Constitutional Jurisdiction in Mexico

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CONSTITUTIONAL JURISDICTION IN MEXICO

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IV. PROTECTION OF POLITICAL RIGHTS AND ELECTORAL DECISIONS

A. Electoral Justice

B. Action to Protect Citizens' Electoral Political Rights

C. Action to Challenge Any Resolutions or Acts by Electoral Authorities of the States

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V. CONSTITUTIONAL POWERS TO DECIDE JURISDICTIONAL CONFLICTS BETWEEN FEDERAL AND LOCAL COURTS

The Mexican Constitution rules an extensive system of jurisdictional protection against violations coming from federal, state and Federal District legislatures, executives and judiciaries. The power of hearing the issued cases has been exclusively entrusted to the Judicial Branch of the Federation. Several means have been provided:

- *Juicio de amparo*,

- Constitutional controversies,

- Actions of unconstitutionality,

- Protection of political rights and of electoral decisions, and

- Resolution of jurisdictional conflicts.

The federal courts are the Supreme Court of Justice, Collegiate Circuit Courts and District Judges. They have subject-matter ju-

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2. "*Juicio de Amparo*" or "*Juicio de Garantías*" is a native Mexican institution. It has no precise equivalent in United States or in English proceedings, which serve the purposes of the *Amparo* with different institutions. In this paper, I try to use the common law vocabulary describing similar institutions. I use "Amparo" because of its originality and diffusion among Latin American and Spanish constitutions and laws. An excellent vocabulary that I tried to follow, has been developed by Allan R. Brewer Carías in Constitutional Protection of Human Rights in Latin America. ALLAN R. BREWER CARÍAS, CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA (Cambridge University Press 2009).

3. [Editor's Note: Dr. Gamas provided the following objective source for a reader seeking to expand his or her base knowledge of the makeup of federal courts in Mexico: FIX ZAMUDIO, HÉCTOR AND COSSIO DÍAZ, JOSÉ RAMÓN, *EL PODER JUDICIAL EN ORDENAMIENTO MEXICANO*; México, Fondo de Cultura Económica, (1999). Dr. Gamas also provided the
risdiction over cases issued from federal statutes as well as those of a constitutional nature. The protection of political rights has been vested in an autonomous court integrated to the Judicial Branch of the Federation.

The Supreme Court of Justice is integrated with eleven justices, appointed in each case of a vacancy by the Senate from three candidates submitted by the President of the Republic. It can act in full court or in two chambers: one for civil and criminal and one for administrative and labor matters. The circuit court justices (three in each court) and the district judges are appointed after a previous exam by the Council of Federal Justice, a specialized board presided by the President of the Supreme Court and integrated by members of the judiciary, legislative and representatives of the executive.

I. JUICIO DE AMPARO (AMPARO SUIT AND TRIAL)

A. Introduction

In Mexican law, the primal means of constitutional protection has been the “Juicio de Amparo.” Initially created in one of the constitutions of the states, that of Yucatán in 1841, then temporally separated from the Mexican Federation, it was raised as a national institution in the 1847 Reform Act (Acta de Reformas de 1847). The Reform Act was a constitutional statute making amendments to the first Mexican Constitution dated 1824. It was recognized and regulated in Articles 101 and 102 of the 1857 Constitution and reinforced in the current 1917 Constitution. It has performed effectively and efficiently. Its structure and operation have been adapted to the country’s social dynamic, attaining a considerable development in binding court precedents,4 in the legal doctrine and, afterwards, in regulating statutes that have been


4. Mandatory court precedents, called “Jurisprudencia” in Mexican law, are created when the Supreme Court of Justice of the nation decides in the same way on five consecutive occasions or when Collegiate Circuit Courts unanimously decide in the same way on five consecutive occasions. Then, decisions become Jurisprudencia, and application of the decision is mandatory for Mexican courts in the decision of the cases they try.
adding up what the experiences in its application advised. The present law dates from 1936, but it has been afterwards amended many times.

The "juicio de amparo" is a legal process of protection of human rights structured as a trial, which is brought forth by the filing of an action by the allegedly injured person. Its goal is to grant such person protection from laws or acts of authorities that violate "individual guarantees," a designation the Constitution uses as equivalent to "human rights."

Article 103 of the Mexican Constitution reads:

The federal courts shall decide all controversies that arise:

I. Out of law or acts of the authorities that violate individual guarantees.

II. Because of laws or acts of the federal authority restricting or encroaching on the sovereignty of the States.

III. Because of laws or acts of State authorities that invade the sphere of federal authority.

The Amparo is an autonomous trial. It is initiated by exercising an individual right of action, which all individuals have, to appear before the Judicial Branch of the Federation in order to obtain a resolution according to the law: (1) for either a violation to individual guarantees by a law or an act of authority, or (2) for any violation to individual guarantees by a law or acts of authority

5. An injured party is called "Quejoso" in Mexican law. The term has been translated in English as "injured party" and means the claimant, the petitioner, or the plaintiff who files the Amparo action and who will be granted the protection of federal justice.

