to any ordinary person, citizen, and non-citizen, alike. Also, success can be attributed to the fact that the constitutional litigation was endowed, not only by the coverage of rights directly applicable from the constitution (as \textit{the} document

\begin{itemize}
\item \textsuperscript{41} See attached Appendix.
\item \textsuperscript{42} E-mail from Ana Virginia Madrigal García, Administrative Secretariat (Sept. 9, 2010, 14:53) (on file with author).
\item \textsuperscript{43} SALA CONSTITUCIONAL CORTE SUPREMA DE JUSTICIA, La Sala en Números 2010 (2011) available at www.poder-judicial.go.cr/salaconstitucional/estadisticas.htm.
\item \textsuperscript{44} \textit{Id.}
\item \textsuperscript{45} \textit{Id.}
\item \textsuperscript{46} \textit{Id.}
\item \textsuperscript{47} \textit{Id.}
\end{itemize}
where democracy sprouts), but also by incorporating international human rights standards in Article 48.\(^4\) Since the inception of the Constitutional Chamber, numerous constitutional law books have been written and university law schools now have specific programs and enhanced courses on constitutional law and procedural constitutional law.\(^5\)

The 1989 amendments to the constitution and the following enactment of the new procedural legislation clearly became an instrument to improve democracy, the rule of law, and fundamental rights and liberties.

II. THE PROCEDURES THAT PROTECT INDIVIDUAL RIGHTS AND LIBERTIES: WRITS OF HABEAS CORPUS AND OF AMPARO

The writs of *habeas corpus* and *amparo* are designed to protect individual and social rights from unconstitutional intrusions by government or private persons.\(^5\) They are free, informal, summarized, and prioritized proceedings that restore fundamental and human rights enshrined in the constitution, any human rights treaty, or other similar international legal instruments applicable in Costa Rica.

As can be seen in the attached Appendix, the vast majority of the Chamber's caseload consists of *amparo* claims.\(^5\) The caseload has had an important impact on the distribution of the time spent by the Constitutional Chamber deciding such cases; two-thirds of

\(^4\) CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 48 (AMENDED 1989). This article states:

> Every person has the right to present writs of *habeas corpus* to guarantee his freedom and personal integrity and writs of *amparo* to maintain or re-establish the enjoyment of other rights set forth in this Constitution as well as those of a fundamental nature established in international human rights instruments, enforceable in the Republic. Both writs shall be within the jurisdiction of the Chamber indicated in Article 10.

\(^5\) For the equivalent of a J.D., the number of courses will vary from one university to another, but mainly they include in their syllabuses two to four semesters directly related to constitutional law. There are also post-graduate degrees, which emphasize human rights and constitutional law. The importance of educating students in constitutional law has clearly increased through these past two decades.

\(^5\) As will be seen below, the Law of the Constitutional Chamber allows the filing of writs of *amparo* against private physical or moral personas. Rarely, writs of *habeas corpus* are filed against private individual or private moral persons, however, the Constitutional Chamber has not ruled out this writ for constitutional infractions to liberty of movement. There are examples of cases where the Chamber has admitted *habeas corpus* under these special circumstances. SCCSJ Apr. 27, 2010 SCIJ 2010-07622 (Costa Rica); SCCSJ Jun. 8, 2006 SCIJ 2006-08132 (Costa Rica).

\(^5\) Garcia, *supra* note 42.
its sessions involve the *amparo* and *habeas corpus* claims, leaving the rest for other matters that have more direct political implications. This has resulted in a bill to amend the law of the constitutional jurisdiction (one of them fostered by the Constitutional Chamber itself) that would create independent sections to adjudge *habeas corpus* and *amparos*. Others have advocated additional constitutional courts to address the said writs. The legislators, however, have deviated from this course of action and have created an amendment that would undoubtedly diminish much of the Constitutional Chamber’s attributes. This bill is currently at an early stage of the legislative procedure, before a commission, and it has not been introduced to the legislative assembly floor. Should the contents of the proposed reforms remain essentially unchanged, they will surely inflict substantial harm to the constitutional control system and the protection of individual and collective rights in the country.

On October 11, 2010 the Constitutional Chamber instituted an aggressive plan to reduce many of the problems that it faces with its current caseload. Some of the important measures include the digitalization of all claims. The plan involves developing computer science and incorporating all technical resources in order to enhance constitutional justice. The reception of documents, the analysis of the case, and the rendering of the final decision in a high percentage of cases is now being resolved readily and efficiently, including the notification of the decisions. It is expected to have a significant impact on costs as well. Less paper will be used and the time spent by the Chamber from the moment the case is filed to the instant where the interested party has the decision in

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55. There are other bills intended to amend the constitutional control system that would create constitutional tribunals to address the writs of *habeas corpus* and *amparo*, but keep the Constitutional Chamber for actions of unconstitutionality, conflicts of competence, and the advisory jurisdiction. See, e.g., EXPEDIENTE LEGISLATIVO No. 17.926 DE 18 DE NOVIEMBRE DE 2010, on the floor of the Legislative Assembly. This bill is following the first stages of a Constitutional Amendment according to article 195 of the Constitution, complying with the reading of the amendment before the Legislative body.

hand will be greatly reduced. All cases filed prior to October 11, 2010 remain the same and will be adjudged in the traditional form.

A. The Habeas Corpus

1. Origins and the Rights Protected

Eduardo Ferrer Mac-Gregor, who studies the history of the Mexican *amparo* published a study on Iberian and Latin American constitutional courts. He noted that in the Middle Ages in the Kingdom of Aragon, there existed a high public authority acting similarly to a constitutional judge, protecting property, rights, and persons in accordance with a higher order called the "general privilege," which protected certain fundamental rights. The author also mentions England's *Habeas Corpus Amendment Act* of May 26, 1679, which regulated this fundamental remedy with great detail. Nevertheless, it has not been disputed that in Costa Rica, *habeas corpus* was first known through the Mexican *amparo*, which had many forms and first began regulating the *amparo-libertad* (protection related to liberty) in Latin America. Yet, there has been some difficulty to determine the exact origins, leaving the possibility that it was a direct influence from England.

The 1859 Costa Rican Constitution first established the writ of *habeas corpus*, and the due process of law clause, but the constitutional provision mandated further regulations to ordinary legislation.

These regulations came about fifty years after the 1859 Constitution. Even though several bills were fostered by several legislators, they did not have the support of the legislative assembly to be enacted. It was not until November 13, 1909 that the country

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58. Id.

59. FERRER MAC-GREGOR, supra note 2, at 34.

had, for the first time, Law No. 4, which regulated *habeas corpus* in Costa Rica.\(^6\)

More recently, the 1949 Constitution articulated, in Article 48, the right of every person to have the recourse of *habeas corpus* when unlawfully deprived of his or her liberty.\(^6\) Today, after the 1989 amendment to the constitution, everyone has the right to file writs of *habeas corpus* to guarantee his or her freedom and personal integrity.\(^6\) This protects the freedom of movement, but also more specifically personal security, morally and physically speaking.

The law relating to the constitutional jurisdiction,\(^6\) is a comprehensive legal document that secures many more individual rights than those explicitly detailed in the constitution. According to Article 15, *habeas corpus* guarantees freedom and personal integrity against the acts and omissions of an authority of any kind, including the judiciary.\(^6\) It also protects against threats to freedom, and disruptions or restrictions improperly established by authorities, as well as against the illegitimate restrictions of one's right to move from one place to another in the republic, and one's freedom to stay, exit and enter into its territory.\(^6\)


\(^{62}\) CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 48. This article indicated:

Everyone has the right to *habeas corpus* when considered unlawfully deprived of his liberty. This recourse shall be exclusively known by the Supreme Court of Justice, and it will be under its decision to order the appearance of the victim . . . maintain or restore the enjoyment of the other rights enshrined in this Constitution, all persons shall have . . . the writ of *amparo*, which will be under the Courts established by law.

*Id.* Further information on the enforcement of the writ of *amparo* prior to 1989, see BARKER, *supra* note 4, at 15.

\(^{63}\) CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 48 (amended 1989). This article indicates:

Every person has the right to present writs of *habeas corpus* to guarantee his freedom and personal integrity and writs of *amparo* to maintain or re-establish the enjoyment of other rights set forth in this Constitution as well as those of a fundamental nature established in international human rights instruments, enforceable in the Republic. Both writs shall be within the jurisdiction of the Chamber indicated in Article 10.

*Id.*

\(^{64}\) LAW OF THE CONSTITUTIONAL JURISDICTION art. 15.

\(^{65}\) *Id.*

\(^{66}\) *Id.*
2. Standing

The jurisdictional law establishes *habeas corpus* and the *amparo* as informal, summarized and prioritized proceedings above all others, with *habeas corpus* having preference over the *amparos*. It has, however, been the Chamber's long practice that certain *amparos* will immediately follow the writ of *habeas corpus* in its sessions.