6. "Act of authority" is the phrase chosen to translate "acto de autoridad." In Amparo procedures it refers to acts that violate individual guarantees and cause a grievance or injury to the rights of the petitioner (or injured party). Such acts are called "challenged acts" (referred to as "acto reclamado" in Spanish) and are exercised by the "responsible authority," who is the government or court official or the law that allegedly has violated the petitioner's individual guarantees and against whom an Amparo suit was filed, namely the government defendant held responsible for an unconstitutional act. See Jorge A. Vargas, Privacy Rights under Mexican Law: Emergence and Legal Configuration of a Panoply of New Rights, 27 Hous. J. of Int'l L. 73, 136, n.103 (Fall 2004) ("Under Mexican Constitutional Law, the term 'individual guarantee' is referred to as la garantia de legalidad de los actos de autoridad.").

7. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 103, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
created, applied or carried out, outside the system of constitutional powers allocated between the Federation and the States.\(^8\)

There must always be an assumption that a fundamental right has been violated; otherwise the action is not admissible. Therefore, the *Amparo* is a direct protection for the individual and only an indirect protection for the Constitution. In this regard, binding court precedents are unequivocal:

The *amparo* was established by article 103 of the Constitution, not to safeguard all the Constitutional provisions, but to protect individual guaranties, and sections II and III of the aforesaid provision, must be understood in the sense that, in the “*juicio de garantías,*”\(^9\) a federal law can only be contested when it invalidates or restricts the sovereignty of the States or, against the States, if they invade the area of competence of the federal authority, when there is a violation to individual guaranties . . . .\(^{10}\)

The defendant against whom the action is brought is any authority\(^{11}\) who has allegedly committed the violations attributed to it by the injured party.

The purpose of the trial is to obtain a statement against a law, judicial final resolution or sentence or action, declaring it unconstitutional and holding its voidance or annulment in respect to the injured party.

\section*{B. Protective Scope}

The basis for the protection of individual rights is established in the Constitution and binding court precedents and the law has been gradually enhancing this protection.

(i) The *Amparo* is not limited to the protection of the rights specified under Article 20, but it extends to any human right pro-

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\(^8\) Id. at art. 124. All powers not delegated by the Constitution to the federal branches are retained by the states. Id.

\(^9\) “*Juicio de Garantías*” (Guarantees Suit and Trial) is another designation for the *Amparo*. In the Spanish language, the term stresses its character as protector of such fundamental rights of each individual. See Alicia Ely Yamin & Ma. Pilar Noriega Garcia, *The Absence of the Rule of Law in Mexico: Diagnosis and Implications for a Mexican Transition to Democracy*, 21 Loy. L.A. Intl. & Comp. L. Rev. 467, 512 (July 1999).

\(^{10}\) Binding Court Precedents from 1917-1985, Pleno de la Suprema Corte de Justicia [SCJN], Primera Época, Página 133 (Mex.).

\(^{11}\) Such authority shall be called, for purposes of translation, “responsible authority,” and it means the one who is accountable for the act whose exercise violates the individual guarantees of the constitution. See *supra* note 5.
vided in constitutional provisions. For instance, the right to “pro-
portionality and fairness in taxes” is in Article 31 in the chapter
referring to the rights and obligations of Mexican nationals. This right has been extended to foreigners.

The Supreme Court of Justice has held that the *Amparo* action can be exercised against a violation of “any of the premises provided in any of the three sections of Article 103 of the Constitution.”

(ii) The *Amparo* is admissible whenever any law or act by an authority violates individual guarantees and also in cases where judges apply the law incorrectly or inadequately.

It was the harsh social reality that conditioned the extension of the *Amparo* suit to the protection of “due enforcement of the law” (*legalidad*). During the ten years following the enactment of the 1857 Constitution, the country suffered a civil war and a French military intervention, both promoted by the Catholic Church and the conservative party. As of 1867, when the organization of the Republic’s life commenced, some state or regional “military cacicazgos” remained standing, submitting to local justice. Those aggrieved in such cases resorted to the *Amparo* as a last relief against such frequent abuses, claiming violations of their rights by the sentences and resolutions issued.