Any person may file a writ of *habeas corpus*, either for the protection of oneself or for any other individual. The Constitutional Chamber has held that the absence or invalid power of attorney will not invalidate standing in any *amparo* claim, since anyone can directly file a petition. However, the latter can be limited. In other cases, the Constitutional Chamber has held that it must be natural, that the petitioner must have the interested party's consent, and that any petitioner in favor of another must exhibit a certain degree of interest in the case.

Additionally, any written document will be enough to meet the procedural standards. As a matter of fact, people are allowed to use any type of paper to file a *habeas corpus* (or an *amparo*). For example, detainees have been known to sign petitions on papers such as bread and paper cartons, and telegrams are free of charge.

The proceedings are also free of cost to the claimant. There is no need for the petitioner to retain a lawyer, and the claimant's signature does not need to be authenticated. Normally, for judicial proceedings, all petitions must be signed by the interested party, authenticated by a lawyer, who is responsible for all of its contents. In response, the government official must submit a written statement and include with it all judicial and administrative files in its possession containing the pertinent data.

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70. BRUCE M. WILSON, ENFORCING RIGHTS AND EXERCISING AN ACCOUNTABILITY FUNCTION: COSTA RICA'S CONSTITUTIONAL COURT 60 (Gretchen Helmke & Julio Rios-Figueroa eds., 2011).
71. LAW OF THE CONSTITUTIONAL JURISDICTION art. 18; WILSON, supra note 70.
72. Id.
74. LAW OF THE CONSTITUTIONAL JURISDICTION arts. 19, 21, 22, and 23.
Constitutional Chamber will then administer a written oath to the public official when summoned. Therefore, following the oath, he or she may be individually held accountable for omissions or false statements.

The openness of the constitutional jurisdiction guarantees access to the constitutional protection and assures that minorities and the poor, who are generally not well represented otherwise, will have an effective voice. Thus, the constitutional jurisdiction provides a very important opportunity for marginalized individuals and groups in the country.

3. Ripeness

The Constitutional Chamber can accept cases to protect against threats to freedom and disruptions or restrictions improperly caused by government authorities of either an administrative or of judicial nature. This includes acts or omissions of any kind that infringe upon personal liberty and integrity.

The nature of the writ of habeas corpus is mainly a procedural remedy characterized by summary and provisional decrees. Therefore, it should be simple, informal, and have appropriate safeguards for all of the parties involved.

It can be used to fight illegitimate restrictions on an individual's right to free movement in the country, as well as foreign travel. Any breach made by a state must come from administrative or judicial authorities. On the other hand, in criminal cases, the Constitutional Chamber will not accept any petitions for habeas corpus once the conviction has been entered because there are other remedies arranged to directly contest the judgment.

B. The Writ of Protection (amparo)

1. Origins

The writ of amparo's origin can be traced to Mexico in the Yucateca State Constitution of 1841. However, proceedings similar to amparo were also brought to the Americas before its independence from Spain. For example, the colonial writ of protection (am-
paro colonial) had to be filed before the Viceroy and the Captain Generals. As hierarchical agents, they would prevent inferior officials, and even private persons, from acting upon others through the use of their position in society.

The writ of amparo was first regulated in Costa Rica in 1950. This came after a controversial election process in 1947. The opposition party called for a general strike, but the government blocked two radio stations from announcing the movement.80 A writ of habeas corpus was filed, but it proved to be incapable of protecting the freedom of speech, because the court found that it was out of the constitutional scope. Further events followed, which tainted the elections and consequently caused a civil war in 1948. Once the opposition party took power and the 1949 constitution was enacted, it included not only the habeas corpus, but also, for the first time, the writ of amparo, in favor of individual and social rights. However, the enactment and enforcement of it restricted the amparo to only cover individual rights. Therefore it was struck down on constitutional grounds and reenacted in 1952 through Law No. 35 of November 24, 1952.81 It remained in force until it was abolished by the Law of the Constitutional Jurisdiction.82

2. The Rights Protected

Along with the writ of habeas corpus, Article 48 of the constitution also regulates the right to file the writ of protection or amparo.83 Therefore, the constitution guarantees the maintenance or reestablishment of the other rights not covered by the writ of habeas corpus and those of a fundamental nature established in international human rights instruments, enforceable in the republic.

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80. LA JURISDICCIÓN CONSTITUCIONAL, supra note 61, at 197.
81. LA JURISDICCIÓN CONSTITUCIONAL, supra note 61, at 198.
82. LAW OF THE CONSTITUTIONAL JURISDICTION, art. 113.
83. CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 48 (amended 1989). Article 48 states:

Every person has the right to present writs of habeas corpus to guarantee his freedom and personal integrity and writs of amparo to maintain or re-establish the enjoyment of other rights set forth in this Constitution as well as those of a fundamental nature established in international human rights instruments, enforceable in the Republic. Both writs shall be within the jurisdiction of the Chamber indicated in Article 10.

Id.
Very shortly after the creation of the Constitutional Chamber, a set of decisions brought to light the long dormant constitutional order. The constitution already enumerated individual rights and guarantees, social rights and guarantees, other rights relating to Costa Rican nationality, foreigners’ rights and duties, rights relating to religion, education, and culture, and political rights and duties. Allowing the direct, domestic application of human rights treaties and other such standards was a change from the Supreme Court’s prior stance on these issues in the past.

Moreover, the writ of *amparo* now embraced the guaranteed rights under the American Convention on Human Rights and other international instruments dealing with fundamental rights that are applicable to Costa Rica.\(^4\) The right to appeal a decision under the American Convention on Human Rights was not recognized expressly in the constitution,\(^5\) but it was included from the American Convention on Human Rights.\(^6\) This closed an im-

\(^4\) Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87, Inter-Am. Ct. H.R. (ser. A) No. 8, ¶ 25 (Jan. 30, 1987). In paragraph 25, the Inter-American Court of Human Rights said that: The States Parties not only have the obligation to recognize and to respect the rights and freedoms of all persons, they also have the obligation to protect and ensure the exercise of such rights and freedoms by means of the respective guarantees (Art. 1.1), that is, through suitable measure that will in all circumstances ensure the effectiveness of these rights and freedoms.

\(^5\) Constitución de la República de Costa Rica de 1949. Article 39 states: No one shall be made to suffer a penalty except for a crime, unintentional tort or misdemeanor punishable by previous law, and by virtue of a final judgment handed down by a competent authority, after the defendant has been given an opportunity to plead his defense, and upon the necessary proof of guilt . . .


Article 8. Right to a Fair Trial
1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
   a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
   b. prior notification in detail to the accused of the charges against him;
   c. adequate time and means for the preparation of his defense;
   d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
important gap, because the American Convention held ensured the existence of "the right to a simple and prompt recourse... for the protection against acts that violate... fundamental rights recognized by the constitution or law of the state concerned or by this Convention..." Costa Rica moved to a system more compatible with the American Convention on Human Rights, which, in the mind of the legislators, was natural, as the Inter-American Court of Human Rights resides in San José, Costa Rica.

Today, human rights treaties are a part of the law of the land, and reinforced by the Constitutional Chamber's jurisprudence. These treaties include the International Conventions on the Elimination of Forms of Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of Persons with Disabilities, among others.

In the words of a former Costa Rican President, Dr. José Joaquín Trejos Fernandez, at the Inaugural speech of the American Conference of Human Rights, in the 1970's:

We know that in any field, absolute perfection is unattainable in this world. But we are encouraged by the desire and the will that in the coming years this new continent will be able to show to the world the enforcement of legal instruments that, transcending the conventional boundaries apply to America in defense of a principle which is not subject to national constituencies. Every human being, as a creature made in the image and likeness of God, is worthy of not only our respect but of our love, our concern, our highest consideration. And so our America also will show that being generous in this

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e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
g. the right not to be compelled to be a witness against himself or to plead guilty; and
h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Id.

87. Id. at art. 25.
respect and this love, it will be ourselves, -and our family and the society we live in- the first beneficiaries of achieving peace and development.  

3. Standing

Article 33 of the Law of the Constitutional Jurisdiction establishes that "[a]ny person may file for a writ of amparo." The phrase "[a]ny person" was construed to stand for the person aggrieved, or anyone who may file the petition in his or her favor. The writ of amparo's purpose is to protect the individual and social rights of a concrete and individualized person or persons. It would not be possible to file a writ in favor of undetermined persons or groups of persons, such as to protect all citizens of a certain nationality living in Costa Rica. There is an exception to this rule when a plaintiff claims the infraction of environmental rights. In such a case the breach impacts all inhabitants and standing is derived directly from the constitution.

The Constitutional Chamber has created a presumption, such that any individual filing a petition in favor of another is presumed to have the latter's will and knowledge to file the writ. However, because the constitutional rights are a private matter to the individual, his unwillingness to continue with the amparo would be enough to dismiss the case.

As in habeas corpus, powers of attorney are unnecessary in these proceedings.

Minors and corporations may file a petition for the writ of amparo in order to protect a particular individual or to foster self-related constitutional interests.

The Constitutional jurisdiction also bars the judicial review of statutory legislation and judicial decisions, or the electoral matters from the amparo. However, Article 48 of the law allows the
Chamber to advise the writ of *amparo* or *habeas corpus* petitioner to seek redress through a claim of unconstitutionality, if the constitutional infraction is being caused by a general provision of law.\(^9\) The interested party must then move to file these procedures, within fifteen days.\(^9\) Failure to do so will stall the case and result in its dismissal.\(^9\)

4. **Ripeness**

Article 35 of the Law of the Constitutional Jurisdiction states that:

The writ of amparo may be filed at any time as long as the violation, threat, disruption or restriction endures, and until two months after they have completely ceased its direct effects on the victim. However, in the case of purely property rights or other rights whose violation can be validly allowed, the appeal must be filed within two months from the date the injured party was reliably informed of the violation and was legally able to file the writ.\(^9\)

This provision of Article 35 imposes a statute of limitation solely for the violation of substantial rights that involve or relate to property, thus it is possible to waive such constitutional rights. Furthermore, the Constitutional Chamber has construed this provision to hold the statute of limitations begins running only after the violation of the fundamental right ceases.

5. **Varieties or Distinguishable Forms of Amparo Claims**

The Law of the Constitutional Jurisdiction contains clearly differentiated writs of protection against various entities in the following categories.

   a. **Against Public Authorities**

The writs for protection against public authorities make up a large percentage of the cases that are filed with the Constitutional

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\(^{96}\) Law of the Constitutional Jurisdiction art. 48

\(^{97}\) Id.

\(^{98}\) Id.

\(^{99}\) Law of the Constitutional Jurisdiction art. 35.
Chamber. They resolve all individual and social rights, the right to petition and rights relating to healthcare, among others.

It is important to mention cases dealing with healthcare rights, as they are a very special type of *amparo*. In practice, the Constitutional Chamber examines these claims immediately, prior to any other cases, except writs of *habeas corpus*. The Costa Rican Social Security Agency (*Caja Costarricense de Seguro Social*) is the most important agency in the health care system, and it is the most important health care provider in Costa Rica. In fact, the *Caja* employs over ninety percent of all registered doctors. It is financed by mandatory contributions from employees, employers, and the state.

A number of people file cases with the Constitutional Chamber to enforce their healthcare rights when they believe the government healthcare system failed to provide medication, treatment, or service, due to equipment failure. The Chamber consistently dismisses the Caja's frequent excuses for not fulfilling patient demands, often stating that its failures were due to budget limitations or the fact that certain drugs are not included in the Official Medicines List (LOM). Today, the court's long-affirmed jurisprudence will uphold a general practitioner's knowledge of the specific patient's case or of the benefits of the medication he or she is prescribing to the patient as enough to supersede any of the financial policies that block prescription, treatment or other healthcare-related claims.

b. Against Private Citizens

There are also writs of protection against private individuals or entities. This is an atypical procedure though, because there are other legal remedies available in such situations. The circumstances and facts of a case must meet special requirements. The plaintiff must have a difficult case where ordinary legal remedies cannot provide protection. For example, if a landlord cuts all public utilities to a tenant, such as electricity and water, leaving the tenant in a precarious situation, an action for a writ of protection

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102. *LAW OF THE CONSTITUTIONAL JURISDICTION* art. 57.
may be available. Another example in which such a writ would be available would be in a situation in which public or private land is being used inappropriately by a neighbor or any other individual, causing environmental damage.

c. Against The Media

The writ of amparo on rectification and response is directed against the mass media, providing protection for anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general.\(^{103}\) This is a two-level procedure.\(^{104}\) First, the aggrieved person has the right to reply using the same mode of communication, as that used for the transmission of the incorrect information. The petition must be in writing and presented to the daily media after five days of the publication.\(^{105}\) If the daily media accepts the rectification, it must do so within three days, or in other cases where the media is not released daily, such as a periodical, that media must accept rectification in the next edition.\(^{106}\) Second, if the petition to reply is denied,\(^{107}\) the Constitutional Chamber will quickly decide the matter within three days, including any questions related to the text of the publication.\(^{108}\)

III. QUESTIONS OF CONSTITUTIONALITY

Through these procedures, the Law of the Constitutional Jurisdiction combines cases based on an abstract form of defense of the

\(^{103}\) Id. at art. 66. It is important to note that Chapter III of the Law of the Constitutional Jurisdiction rules this form of amparo as the result of an international obligations acquired by Costa Rica when ratifying the American Convention of Human Rights. Moreover the Costa Rican Government requested an advisory opinion to the Inter-American Court of Human Rights on the scope and meaning of "law" in article 14.1 of the Convention. See Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights). Advisory Opinion OC-7/86, Inter-Am. Ct. H.R. (ser. A) No. 7, decree C (Aug. 29, 1986) said:

C. That the word "law," as it is used in Article 14(1), is related to the obligations assumed by the States Parties in Article 2 and that, therefore, the measures that the State Party must adopt include all such domestic measures as may be necessary, according to the legal system of the State Party concerned, to ensure the free and full exercise of the right recognized in Article 14(1). However, if any such measures impose restrictions on a right recognized by the Convention, they would have to be adopted in the form of a law.

\(^{104}\) Id. at art. 69.

\(^{105}\) Id. at art. 69(a).

\(^{106}\) Id. at art. 69(b).

\(^{107}\) LAW OF THE CONSTITUTIONAL JURISDICTION art. 69(c).

\(^{108}\) Id. at art. 69(ch) – (d).
constitutional order when public authorities exercise their constitutional and legal attributes, and also provides an avenue for public officials to assert their relationship when conflicting with other entities and branches of government. Notwithstanding this abstract form of judicial review, there are also other mechanisms, not only to defend structural constitutional provisions, but also to adjudicate legislation and other acts of public authorities, mainly to ascertain individual rights embodied in the constitution.

A. The Action of Unconstitutionality

Article 10 of the constitution embodies the remedy to defend the constitutional order and also to protect individual freedoms. In fact, the action of unconstitutionality is currently a very important instrument available to the ordinary citizen to challenge certain policies and legislation on constitutional grounds in a pending case lodged at the administrative or judicial instance. An action of unconstitutionality can even be argued in certain cases if the injured party cannot directly demonstrate a private interest in the case.

Notwithstanding the importance of actions of unconstitutionality, the structure of the system of constitutional controls in Costa Rica maintains the writs of habeas corpus and amparo as a preferential remedy over the judicial review of statutes.

1. Origins

Constitutional control of legislation can be traced back to the early constitutional document, the Cadiz Constitution, which governed Spain and the colonial Americas. Although it held many interesting principles, it was more concerned with a political control system of constitutional supremacy than a system of judicial review. It was the product of the strong influence from the French Revolution, where the control over constitutional supremacy resided in the political bodies of government.

Most subsequent Costa Rican constitutions granted preeminence to the legislative body over the control of constitutional in-

110. LA JURISDICCIÓN CONSTITUCIONAL supra note 61, at 173. See also BARKER, supra note 4, at 38.
fractions. The constitutional framers of many of the country's fundamental documents frequently followed the Cadiz Constitution's political guidelines. These documents prevailed more than a century before a well-organized constitution assembled a jurisdictional control system of constitutional supremacy. It is, therefore, common to find a rule in which the political body is required to review the constitutionality of its own legislation in its first sessions, and solve any violations that derived from it.

Costa Rican scholars have divided the early history of the development of the system of constitutional control into two periods. The first period was from 1812 to 1887, in which the Constitution of the United States had a direct impact on the Costa Rican constitutional documents, through the Central American Federation. The Central American framers' reception of the document was imprecise. This was an unfortunate constitutional moment for Costa Rica and the other Central American states, because it misplaced the resolution of constitutional issues in the political bodies of the federation, which had a negative effect on the attempt to form a real system of constitutional control.

Other subsequent constitutions followed, until an important provision was promulgated in the 1869 constitution. The political control over the supremacy of the constitution was still vested in the Legislative Assembly at that time, but required some degree of


112. Id. at 30. The author cites Article 373 of the Cadiz Constitution that asserted "Las Cortes en sus primeras sesiones tomarán en consideración las infracciones de la Constitución que se les hubieran hecho presentes, para poner el conveniente remedio y hacer efectiva la responsabilidad de los que hubieren contraído a ella." ["The parliaments in its first sessions shall take into consideration the Constitutional breaches that have been made present, in order to establish the convenient remedy and make effective the responsibility of those whom have breached her."] Id.