Gradually, federal justice began accepting such protective extension, making thereby an immense contribution to the nation’s stabilization and integration. Such attitude favored the purposes of the President of the Republic, later an autocrat, Porfirio Díaz, to submit regional powers. However, it was also to the benefit of national justice and for the integration of a true state, which,

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12. Article 31 states that Mexicans are obligated “[t]o contribute to the public expendi-
tures of the Federation, and the State and Municipality in which they reside, in the propor-
tional and equitable manner provided by law.” Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 31, frac. IV, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.)(emphasis added).


14. For general history of the “war of reform” the reader is directed to Vigil, JOSÉ M., *MÉXICO A TRAVÉS DE LOS SIGLOS, LA REFORMA* (volumen 5); for contemporary research and approach, the reader is directed to Díaz Lilia, *El Federalista Militante*, and González Luis, *El Federalismo Triunfante*, in HISTORIA GENERAL DE MÉXICO, El Colegio de México (2000).

15. “Cacicazgo” is the term used in Mexico to designate power exercised by a “cacique,” who is a local political leader that has become the chief in a region and uses his political power, influence or authority to control authorities and individuals to the benefit of his personal interests.

16. Porfirio Díaz was one of the military “caciques” in the state of Oaxaca. He attained power through a revolution, was elected president and then successively reelected. He was in power for thirty years. See William D. Signet, *Grading A Revolution: 100 Years of Mexican Land Reform*, 16 LAW & BUS. REV. OF THE AMERICAS 481, 493 (Summer 2010).
since the Independence, had not really existed. The former military chiefs were replaced by obedient governors controlled by the President. The abuses diminished but did not end. At that time, many outstanding scholars and lawyers contributed to the development of the legal institutions and gave “prestige” to the regime. It is ironic that the *Amparo* developed during an autocratic regime.

The legal interpretation profited from the imprecise wording of Article 14 in the previous Constitution, which remains the same in the present Mexican Constitution. The original text of Article 14 of the 1857 Constitution established: “No one may be tried or sentenced, except in accordance with laws enacted before the facts and exactly applicable thereto . . .”\(^{17}\) “In exact application of the law,” was understood to apply whenever a judge did not apply the law, whether federal or local, properly. Such recognition came from binding court precedents and from 1869 forward the Supreme Court of Justice became the reviewing tribunal in the final stage on the resolutions of all the courts of the Republic.

The interpretation passed to the 1917 Constitution. A dramatic reality was described when the draft of the Constitution was presented: It was admitted that the interpretation of Article 14 of the 1857 Constitution resulted in converting the judicial authority of the Federation into the reviewer of all acts of the judicial authorities of the States; that the central power, in being subjected to the Court, could interfere in the acts of local courts . . . and because of the abuse of the *amparo*, the tasks entrusted to Federal courts would be overloaded and the course of ordinary trials obstructed and delayed . . . Nevertheless, in this regard it must be acknowledged that, in the depths of the trend to grant an inadequate extension to the scope of article 14, there was the need to restrict the States’ courts. Soon it became evident that trials became blind instruments in the hands of governors who impudently intruded in cases completely outside the scope of their attributions. It was, therefore, urgent to have a means of relief, resorting to federal courts to repress such excesses.\(^{18}\)

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17. Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 14, Diario Oficial de la Federación [DO], 1857.
18. Debate Journal of the Constitutional Congress, tomo I, Primero Época, 1 Diciembre de 1916 (Mex.).
Article 14 of the current Mexican Constitution, establishes under its third paragraph: “In criminal cases no penalty shall be imposed by mere analogy or by a prior evidence. The penalty must be decreed in a law in every respect applicable to the crime in question.” The fourth and last paragraph states: “In civil suits the final judgment shall be according to the letter or the juridical interpretation of the law; in absence of the latter it shall be based on the general principles of law.”

The Amparo is admissible every time a violation of such provisions that consecrate the current constitutional expression of the guaranty of “due enforcement of the law” (garantía de legalidad), is claimed. In those cases, from the procedural perspective, the Amparo action takes the nature of an ordinary appeal; in such cases, federal courts act as appellate courts, reviewing federal and local civil and criminal controversies.

In covering infractions relating to federal and state legislation, in addition to constitutional violations to the detriment of constitutional guarantees, the Amparo is the last stage in the legal order of the Mexican Federation. In this case, the Federal Judicial Branch acts as a French style “Cour de Cassation.” The respective powers have been laid in the second step of the structure: the collegiate circuit courts.

The acceptance of the centralization of justice has its background in the colonial tradition of the Audiencia, the supreme centralized court of justice according to the Spanish ancient law and court organization in their colonies. In Mexico, the Audiencia also had political powers as a balance to the viceroy’s authority. The two Audiencias (Mexico City and Guadalajara) concentrated the best lawyers and acted generally with impartiality, except when the interests of the Crown were involved in the controversy.

(iii) The Amparo covers all of the legal order: general laws or statutes, by-laws, international treatises and conventions, administrative acts and resolutions and sentences.

This coverage of the whole order may be expressed in the following formula: the authority may only act if it has legal grounds thereto for, if the general provision fits the Constitution and if the

19. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 14, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
20. Id.
21. See Miranda Jose, Las Ideas y Las Instituciones Políticas Mexicanas, México, Instituto de Derecho Comparado (1952); Ots Capdequi J.M., El Estado Espanol en Las Indias, México, Fondo de Cultura Económica (1941); Zavala, Silvio, El Mundo Americano en la Época Colonial, México, Porrúa (1967).
act of enforcement is adequate to the abstract situation to which the general provision refers.

Article 16 provides: “No one shall be molested in his person, family, domicile, papers or possessions except by virtue of a written order of the competent authority, stating the legal grounds and justification for the action taken.”

“To state the legal grounds and justification for the action taken” implies that any activity carried out by public entities or bodies must be to apply a general provision and any individualized provision must be the result of a correct enforcement of a general provision to a concrete case.

Important court decisions can be found by analyzing the Supreme Court of Justice’s mandatory precedents:

When article 16 of our Supreme Law provides that no one may be disturbed in his person, except by written order of a competent authority, duly set forth in law and grounding the legal cause of the proceeding, is requiring government authorities not only to abide, according to a criterium hidden in their conscience by a law, without knowing what law it is and the provisions thereof, upon which the respective order by the authorities is grounded, because such behavior would not even remotely constitute a guaranty for the individual. To the contrary, what said article is demanding from authorities is to quote the law and the provisions thereof upon which they rely, since what is meant, is to legally justify their resolutions, showing that they are not arbitrary. A justification means which is even more necessary since in our constitutional system, authorities have no other faculties except for the ones attributed to them by the Law.

In respect to legal grounds, the Supreme Court stated that “[i]t is not enough that respondent authorities shall invoke certain legal provisions to consider that their findings are duly grounded, but rather, it is necessary that the provisions invoked be precisely the ones applicable to the case in question.”

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22. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 16, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
23. Id.
25. Binding Court Precedents, Amparo in Review 2,479/58, Ignacio Navarrete Hernández, Pleno de la Suprema Corte de Justicia [SCJN], tomo XXIII, Sexta Época (Mex.).
Therefore, through Article 16, the Amparo protects the legal order in full, while authorities have to act with constant reliance on the grounds of a valid constitutional or legal provision.

(iv) The Amparo covers "social guarantees." The Amparo action was born in times when Mexico adopted political economic liberalism as the fundamental ground of the society and the State it sought to build.

The rights of man, or "the individual guarantees," as the current Constitution now calls them, are first individual rights that the individual enforces against the State.

The Constitution of 1917 recognized social rights. An analysis of Articles 27 (agrarian reform, land regulation and organization of rural property)\textsuperscript{26} and 123 (labor rights)\textsuperscript{27} reveals these as "class" rights, or rights of a specific group and of individuals.

(v) The Amparo does not cover the so-called "third generation rights" or "solidarity rights." Protection of the society as a whole of necessities, like clean environment, health and housing, whose enforcement cannot be translated in specific obligations of the State, mostly depend on budgetary possibilities. They are considered only as guides to legislation and government policies.

C. Constitutional Basis

The basic regulations of the Amparo are contained in Article 107 of the Constitution and in its respective regulatory law. For such purpose, the "Amparo Law, Regulatory of Articles 103 and 107 of the Political Constitution of the United Mexican States" (hereinafter referred to as "The Amparo Law") was enacted (and published in the Official Gazette of the Federation on January 10, 1936 and amendments thereafter).

Such bases are:

1. Court Proceedings: A Trial

The first part of Article 107 says: "Any controversies mentioned in Article 103 shall be subject to the legal forms and procedure

\textsuperscript{26} Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 27, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

\textsuperscript{27} Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 123, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
prescribed by law . . . " 28 The procedure has a bilateral and adversary character.

2. Subjects in proceedings: The Judge and the Parties

The judge is, at all times, the Federal Judicial Branch exercising its constitutional judicial function.

The parties in the proceedings are: 29

(a) The Injured Party (quejoso)

The injured party is an individual, or a group of individuals or collective person, who is or are allegedly injured by the law or the act that violates any individual guaranty established in the Constitution.