113. Id. at 29.

114. Id. at 31.

115. Jorge Francisco Sáenz Carbonell, El Despertar Constitucional de Costa Rica [The Constitutional Awakening of Costa Rica] 239, 240, 273-74 (Libro Libre, 1985). After the Central American countries obtained their independence from Spain in 1821, they briefly formed part of the Mexican Empire. Id. at 239. However, on June 30, 1823 the representatives of Honduras, El Salvador, Nicaragua, Costa Rica, and Guatemala (acting as the head of the Central American countries) declared null and void the Union with the Mexican Empire. Id. at 240. From thereon, these five nations organized themselves in a Federal State September 1st, 1825. Id. at 273. This gave birth to the Central American Federation, it however was plagued since its inception with many structural problems between the Federal Government and the States, which ultimately determined Costa Rica's suspension from April 13, 1829 to February 11, 1831 when it was instituted again until its final decay in November 14, 1838. Id. at 273-74.
coordination between the legislative branch and the judicial branch. The Supreme Court had a consultative function, but the final decision still remained with the legislative branch.\textsuperscript{116} Article 135 of that Constitution stated:

The Supreme Court may suspend by an absolute majority of votes the enforcement of the laws, if a motion of the prosecutor or any citizen alleges them to be contrary to the Constitution, it shall submit the question to Congress, where at its next regular meeting its comments shall be taken into account, to decide definitely the appropriate matter.\textsuperscript{117}

The relevance of this provision relies on a novel concept: the ability of an individual petitioner, rather than a political, government official, to bring a grievance resulting from unconstitutional laws before a court. In this sense, a form of judicial review was first established in this constitution, but unfortunately there are no records of its implementation in its brief constitutional existence. According to one author, this was a consequence of the nineteenth century philosophy upholding a strict division of powers.\textsuperscript{118}

If it was implemented, this rule would have provided a major change, because the constitutional control of legislation would finally shift from the political body to the judicial branch of government.

The 1871 Constitution followed, but it returned once more to the ancient approach, in which the political body reviewed the constitutionality of legislation. During this constitutional period, however, ordinary legislation established a diffusive system of judicial review.

A second period of judicial review began under the 1871 constitution,\textsuperscript{119} which was enacted as the Organic Law of the Courts in 1887\textsuperscript{120} and was in force at the beginning of 1888. Its provisions

\textsuperscript{116} Piza Escalante, supra note 5, at 9.
\textsuperscript{117} CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1869 art. 135. See also Peralta, supra note 34, at 455.
\textsuperscript{118} Orígenes del Control de Constitucionalidad, supra note 111, at 39.
\textsuperscript{119} Peralta, supra note 34, at 595. Article 137 indicates that: “El Congreso en sus primeras sesiones ordinarias observará si la Constitución ha sido infringida, y si se ha hecho efectiva la responsabilidad de los infractores, para proveer en consecuencia lo conveniente.” [The Congress in its first ordinary sessions shall observe whether the Constitution has been breached, and if the liability has been effective against the trespasser, in order to provide for the convenient consequences.] Orígenes del Control de Constitucionalidad, supra note 111, at 39.
\textsuperscript{120} Orígenes del Control de Constitucionalidad, supra note 111, at 40. Article 8 indicates: “No podrán los funcionarios del orden judicial: 1.- Aplicar leyes, decretos o acuerdos
created a diffuse system of judicial review, in which all courts were banned from applying laws, decrees, or other governmental agreements that were in conflict with the constitution. Any decision-making process from the court was inter-partes.\textsuperscript{121}

These provisions challenged the most profound traditional powers known to the legislative assembly; however, they were never directly contested. The operation of this diffusive system operated smoothly in its beginnings,\textsuperscript{122} but as it will be explained caused many problems, especially for the Supreme Court of Justice as the high court's decisions were not considered binding upon lower courts.\textsuperscript{123}

Additional problems arose after a coup in 1917. The 1871 constitution was suspended for several years, but reinstated by Congress in 1919; therefore many of the past governmental acts were annulled. Although several cases were brought before the highest court, its doctrine evolved conservatively, and all claims filed on constitutional grounds were resolved by declaring the impugned law constitutional.\textsuperscript{124} Otherwise the court would not consider it under the constitutional realm.

In the 1930's several justices that were uneasy with the diffusive system of judicial review began to pursue amendments to eliminate the system underlying these bills. The rationale, however, remained the same, meaning that an excessive respect for the executive and legislative branches of government was still present. Some judges would call this "the greatness of the law."\textsuperscript{125} Consequently, for the law to be repugnant to the constitution, it had to be clearly contrary to its spirit and text. A law could be

\begin{itemize}
\item \textsuperscript{121} As indicated supra, inter partes means between the parties involved in the case.
\item \textsuperscript{122} Origenes del Control de Constitucionalidad, supra note 111, at 44.
\item \textsuperscript{123} Origenes del Control de Constitucionalidad, supra note 111, at 44, 56. The author explains that the civil law system in Costa Rica prevented that the jurisprudence to be binding: "The fact that the courts, including at the level of Cassation, considered a regulation unconstitutional, would not make it disappear from the legal order." Origenes del Control de Constitucionalidad, supra note 111, at 44.
\item \textsuperscript{124} Origenes del Control de Constitucionalidad, supra note 111, at 57-61. The author analyzes the case of Gómez Braga v. el Estado, where notwithstanding the Cassation Court's previous opinions on the constitutionality of the Law of Nullities, a lower Court would consider it unconstitutional. The Cassation Court would set forth the presumption of constitutionality of legislation. These cases were common to find as the jurisprudence were not binding on the lower Courts. Saenz would also attribute other cases to follow the same rule: Rojas Bennett v. el Estado, and Vargas v. Banco Internacional de Costa Rica. Origenes del Control de Constitucionalidad, supra note 111, at 57-61.
\item \textsuperscript{125} Origenes del Control de Constitucionalidad, supra note 111, at 63.
\end{itemize}
found constitutional frequently by the court, even though it breaches fundamental rights. The system was thus controlled by the minorities in the Plenary Court, which required a high voting requirement to repeal a law on constitutional grounds.\textsuperscript{126}

In 1937, the system was successfully amended to give the Plenary Court the power to resolve constitutional questions through a legal amendment.\textsuperscript{127} This was, however, not to be done at the constitutional level, because formally there still remained the provision under a similar Cadiz-like guidance. Furthermore, a law in 1944 further restricted the legal system and prohibited the court from hearing constitutional challenges concerning a previously contested law.\textsuperscript{128}

The diffusive system of judicial review was thus amended to incorporate the legal system known to the Plenary Court that legitimized unconstitutional rules of law. This was done through a proposed bill, which included an amendment to Article 967 of the Civil Procedure Code.\textsuperscript{129} The amendment established the two-thirds voting requirement for the Plenary Court to declare a law unconstitutional, as a way to avoid conflicts on policy questions.\textsuperscript{130} It was planned this way to avoid conflicts among the different branches of government and its agencies, as it was believed and explained in the preparatory commission of the bill, that a simple majority voting rule provided an avenue to many conflicts among

\begin{itemize}
\item \textsuperscript{126} ANTONIO G. PICADO, EXPlicACI6N DE LAS REFORMAS A LA LEY ORGÁNICA DEL PODER JUDICIAL [EXPLANATION OF THE REFORMS OF THE ORGANIC LAW OF THE JUDICIAL POWER] 419 (Imprenta nacional, 1st ed. 1937). The intent of the framers was to make it difficult to strike down a law, decree, or executive agreement or resolution, only if two thirds of the votes of the Plenary Court were obtained. \textit{Id.}
\item \textsuperscript{127} \textit{Orígenes del Control de Constitucionalidad, supra note 111, at 63.}
\item \textsuperscript{128} GUTIÉRREZ, \textit{supra note 24, at 366.} The author refers to Law number 183 of August 31, 1944, which amends Article 967 as it introduces the principle of \textit{res judicata} to all cases where constitutional questions have been dismissed. \textit{Gutiérrez, supra note 24, at 366.}
\item \textsuperscript{129} PICADO, \textit{supra note 126, at 417.} The amendment also included many other Chapters of the Civil Procedural Code.
\end{itemize}

\textit{Articulo 967.- Para que haya resolución declarando la inaplicabilidad de la ley, decreto, acuerdo o disposición por ser contrarios a la Constitución, es indispensable que se hayan pronunciado en ese sentido por lo menos los dos tercios del total de los Magistrados. Si no alcanzare ese número, se tendrán por aplicables la ley, decreto, acuerdo o resolución y no podrán presentarse ni serán admisibles nuevas demandas de inaplicabilidad sobre el mismo punto.} [In order to have a decision declaring the inapplicability of a law, decree, agreement or provision held to be contrary to the Constitution, it is essential to have the concurrence of at least no less than two thirds of the total of Justices. If such a number shall not be reached, the law, decree, agreement or provision shall be applicable and from thereon it shall not be possible nor admissible to have new actions of inapplicability concerning the same questions.]

\textit{PICADO, supra note 126, at 417.}

\textsuperscript{130} PICADO, \textit{supra note 126, at 417.}
the political branches of government. It is clear that this rule was intended to provide deference to the laws and other general provisions, until the new constitutional control system of 1989 was put into force.

It is equally clear that a third period of judicial review began under the 1949 constitution, after amendments were made in 1989. The amendments to the constitution and the creation of the constitutional jurisdiction had important implications that marked a dynamic period and began a legal revolution within all areas of the Costa Rican legal system.

2. Freedoms and other Principles Protected

Today, the action of unconstitutionality empowers the Constitutional Chamber with the competence to declare, by an absolute majority vote of its members, the unconstitutionality of provisions of any nature and acts subject to Public Law. It has been designed to challenge the policies embodied in ordinary or secondary legislation of the political branches of government. Legislative statutes and executive decrees can be contested for constitutional-related infractions. The judicial branch's administrative regulations can also be challenged through this remedy. The action of unconstitutionality is an instrument to test and drive certain governmental policies closer to constitutional standards. Not even the judiciary or the Supreme Electoral Tribunal is excluded from its jurisdiction with regards to the administrative functions.

131. LA JURISDICCION CONSTITUCIONAL, supra note 61, at 195.
133. Article 10 of the Constitution indicates:
A specialised Chamber of the Supreme Court of Justice shall declare, by an absolute majority vote of its members, the unconstitutionality of provisions of any nature and acts subject to Public Law [. . .]. Article 10 provides an ample or broad jurisdiction that allows to discuss constitutional questions before the Constitutional Chamber over diverse types of legislation: international law, statutes, secondary legislation provided by the executive, legislative, judicial and the Supreme Electoral Tribunal branches of government and their agencies.

Id.
134. Id. Article 10 of the Constitution indicates:
A specialised Chamber of the Supreme Court of Justice shall declare, by an absolute majority vote of its members, the unconstitutionality of provisions of any nature and acts subject to Public Law. [. . .]. It is a fundamental principle of administrative law that all public acts, may that be for the general population or only affecting individuals, shall be governed by public law. Therefore, in all circumstances such acts of the Executive, Legislative, Judicial branches and the Supreme Electoral Tribunal or their respective agencies, are under the scope of the Constitutional Chamber's jurisdiction as they exercise the powers assigned to these administrative functions.

Id.
Notwithstanding the ample and broad jurisdiction of the Constitutional Chamber, jurisdictional acts of the judiciary and the declaration of the elections by the Supreme Electoral Tribunal, and any others established by law, are out of the reach of the constitutional jurisdiction. This last stipulation has not been applied by the legislators, adding more restrictions to the Constitutional Chamber.

The action of unconstitutionality protects all rights and duties established in the constitution. This remedy is important to ascertain all human rights and other international law standards within Costa Rica, when the infringement is caused by a statute or other provision of law. Under very special circumstances, it may be an instrument to impugn other types of general norms, such as corporate constituencies.

To illustrate these powers of the Chamber, the Costa Rican government sought an Advisory Opinion before the Inter-American
Court of Human Rights. Based on a long legal tradition in Costa Rica, all members of a profession are grouped into legal entities called Colegios, including journalists. The American Convention on Human Rights, in conformity with the Inter-American Court however, provides that everyone has the right to seek, receive, and impart information and ideas of all kinds. In addition to the American Convention, there are other constitutional provisions that protect freedom of expression, although they are not as comprehensive. In the advisory opinion to the Costa Rican government, the Inter-American Court of Human Rights decision OC-05-85 stated that domestic legislation requiring compulsory membership of journalists in a professional association violates the Human Rights Treaty.

Many years later, a case relating to this matter came to the attention of the Constitutional Chamber. In its decision, the Con-


The Government agreed to present the request because the IAPA does not have standing to do so under the terms of the Convention. Article 64 of the Convention empowers only OAS Member States and, within their spheres of competence, the organs listed in Chapter X of the Charter of the OAS, as amended by the Protocol of Buenos Aires in 1967, to present requests for advisory opinions. In presenting its request, the Government indicated that laws similar to those involved in the instant application exist in at least ten other countries of the hemisphere.

Id.

138. American Convention on Human Rights, art. 13, Nov. 22, 1969. This convention states: Article 13.1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2.- [...]. Id.

Paragraph 81 of the Inter-American Court decision indicates:

It follows from what has been said that a law licensing journalists, which does not allow those who are not members of the "colegio" to practice journalism and limits access to the "colegio" to university graduates who have specialized in certain fields, is not compatible with the Convention. Such a law would contain restrictions to freedom of expression that are not authorized by Article 13.2 of the Convention and would consequently be in violation not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference.

Id. at ¶ 81.

139. Id.

140. SCCSJ, May 9, 1995, SCIJ No. 1995-02313 (Costa Rica). The Constitutional Chamber speaking through Justice Solano Carrera, held that:

Ahora bien, si la Corte elogió el hecho de que Costa Rica acudiera en procura de su opinión, emitida hace diez años, resulta inexplicable lo que desde aquélla fecha ha seguido sucediendo en el país en la materia decidida, puesto que las cosas han permanecido igual y la norma declarada incompatible en aquélla ocasión, ha gozado de plena
stitutional Chamber declared the article forcing journalists to be members of the association before they could practice their trade to be unconstitutional. In its decision, the Constitutional Chamber affirmed Articles 1 and 2 of the American Convention on Human Rights, in which the countries, as parties to the Convention, not only have an obligation to respect the fundamental rights expressed in the American Convention, but also have an obligation to protect those rights at the domestic level. The Chamber determined that international agreements on human rights bind the country as a whole. Consequently, the judiciary, as part of

\text{vigencia durante el tiempo que ha transcurrido hasta la fecha de esta sentencia. Eso llama a la reflexión, porque para darle una lógica al sistema, ya en la Parte I, la Convención establece dentro de los deberes de los Estados, respetar los derechos y libertades reconocidos en ella y garantizar su libre y pleno ejercicio (artículo 2).} [Nevertheless, if the Court praised the fact that Costa Rica sought this opinion, issued ten years ago, it is inexplicable that things continue the same in the country in a decided matter, and the ruling that found inconsistent the provision in that occasion, has had full effect during the time that has elapsed until the date of this decision. This calls for reflection, because to grant logic to the system, in Part I of the Convention established within the duties of States, the respect to the rights and freedoms recognized herein and to ensure the free and full exercise (article 2)].

\text{Id.}

141. \text{Id.}

142. \text{Id.}

143. \text{Id.} The decision indicates that:

\text{Se hace más que notorio que la Sala Constitucional no solamente declara violaciones a derechos constitucionales, sino a todo el universo de derechos fundamentales contenidos en los instrumentos internacionales de derechos humanos vigentes en el país. Desde ese punto de vista, el reconocimiento por la Sala Constitucional de la normativa de la Convención Americana de Derechos Humanos, en la forma en que la interpretó la Corte Interamericana de Derechos Humanos en su Opinión Consultiva OC-05-85, resulta natural y absolutamente consecuente con su amplia competencia. De tal manera, sin necesidad de un pronunciamiento duplicado, fundado en los mismos argumentos de esa opinión, la Sala estima que es claro para Costa Rica que la normativa de la Ley N° 4420, en cuanto se refiere a lo aquí discutido por el señor ROGER AJUN BLANCO, es ilegítima y atenta contra el derecho a la información, en el amplio sentido que lo desarrolla el artículo 13 del Pacto de San José de Costa Rica, tanto como de los artículos 28 y 29 de la Constitución Política.}

\text{[It is more noticeable that the Constitutional Chamber not only declares constitutional rights breaches, but the entire universe of basic rights contained in the international human rights instruments in force in the country. From this point of view, the recognition by the Constitutional Chamber of the rules of the American Convention on Human Rights, as interpreted by the Inter-American Court of Human Rights in its Advisory Opinion OC-05-85, results natural and consistent with its wide competence. Thus, without requiring to duplicate the reasoning, based on the same arguments to this view, the Chamber considers that it is clear for Costa Rica that the rules of the Law No. 4420, as referred to herein discussed by Mr. Roger Ajun Blanco, is unlawful and violates the right to information, in the broad sense that it is implemented in article 13 of the Pact of San José de Costa Rica, as well as articles 28 and 29 of the Constitution.]}
the country, must construct and interpret domestic legislation to ensure that it does not violate international obligations, even if the other branches of government fail to fulfill them. In this way, basing its rationale on an Inter-American Court decision, the Constitutional Chamber declared the provision that excluded non-journalists from seeking, receiving, and imparting information and ideas of all kinds to be unconstitutional.\textsuperscript{144}

The constitution, human rights treaties, and other international instruments that are applicable to Costa Rica are frequently enforced by the Constitutional Chamber. Therefore, it is important for today's legislators to be extremely aware of the Constitutional Chamber's opinions interpreting the constitution. In this way, sharing this power has had a tremendous impact on the relationship between the Legislative Assembly and the Constitutional Chamber.