(b) The Aggrieving or Responsible Authority

Authority is any state body that participates in the process to create and apply legal statutes. The authority must be vested with imperium, meaning that its actions are fully binding and mandatory and may be imposed by coercion. Such concept seems redundant, but it is used to distinguish properly such bodies from others created with the purpose of preparing the actions to be taken by the former ones, without being empowered to decide by themselves. The Supreme Court has acknowledged this circumstance and has denied the nature of proper "authority," for purposes of Amparo actions, to the legal counseling departments of state agencies, which have a prominently auxiliary character. 30 Therefore, the responsible authority is the one who decides, enacts, promulgates, orders, executes or tries to execute the law or the act contested. 31 The Supreme Court of Justice has extended the concept to apply it to those persons who can avail themselves of physical force under lawful or factual circumstances.

Binding court precedent states the following:

Indeed, the General Constitution of the Republic, in saying that the amparo suit is admissible against laws or acts by authorities that violate individual guarantees, does not mean, in

28. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 103, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
29. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 5, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).
31. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 11, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).
any way, that 'authorities' should be understood, for purposes of amparo, only and exclusively, as the ones established according to the laws, and that, in the special case in question shall have acted within the scope of their attributions, in exercising the acts reputed as violations to individual guarantees. Far from that. Vallarta and other Mexican Constitutional Law scholars hold that the term “authority,” for purposes of amparo, includes all such persons who can use police force, either by legal or factual circumstances, and who therefore, have a real possibility to act, not as simple individuals, but as individuals exercising official acts because of the fact that the force available to them is police force.32

The creation of state autonomous agencies and their increasing power lead to a broader concept of authority in binding precedents; the concept was extended to "those officers of public agencies acting in terms of the law, who perform unilateral actions creating, modifying or extinguishing legal conditions affecting the individual."33

(c) The Injured Third Party
The injured third party is anyone who has an interest in preserving the claimed act because its revocation will cause injury.

The Amparo Law in force34 grants such legal capacity to:

a) the counterpart of the injured party, when the claimed act arises from a proceeding or controversy which is not of criminal nature, or any of the parties in the same proceeding, when the action is filed by a person who is not a party to the lawsuit;

b) the victim or such persons who, according to the Law, are entitled to seek relief for damages or to sue for civil liability as a consequence of a criminal offense.

c) the person or persons who shall have sought in their favor the act against which the action has been filed, when such rulings have been issued by authorities other than judicial

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32. Binding Court Precedents, Pleno de la Suprema Corte de Justicia [SCJN], tomo XLV, Página 5033 (Mex.).
33. Pleno de la Suprema Corte de Justicia [SCJN], Annual Inform (1997), Página 112-13 (Mex.).
34. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 5, § III, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).
courts; or a person who, not having sought the contested act, shall have a direct interest in upholding the contested act.


In that regard, section XV of Article 107 restricts the intervention of the Attorney General: “The Attorney General of the Republic or an agent of the federal public ministry appointed for the purpose, shall be a party in all suits in amparo, but they may abstain from intervening in such cases, if the matter in question lacks public interest, in their opinion.”

The Attorney General is a collaborator of the Executive. Also, the Attorney General’s intervention performs, in the Amparo action, the obligation imposed on the President of the Republic “to uphold” and “to enforce” the Constitution.

The trial concludes regularly with a resolution:

The resolution granting amparo shall have the purpose of restoring the injured party in the full enjoyment of the violated guaranty, restoring things to the state they had before the violation occurred, whenever the act contested is of a positive nature; and should it be of negative nature, the amparo’s effect shall be to oblige the respondent authority to act in a sense that respects the guaranty in issue and to comply with the requirements of such guaranty.”

3. By Initiative or by motion of the Injured Party

Section 1 of Article 107 reads: “A trial in amparo shall always be held at the instance of the injured party.” It follows that:

(i) to be admissible it must be filed by motion of the injured party, and

(ii) such “party” must have suffered a “grievance” or “injury.”

The Supreme Court has established that a grievance or error is the offense or injury against someone in his rights or ests and that “grievances argued in the amparo tend to prove

35. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. XV, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
36. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 80, Diario Oficial del la Federación [DO], 30 de Deciembre de 1935 (Mex.).
37. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. I, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
38. Pleno de la Suprema Corte de Justicia [SCJN] [Supreme Court], Semanario Judicial de la Federación [SJF], Quinto Epoca, tomo XXXV, Página 974. Id. at tomo XLV, Página 4686, Id. at tomo LXX, Página 2276. Id. at tomo LXXII, Página 316. See also Binding
that the claimed act has been issued in a direct violation to individual guaranties.”

(iii) The grievance or injury must be personal and direct. The Supreme Court says that any Amparo “sought, must be filed precisely by the person who considers to have been deprived of any of his rights, possessions or property . . . .”

The grievance must be a direct one: “An injured party is, for purposes of amparo, the one who has been directly affected by the violation of guarantees and not the injured third party, who is indirectly accepted by such violation.”

The law allows third persons to make the filing. Therefore, legal representatives of minors and anybody deprived of their freedom can file.

4. Relativity of Amparo Resolutions.

In amparo, “[t]he judgment shall be always be such that it affects only private individuals, being limited to affording them redress and protection in the special case to which the complaint refers, without making any general declaration as to the law or act on which the complaint is based.”

This res judicata relativity formula in the Amparo was expressed for the first time by the constituent jurist Manuel Cresencio Rejón in the 1841 Constitution of the State of Yucatán and was adopted by the constituent jurist Mariano Otero in the Acta de Reformas de 1847 (1847 Act of Amendments). The formula was thereafter known as the “Otero formula.” Otero restricted the formula to the Amparo, considering it as part of an integral mixed system of constitutionality defense. It provided the annulment by political government bodies of laws which contradicted the Constitution. Nevertheless, this second part of the articles in the Acta de Reformas was rejected by the 1856-1857 constituent. They would be discussed again in 1994.

Court Precedents, General Subject Matters Pleno de la Suprema Corte de Justicia [SCJN], tomo LXVIII, Página 753 (Mex.).

39. Id. at tomo XLII, Página 1230.

40. Id. at tomo LXIII, Página 3770; id. at tomo LXXVIII, Página 100.

41. Id. at tomo IV, Página 127; id. at tomo LXX, Página 2276.

42. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. II, pfo. 1, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

43. For information on the Otero Formula, the reader is directed to: Tena Ramirez Felipe, Leyes Fundamentales de Mexico, Porrúa, 304-402, 439-84 (1994). For further explanation of the Otero formula, the reader is directed to: Burgoa, Ignacio, El JUICIO DE AMPARO, chapter vii, Porrúa México (2004).
The preliminary ideas on the *Amparo* were elaborated from the readings of Alexi's de Tocqueville's "De la démocratie en Amérique" which discussed North American institutions, as well as the medieval Hispanic charters where the term "Amparo" was adopted.

The "Otero formula" made the operation of the *Amparo* action more than satisfactory for almost 150 years, thus avoiding a clash of the Supreme Court of Justice with "political powers." It was because of this principle that the *Amparo* action was preserved in difficult times and that the Federal Judicial Branch was preserved as an unusual case of a dignified institution.

In the *Amparo*, if a judgment favors the injured party, it protects such party personally. However, the unconstitutional law or act keeps its binding force.

All arguments upholding the relativity principle rely on the inconvenience of involving the Judicial Branch in political issues avoiding power conflicts. Such grounds for argument are no longer sustainable because, since the 1994 amendments, the Supreme Court of Justice has been vested precisely with powers to make *erga omnes* decisions invalidating unconstitutional laws in certain cases satisfying special requirements. If the *Amparo* action is to be preserved under its current form, the "Otero formula" must be given a different theoretical ground than the one over which it has relied until this day. Otherwise, it must be eliminated and there are good reasons for elimination, including the lack of information and the deprivation of means to hire an attorney that affect many low income people, who are thus unable to file the suit.

5. Correction of the Complaint's Deficiencies.

Paragraphs two and three of Section II of Article 107 of the Constitution establish restrictively the cases where the Court may correct any deficiencies in the petition. The second paragraph of Section II of Article 107 reads: "A defect in the complaint may be corrected, whenever the act complained of is based on laws declared unconstitutional by previous decisions of the Supreme Court of Justice." The correction of the deficiencies in the peti-
tion is an authorization granted to the judge to introduce, in the matters at issue, arguments and legal grounds in favor of the injured party, even if the latter was not argued in the original assertion of grievances. The intention is to safeguard the individual from any eventual lack of knowledge, expertise or ethics of his counselors. As to the Amparo action, the correction of the claims’ deficiencies are set forth by delegating on the federal legislator, the power to determine such cases “in accordance to the provisions established in the Amparo Law . . . .”

The Amparo Law in force, on the grounds of its highest protective purpose, has extended in broad terms the principle of correcting claims’ deficiencies.

Indeed, Article 76 of the aforesaid law provides the correction:

(i) in any subject matter, whenever the action contested is grounded in a law which has been declared unconstitutional by the Supreme Court of Justice’s binding precedents; 45

(ii) in criminal cases the correction shall proceed even in the absence of the assertion of grievances by the accused party; 46

(iii) in agrarian cases when the injured party is a rural settlement, known an ejido or a communal population center, 47 or any ejidatario 48 or comunero individually; 49

(iv) in favor of the worker in labor cases; 50

(v) in favor of minors or incapacitated individuals; 51

ters, likewise, when the trial has been based on a law not precisely applicable to the case.