3. **Standing**

Article 75 of the Law of the Constitutional Jurisdiction provides two basic ways to access the Constitutional Chamber.\textsuperscript{145} It provides for both indirect and direct forms of standing to contest a statute or other general provisions of law. Indirect standing follows the Costa Rican second period of the constitutional control system development, which begins with the Civil Procedure Code rather than the European direct form of access. During discussion of the jurisdictional law, the records of the bill reveal very few excerpts on standing as an avenue to access the Constitutional Jurisdiction either directly or indirectly.\textsuperscript{146}

\textit{a. Indirect Standing}

A Constitutional Chamber decision may be reached during discussion of a pending case at any administrative or judicial proceeding. Before seeking protection, the interested party must invoke the constitutional rule or principle being breached by a pro-

\textsuperscript{144} Id.
\textsuperscript{145} LAW OF THE CONSTITUTIONAL JURISDICTION art. 75.
\textsuperscript{146} Fernando Castillo Viquez & Giulio Sansonetti H., Ley de la Jurisdicción Constitucional [The Law of the Constitutional Jurisdiction] (undated document) (unpublished manuscript, on file with the Procuraduría General de la República).
vision of law.\textsuperscript{147} This requirement was included to facilitate the improvement of the legal system. It avoids time consuming, multiple, and costly judicial proceedings before the courts and guarantees that the constitutional questions are brought up at an early stage of the controversy. Moreover, any administrative procedure can be brought free of cost, without the need of a lawyer before the Public Administration. This is similar to the writs of \textit{amparo} and \textit{habeas corpus}. In this sense, the system was structured to guarantee openness of the jurisdiction while discussing any case, and to allow collateral attacks to unconstitutional legislation.

The action of unconstitutionality must be brought in the course of an administrative or judicial proceeding, or in a \textit{habeas corpus} or \textit{amparo} claim.\textsuperscript{148} It must be filed before the final decisions are rendered in the case.\textsuperscript{149} It is an indirect approach to the constitutional jurisdiction, because the plaintiff must plead a constitutional breach in the case ahead of time and show that an action of unconstitutionality is a reasonable means to provide protection.\textsuperscript{150} As a consequence, it is unnecessary for the Administration or judge to actually settle the constitutional petition. The plaintiff, however, then has the burden to file the case at the constitutional jurisdiction, before it is definitively resolved, since the Constitutional Chamber will have jurisdiction to decide the case as long as it is pending subject matter.\textsuperscript{151} According to long standing precedents, this indirect standing is the general rule used to admit actions of unconstitutionality, but there are exemptions.\textsuperscript{152}

\begin{itemize}
\item \textsuperscript{147} Law of the Constitutional Jurisdiction art 75. The first paragraph of the article indicates that:
\begin{quote}
Para interponer la acción de inconstitucionalidad es necesario que exista un asunto pendiente de resolver ante los tribunales, inclusive de hábeas corpus o de amparo, o en el procedimiento para agotar la vía administrativa, en que se invoque esa inconstitucionalidad como medio razonable de amparar el derecho o interés que se considera lesionado. [To file for an action of unconstitutionality is necessary to have a case pending resolution before the courts, including the writ habeas corpus or amparo, or the procedure for exhaustion of administrative remedies, within which the constitutional breach must be invoked as a reasonable means to bring protection to a right or interest considered injured.]
\end{quote}
\item \textsuperscript{148} Id.
\item \textsuperscript{149} Id. at art. 77.
\item \textsuperscript{151} SCCSJ, Jan. 3, 1991, SCIJ No. 1991-00493 (Costa Rica).
\item \textsuperscript{152} SCCSJ, Mar. 3, 2004, SCIJ No. 2004-2260 (Costa Rica).
\end{itemize}
b. Direct Standing

Article 75 of the Law of the Constitutional Jurisdiction also allows pursuing the unconstitutionality of legislation and other provisions of law through a direct and abstract form of litigation. Consequently, a pending case is not needed. The legal requirements are still assembled to structure a more technical remedy than the amparo and habeas corpus, but this procedure enjoys much of the original design, which loosens standing requirements. This procedure was intended to fix constitutional justice and to alter it into an accessible public service, providing avenues for anyone to be a real party in interest and for a broader category of individuals to have the capacity to sue if he or she shows standing under the included categories. There are a few significant legal requirements, including the authentication of the petition for legal representation, a clear and precise explanation of the constitutional breach, and representation before the Court in a public hearing, if decreed. These requirements apply to both the indirect and direct forms of standing.

The Law of the Constitutional Jurisdiction surpasses the classical divisions of private and public interests, and regulates the collective interests in Costa Rica. Hence, the inhabitants of the republic have direct standing to bring claims for the protection of legitimate, individual interests related to basic rights and freedoms. The Law of the Constitutional Jurisdiction can protect the constitutional attributes of public authorities and the collective interests, as long as the protection of extensive constitutional standards is at stake. The procedures are regulated to repair critical, collective interests which may be allocated in the recognition of rights for groups that wish to protect such interests.

In order to bring a case before the Constitutional Chamber, the Law of the Constitutional Jurisdiction does not require predetermined number of plaintiffs. Nor is there a need to demonstrate special common interests for any type of certification by the court. Any person can instead assert the defense of any legitimate collective interest. In short, there is no need for the individual to create a group to obtain a legal remedy. The interaction of the members around a specific constitutional end will suffice. Common ground

153. LAW OF THE CONSTITUTIONAL JURISDICTION art. 75.
154. LAW OF THE CONSTITUTIONAL JURISDICTION arts. 10, 78 and 79.
for these groups may include any socially relevant point of view, as long as they share a common characteristic that binds them to a specific constitutional right. Under these circumstances, individuals may suffer damages individually. At the same time, the loss will also be deemed as injuring the group as a whole.

Therefore, it is possible to bring a constitutional question on the following cases:

- When laws and other general provisions of law do not cause a direct and individual infraction;\(^\text{156}\) as the nature of the constitutional breach (injury) cannot be allocated in any public or private individual or group of individuals. In these cases, the loss or damage inflicted by the legislation could rarely be attacked indirectly.\(^\text{157}\) Therefore, it is possible to challenge legislation directly by demonstrating the need to use these grounds to take the action. The Constitutional Chamber can use a great deal of discretionary powers in these circumstances. For example, the court has granted municipalities this category of standing to access the constitutional jurisdiction.\(^\text{158}\)

- The Constitutional Chamber has construed another type of collective interest among legal entities (or their constituency, associations or foundations): not-for-profit or commercial legal entities that enhance shareholders' constitutional rights and interests, etc.\(^\text{159}\) In this sense, the Constitutional Chamber recognizes the authority of corporative interests to exercise the protection of its members.\(^\text{160}\) The damage caused by the unconstitutional provision can be allocated to an individual member being entitled to impugn the law individually, or through the legal entity that groups all members that are sharing the same constitutional complaint.\(^\text{161}\)

- Diffusible interests allow a special standing to challenge legislation that infringes widely, scattered and extended con-

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156. LAW OF THE CONSTITUTIONAL JURISDICTION art. 75, ¶ 2.
159. JINESTA LOBO, supra note 155, at 222. The author explains the corporative interest as a species of the collective interests, but related to organized and legal moral entities. JINESTA LOBO, supra note 155, at 222.
160. JINESTA LOBO, supra note 155, at 222. The author cites the jurisprudence of the Constitutional Chamber in the subject matter. JINESTA LOBO, supra note 154, at 222.
161. JINESTA LOBO, supra note 155, at 222.
stitutionally protected interests among the Costa Rican population. These types of interests reflect a type of collective interest (as the collectivity represents the entire Costa Rican population), distributed among smaller groups of individuals sharing a common interest.\textsuperscript{162} It shares in common the collective interests that any individual may petition in his own favor and of those that are harmed among his category, class, or group.\textsuperscript{163} This is true as the group shares the characteristics of the collective interests, in the sense that the individuals may be singled out, considered individually, but anyone in his category, class, or group has the same standing as the rest of the members.\textsuperscript{164} There is no need for them to be legally organized.\textsuperscript{165} Any person may be entitled to file a constitutional question as long as they claim these less extended diffusible rights and many times are less resourceful.\textsuperscript{166}

Among all these interests that are widely allocated and distinguishable at a broader level, the most common examples used for standing are environmental rights, control over public funds or expenditures, consumer rights, and issues relating to cultural and world heritage.

However, the Constitutional Chamber has narrowly construed Article 75 of the Constitutional Jurisdiction to deny \textit{popular action} and to consider a pending case under the general rule on standing.\textsuperscript{167} Therefore, if a piece of legislation at odds with the constitution does not fall under the Chamber's categories of collective interests, then this abstract and direct form of litigation will be denied unless the person expressing the complaint considers bringing the case under the constitutional control system through indirect standing.