Id. at art. 107, frac. II, pfo. 3.

45. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 76, § I, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).

46. Id. at art. 76, § II.

47. The communal population center, designated as núcleo de población comunalcral, or comunidades, is a Mexican rural land tenure institution constituted by a settlement of peasants holding land in common, which tenure and disposition is also subject to limitations to protect the peasants’ rights. Most of these population centers originated as indigenous rural settlements. Settlers have occupied the land since the times of Spanish colonization. This class of land tenure also has also certain particularities and is held in common. Communal population centers are, together with the ejido, institutions of land tenure for the protection of peasants, and to prevent land concentrations in the hands of a few. Both institutions constitute the grounds of the Mexican land reform resulting from the 1910 Revolution and have been regulated since the inception of this Constitution. (Becerra, Javier F. P. 173).

48. Ejidatario is an individual who is a member of an ejido. He is assigned a parcel of land to work, which transfer is subject to restrictions. Comunero is an individual member of a communal population center who participates in the exploitation of the rural land held in common by the community members, whose land disposition is also subject to restrictions.

49. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 227, § III, Diario Oficial del la Federacion [DO], 30 de Deciembre de 1935 (Mex.).

50. Id. at art. 227, § IV.
(vi) in other subject matters when there is an awareness that there has occurred, against the injured party or the appellant private person, an obvious violation of the law which has left such party or person without defense.

The Constitution contains other procedural protections when it restricts, to the benefit of certain petitioners, the rules of dismissal for "procedural inactivity" or for "lapsing of the proceedings," which are discussed later.

The third paragraph of Section II of Article 107 provides an extreme case of the inquisitive principle: the intervention of the judge at his own initiative to the benefit of the injured party. Whenever the acts claimed in the amparo deprive or may result in depriving any ejido or communal population center or any ejidatario or any comunero individually of their ownership or possession of their lands, waters, pastures and woodlands, "any evidence that could benefit the aforesaid entities or individuals must be obtained at the court's own initiative, and any actions or proceedings deemed necessary to determine their agrarian rights, as well as the nature and consequences of the contested actions, must be ordered."

6. Exhaustion of Ordinary Remedies

The amparo is only admissible with respect to final actions, namely the ones against which no remedy or legal means of defense to modify or nullify them is available. "If available ordinary remedies are not exhausted first, any amparo action filed against the decision is inadmissible." Exhaustion requires that the ordinary remedy had been pursued until the final resolution had been rendered.

The principle arises from the contents of Sections III and IV of Article 107 which provide that any amparo filed against acts by judicial, administrative, or labor courts shall only be admissible in the following cases:

51. Id. at art. 227, § V.
52. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, pfo. 3, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex).
53. Appendix to volume CXVIII thesis 883 and 905, corresponding to thesis 293, third chamber, P.159.
54. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 73, § XIV, Diario Oficial del la Federacion [DO], 30 de Deciembre de 1935 (Mex.).
(i) against any final judgments or awards and resolutions putting an end to a trial, where no ordinary judicial means is available to amend or to change them, whether the violation occurs therein or during the course of proceedings, if it harms the petitioner's defenses so as to influence the outcome of the judgment;

(ii) against acts during trial which enforcement would render them of impossible restitution, whether out of court or after the trial's conclusion, upon having exhausted the ordinary remedies;

(iii) against acts that affect persons who are not a party in the lawsuit when the law does not provide other means of defense;

(iv) in administrative cases, against decisions causing a grievance which cannot be repaired by any remedy, court proceeding or any other lawful means of defense.55

These rules are included in the Amparo Law.56 Nevertheless, important exceptions are provided: the exhaustion of such remedies shall not be necessary whenever the law establishing them should impose more conditions to obtain the suspension of the challenged act than those required by the Amparo Law to grant it.

The Law establishes exceptions to the principle we are discussing here in cases when the challenged act menaces the life or orders a deportation of an individual or violates the guarantees of due and fair process of law in criminal trials.57

D. Suit and Trial

The Constitution creates two kinds of amparos: the single instance and the two instances.

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55. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
56. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 73, § XIII, XV, Diario Oficial de la Federación [DO], 30 de Deciembre de 1935 (Mex.).
57. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 20, frac. II, pfo. 2, cl. 2, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
1. Admissibility and Jurisdiction in Single Instance or Direct Amparo.