Finally, similar to the European countries, the law allows the head of specific governmental entities to have direct standing,

\begin{footnotesize}
\textsuperscript{162} JINESTA LOBO, \textit{supra} note 155, at 225.
\textsuperscript{163} JINESTA LOBO, \textit{supra} note 155, at 225.
\textsuperscript{164} JINESTA LOBO, \textit{supra} note 155, at 225. Ernesto Jinesta cites the Constitutional Chamber's case law, that explains this complex form of standing, in this sense it is relevant the decision 1999-00360 of the Constitutional Chamber, as it describes the diffusible interest as a way to defend certain constitutional rights of singular relevance for the adequate and harmonious development of society. \textit{See} SCCSJ, Jan. 20, 1999, SCIJ, No. 1999-00360 (Costa Rica).
\textsuperscript{165} JINESTA LOBO, \textit{supra} note 155, at 224.
\textsuperscript{166} JINESTA LOBO, \textit{supra} note 155, at 224.
\end{footnotesize}
such as the Comptroller General of the Republic, the Procurator General of the Republic, Attorney General of the Republic, and the Ombudsman.\textsuperscript{168}

\section*{4. Ripeness}

The requirement of a pending case is only necessary when the petitioner is challenging a law with indirect standing. At the administrative level, the window to challenge any rule of law begins after the filing of remedies to exhaust the administrative jurisdiction.\textsuperscript{169} A similar rationale is applicable to the judicial cases, before any final and conclusive decision is entered in the case. Hence, it would not be possible to challenge a general provision of law on constitutional grounds in a case where it has already been applied, or finally resolved, due to the \textit{res judicata} rule.

It is even possible to challenge legislation if it has been repealed, as long as there are unconstitutional consequences still standing and in force. If the statute or general provision of law has been invalidated, reformed, or abolished by the responsible public authority, the action of unconstitutionality would be inadmissible, unless the effects of such legislation survive and cause damage to specific individuals.\textsuperscript{170}

\subsection*{B. The Advisory Jurisdiction}

This type of constitutional control system is entirely new for the Costa Rican legal system. Section (b) of Article 10 of the Constitution provides for a preventive jurisdiction, to control the approval of constitutional amendments, the incorporation of international law prior to their legislative approval (constitutional requirement for the final ratification by the executive power), and to draft legislation.\textsuperscript{171}

Before 1989, the constitution did not have a judicial body to render an advisory opinion to the Legislative Assembly. The forefathers did, however, establish a formal \textit{constitutional consultation}\textsuperscript{172} for very specific circumstances. This consultation pre-
scribed the constitutional obligation to have a hearing for certain institutions when bills targeted matters under their jurisdiction. Examples include the universities; the Supreme Electoral Tribunal when the regulation would affect electoral matters; the Central Bank if the regulation regarded the determination of the law of the unit of currency; the judicial branch when the regulation regarded its organization or functioning; and, finally, any autonomous institution when the discussion and approval of bills affected its institutional legal framework.

The original proposition to amend the prior Article 10 of the constitution was rather simple. In fact, it did not include the advisory jurisdiction, the competence to settle conflicts of jurisdiction between the branches of government, the Supreme Electoral Tribunal, or any other entities or bodies established by law. This was the result of a motion modifying the bill to add two sections to Article 10 before the proposed amendment reached the consultation before the Supreme Court of Justice.

Once approved by the legislators, the advisory jurisdiction created a form of constitutional justice that provides for a two-fold system consisting of mandatory and optional procedures to review draft legislation on constitutional grounds before it is approved and enacted by the Legislative Assembly.\textsuperscript{173} An opinion is only binding when the Chamber reviews procedural matters prescribed by the constitution and regulations ruling on legislative procedures. It has, however, been a long standing practice that the opinion will include questions that may be relevant from a constitutional point of view, rendered in the form of advice to the legislators before the final approval of the legislation. For the case of optional advisory opinions, the Chamber will only decide those questions raised by the legislators. Nevertheless, these opinions do not preclude further litigation rights that could emerge from the fundamental rights enshrined in the Constitution.\textsuperscript{174}

1. \textit{Mandatory Advisory Opinions before the Legislature}

The Mandatory Advisory Opinions address procedural questions relating to drafts of constitutional amendments, international legislation, or amendments to the Law of the Constitutional Jurisdiction.\textsuperscript{1}


\textsuperscript{173} Constitución de la República de Costa Rica de 1949, art. 10, § b (1989); Law of the Constitutional Jurisdiction art. 96.

\textsuperscript{174} Law of the Constitutional Jurisdiction art. 101 § 3.
Constitutional amendments must be subject to approval only after two or more debates and different legislative periods, because they require more complex and rigid procedures than ordinary legislation and treaties that only require two debates for final approval.

The Law of the Constitutional Jurisdiction mandates that once the draft legislation is approved in the first debate, the Legislative Governing Council must submit the records to the Constitutional Chamber. The Constitutional Chamber must then render its opinion within one month.

2. The Optional Advisory Opinions on Draft Legislation

In general, few details are available in the legislative records showing how the advisory opinions were introduced in the bill to amend Article 10 of the constitution in 1989. However, some experts' documents reveal reliable information on the precise origins of these procedures. Article 10 not only created the jurisdiction to hear consultations on constitutional amendments, ratification of treaties and other legislation, but it also opened the way for future legal development.

The historical background of the Advisory Jurisdiction is difficult to understand, because the Law of the Constitutional Jurisdiction was the result of contributions from many sources, making it difficult to understand individual articles. Nevertheless, it is possible to conclude that the European models of constitutional justice played an important role in creating the advisory jurisdiction in the constitution and the jurisdictional law. Specifically, the Costa Rican forefathers were inspired by the enduring, French, strict division of powers that only regulate preventive mechanisms of a constitutional control system. Kelsen’s ideas of constitutional justice in Austria, and Spain’s jurisdictional regulations.

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175. LAW OF THE CONSTITUTIONAL JURISDICTION art. 96 § a.
177. Id. at art. 124.
178. LAW OF THE CONSTITUTIONAL JURISDICTION art. 98.
179. LAW OF THE CONSTITUTIONAL JURISDICTION art. 101.
180. Viquez, supra note 146; LUIS FERNANDO SOLANO, LA CONSULTA LEGISLATIVA DE CONSTITUCIONALIDAD EN COSTA RICA, 6-7 (Institutia No. 69 1992).
181. Viquez, supra note 146.
182. There were many important jurists involved in the 1989 constitutional and legal reforms, from different public and private sectors of Costa Rica. Eduardo Ortiz Ortiz, prestigious private lawyer; Rodolfo Piza Escalante, private lawyer and former Congressman.
According to Justice Solano Carrera, the Advisory jurisdiction was designed after France's Conseil D'Etat that inspired the Spanish, the Portuguese and the Colombian system of Optional Advisory Opinions. He indicated that the Conseil D'Etat provided many examples of excellence and provident courses of action when deciding questions submitted to its advisory jurisdiction. Therefore, the advisory opinions were established to make constitutionality a priority. As a result, future legislation could then be enacted in conformity with the text, values, and principles of the constitution.

The Costa Rican Advisory Jurisdiction was designed for minorities and took the lead from the Spanish system on standing, allowing one-fifth of the members of parliament to seek consultation. For Costa Rica, ten out of fifty-seven legislators is required to request an Optional Advisory Opinion before the Constitutional Chamber.

The 1989 discussions highlight the usefulness of the opinion of a specialized judicial body on constitutional law, but a minority voiced concern over the decision to allow an advisory opinion on ordinary legislation, believing this to be a controversial legal instrument. It is clear that at that time, Spain had already amended its preventive constitutional control system, which it did in 1985, eliminating the advisory opinion from its legal system. It did so because of the unfortunate political and constitutional issues that it experienced, and left only the exception for the approval of international legislation. Today, it is clear that these procedures are frequently used as a political instrument, not only to help ensure the constitutionality of future legislation, but also for political purposes.
It is possible that the Opposition Parties will use the Advisory Opinion to move forward with their political agendas. In fact, it is often contended that the Advisory Opinion is often used as leverage to end a dispute and to reach a political agreement. Nevertheless, this might be true in some cases, but not always. An analysis of the different advisory opinions (mandatory and optional) from the years 1989 to 2007 reveals that the Constitutional Chamber’s involvement in the legislative process to be positive. It analyzed a total of 525 cases, where 60% were mandatory and 38% were optional. This fact easily rules out that the optional advisory opinion could be used to filibuster the legislative procedures. Moreover, 24% of the mandatory advisory opinions of the Constitutional Chamber were found with constitutional problems, 62% did not. For optional advisory opinions 43% found breaches in the procedure or to the fundamental rights, therefore preventing the enactment of legislation with expensive repercussions due to important constitutional breaches.

Like in Spain, specific institutions in Costa Rica also have standing to seek an advisory opinion, which is in addition to legislators discussed above. In Costa Rica, legislation provides standing to the Supreme Court of Justice, the Supreme Electoral Tribunal, the Comptroller General of the Republic concerning constitutional issues, and the Ombudsman, to advance the rights and freedoms contained in the constitution and international instruments of human rights.

3. The Mandatory and Optional Advisory Opinions for Judicial Bodies

The framers of the Law of the Constitutional Jurisdiction also included Advisory Opinions for judicial bodies. The original bill was designed only for the Chambers of the Supreme Court of Justice, Superior Cassation Courts, or judges of last resort. However, the Plenary Court objected to this wording to expand it to the ju-

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189. SOLANO, supra note 180, at 11.
191. Id.
192. Id.
193. Id.
194. Id.
195. LAW OF THE CONSTITUTIONAL JURISDICTION art. 98(c) – (ch).
Consequently, the framers opted for a provision that would include other judicial bodies, regardless of hierarchy. 196

Today the judiciary must request a mandatory advisory opinion before the Constitutional Chamber in certain circumstances, 197 or it may do so when the judge has reasonable doubts on the constitutionality of an act that he must apply. 198 Such a process may also be used in circumstances to deem an act, conduct or omission unconstitutional in the instant case. According to the law, the criminal judges of last resort must seek a mandatory Advisory Opinion, when a reconsideration of a final judgment in a criminal case is requested. 199 The Law of the Constitutional Jurisdiction allows the review of a prior judgment according to the findings and advice of the Constitutional Chamber on violations of due process of law, on the right to be heard in trial, and the right to a defense. 200 This function is very narrow, because one of the Chambers of the Supreme Court of Justice or any Criminal Cassation Court is allowed to request an opinion of another Court of the Supreme Court of Justice on these procedural requirements.

Even though the Costa Rican Constitution prohibits the retrial of criminal causes of action after final judgment, it expressly authorizes this motion 201 and it is regulated by the Criminal Procedure Code. 202 A criminal conviction can be reconsidered when new evidence indicates that the sentence was based on false evidence or on a contradictory criminal decision; when the decision is the direct product of the judge's breach of his duties; or any other new circumstance or evidence that proves the non-criminal conduct of the convict, among other cases. 203

The optional Advisory Opinions are to be applied by a judge before any preclusive procedure or final decision is entered in the

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196. Viquez, supra note 146.
197. SCCSJ, Sept. 19, 2001, SCIJ, No. 2001-9384 (Costa Rica). For the review of a prior criminal conviction, the Law of the Constitutional Jurisdiction provides for an advisory opinion on due process questions. However this requirement has been dose down by a decision of the Chamber, since well-established, long-standing precedents make up a constant doctrine relating to the principles of due process that should be observed by the Criminal Courts. Only when new or different questions emerge, the high court judges will be obliged to petition for the opinion.
198. LAW OF THE CONSTITUTIONAL JURISDICTION art. 102.
199. LAW OF THE CONSTITUTIONAL JURISDICTION art. 102.
201. CONSTITUCIÓN DE LA REPÚBLICA DE COSTA RICA DE 1949 art. 42.
203. Id.
case. Since the constitutional system is not diffusive, the request must be to the specialized Chamber of the Supreme Court of Justice. When the judge doubts the constitutional legitimacy of a law, he may apply for an Advisory Opinion in an interlocutory resolution and suspend the case. If he believes that a law is unconstitutional, he may complete a written decision, requesting an Advisory Opinion from the Constitutional Chamber, to review the constitutional question before he decides the case.

IV. CONFLICTS OF CONSTITUTIONALITY

There is also another procedure to settle conflicting constitutional issues between public agencies regarding their constitutional prerogatives (such as conflicts between autonomous agencies and the executive branch or the Supreme Election Tribunal and municipalities, etc.). These procedures have been scarcely applied and do not necessarily empower the enforcement of human rights. Instead, they are instruments for solving political conflicts between governmental entities.

The petition must be submitted to the Constitutional Chamber by the head of the agency or branch of government. It will then be communicated for a proper response from the institution, which is the defendant, within eight days. Once received, or if there is no reply, the decision must be entered in ten days.

V. EXECUTIVE VETO

The constitution regulates the executive veto in Articles 125, 126, 127 and 128.

If the Legislative Assembly approves a bill, it must be sent to the President for signature and sanctioning. If there are no objections after the said ten days, the President must approve and publish the legislation. He or she is entitled to return it in ten days with any objections on grounds of opportunity and conven-

204. SCCSJ Nov. 13, 1990 SCIJ No. 1990-1628 (Costa Rica).
206. LAW OF THE CONSTITUTIONAL JURISDICTION art. 104.
209. LAW OF THE CONSTITUTIONAL JURISDICTION art. 110.
210. LAW OF THE CONSTITUTIONAL JURISDICTION art. 110.
211. LAw OF THE CONSTITUTIONAL JURISDICTION art. 111.
213. Id. at art. 140.3 and 126.
214. Id. at art. 126.
ience, or if he or she believes that it is in need of amendments. In the latter case, he or she shall propose the modification when it is returned to the Legislative Assembly.

In cases in which the Legislative Assembly does not accept the reasons given by the Executive Power, the Legislative Assembly may pass the bill by a vote of two-thirds of the total membership. If this occurs, it shall be sanctioned and enforced as a law.

If the Legislative Assembly accepts the amendments drafted by the executive branch, on approval, it may not refuse to sanction the law. However, if the proposed amendments are not accepted and fail the two-thirds voting requirement, the bill shall be sent to the archives and may not be reconsidered until the next legislative period.

If the executive branch of government refuses to sanction and promulgate a bill on constitutional grounds, and the Legislative Assembly rejects such arguments, the bill shall pass to the Constitutional Chamber to decide the constitutional questions within a period of thirty days. The provisions held unconstitutional will be struck down, and the rest shall receive the appropriate proceedings such as the sanction and promulgation from the executive. Hence, if the Constitutional Chamber decides that the bill complies with the constitutional order, it will receive the same treatment.

VI. CONCLUSION

After 1821, since its inception, early Costa Rican systems of government relied on many of the Cadiz Constitution principles and the Constitution of the United States through the Central American Federation. From then on, the constitutions put a strong emphasis on a political control system of constitutional supremacy, relegating judicial review to the future. Under the 1871 constitution, however, legal provisions were enacted that clearly created a diffusive system of judicial review, but many practical

215. Id.
216. Id.
218. Id.
219. Id.
220. Id.
221. Id. at art. 128.
223. Id.
problems arose. To fix these problems, a requirement for a two-thirds vote of the Plenary Court was created, which promoted a concentrated judicial review system that emphasized an excessive deference to the ordinary law and executive decrees.

The writs for *habeas corpus* and *amparo* were both introduced in the Costa Rican Constitutional order at separate times. *Habeas corpus* was first mentioned in the 1859 constitution. However, its text delegated its enforcement through ordinary legislation that did not come for fifty years, and the *amparo* claims would not be implemented until after the 1949 civil war.

A significant development occurred under the 1949 constitution. Forty years after its enactment, the 1989 amendments were passed to create a concentrated and specialized Chamber of the Supreme Court of Justice, which not only enhanced procedures, but also substantive rights. The judicial review, the *amparo* and *habeas corpus* proceedings, the advisory jurisdiction, and the conflicts of competence were substantially developed through the jurisdictional legislation. The impact was clearly felt, not only because of the availability and accessibility to any ordinary person to discuss constitutional questions, but also because of the direct applicability of the constitutional standards and international instruments on human rights.

The 1989 amendments to the constitution created a sophisticated and comprehensive constitutional control system. The Constitutional Chamber of the Supreme Court of Justice vigorously applied constitutional standards where the jurisdictional law extends its reach. This system includes procedures and substantive rights of a fundamental nature, modernizing the individual and social rights dogma through the incorporation of the international instruments of human rights that are applicable in the country.

The period from 1989 to 2010 consists of a historical trend that emphasizes a very successful system of constitutional justice, applying high standards and accountability to political and govern-

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mental actors. In return, an excessive number of cases have occupied much of the Chambers’ time, pressing it to make legal amendments. However, at the same time, the court has also taken important steps to enhance its performance by utilizing the technical resources that are available. Nevertheless, policymakers and government officials are urging reforms to ease claims of excessive powers granted to the Constitutional Chamber, leaving it at a crucial time where much of its success may be the main reason that curtails its important functions.

Under these circumstances, only time will ease differences, in order to maintain constitutional gains into the future. One must remember that the constitutional jurisdiction protects those who are not protected by the political process; they too must have the ability to resort to an inexpensive judicial body to advance their individual and social rights.

APPENDIX