The *amparo* action filed against court decisions has one single stage before collegiate circuit courts who decide the case. Their decision is final and therefore, this kind of *amparo* is known as "single instance" or "direct" *amparo*.

The Constitution originally empowered the Supreme Court of Justice to try any challenges against court decisions of all federal and state courts; namely, it created a court of last resort for all the judgments pronounced in the country. The Court was overloaded with all such cases and the 1951, 1987, 1994 and 1999 amendments successively transferred said jurisdiction to collegiate circuit courts. The Supreme Court of Justice reserved for itself exceptional jurisdictional competence to try such *amparo* and in some cases the power of review.

Section III of Article 107 provides the admissibility of the *amparo* action against final decisions or awards and resolutions with respect to which no other ordinary means of defense is admissible to change or amend them. This is true regardless of whether the violation occurs in the resolution itself, or if it occurs during the course of the proceedings if it affects the injured party's defense transcending the decision's outcome.\(^{58}\)

Section V of Article 107 provides *amparo directo* in the following cases:

(i) in criminal cases, against final judgments issued by judicial courts, in either federal, state, or military courts;\(^{59}\)

(ii) in administrative cases, whenever private persons claim any final judgments or decisions putting an end to proceedings, issued by judicial or administrative courts, which can not be redressed by any remedy, trial or any other ordinary means of lawful defense;\(^{60}\)

(iii) Administrative Courts (*Tribunales de lo Contencioso Administrativo*) as appeal courts have been established and are performing their tasks at federal, state and district federal levels;

\(^{58}\) Repeated by Ley de Amparo [LA] [Legal Protection Law], *as amended*, art. 158, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).

\(^{59}\) Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 107, frac. V(a), Diario Oficial de la Federación [DO], 2005 (Mex.).

\(^{60}\) *Id.* at art. 107, frac. V(b).
(iv) in civil cases, against any final judgments issued by federal courts or in commerce law proceedings, whether the authority issuing the judgment is a federal or state authority, or in lawsuits under state jurisdiction; in federal civil proceedings, the rulings may be claimed through an *amparo* action by any of the parties, including the Federation, in defense of its property interests;

(v) in federal civil cases, judgments may be contested through *amparo* action by any of the parties, even by the Federation in defense of its own pecuniary interests.

(vi) in labor cases, when contesting awards issued by Federal or Local Conciliation and Arbitration Boards or by the Federal Conciliation and Arbitration Board for Government Employees.

The suit must be filed in the court whose resolution or sentence is challenged, while the court notifies the parties in the trial already resolved and sends the file to the circuit collegiate court. The circuit court asks and receives allegations from the parties and, from the Attorney General and a justice in charge, elaborates a draft of the final resolution which is voted on by the court in full (three justices).

Similar procedures are followed when the *amparo* is exception-ally heard by the Supreme Court. The Supreme Court of Justice by its own motion or by motion justified and submitted by the corresponding collegiate circuit court, or by the Attorney General of the Republic, may attract under its jurisdiction certain direct *amparo* suits, to try them in the light of their interest and transcendence.

2. **Admissibility and Jurisdiction in Two Instances or Indirect Amparo**

Article 107, Section III, subsections b, and c, and Section IV of the Constitution establish indirect *amparo*.

An indirect *amparo* is brought forth before a district judge against whose resolutions an appeal for review may be filed. That is why it is designated as a “two instances” or an “indirect” *amparo*.

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61. Mexican commerce law is federal, but actions may be filed either in federal or state courts.
62. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 107, frac. V(c), Diario Oficial de la Federación [DO], 2005 (Mex.).
63. Id.
64. Id.
65. Id. at art. 107, frac. V(d).
The Amparo Law specifies admissibility requirements, discussed below.\(^6\)

(a) "Against laws"

"Against laws" refer to statutes and written regulations, according to the nature of the legal system of remote Roman origin. Binding court precedents always understood the "law" as a concept in the widest possible sense. The Amparo Law in force specifies:

against Federal or State laws, international treaties, by-laws issued by the President of the Republic under section I of article 89 of the Constitution (administrative regulation of a previous law), regulations of State laws issued by the governors of the States, or any other regulations, orders or provisions to be generally in force, which by their sole entrance into effectiveness or by the first act to apply them, cause an injury to the claimant.\(^7\)

(b) "Against acts which are not issued from judicial, government or labor courts"

Such acts are those committed by government bodies. It refers to all sorts of acts with the following exclusion:

In these cases, when the act contested arises from a procedure carried out in trial form, an amparo action may only be filed against a final resolution for violations in the same resolution or during the procedure, if by cause of such violations the claimant has been left without defense or deprived of the rights to which he is entitled under the Law on such matters, unless the amparo shall be filed by a person who is not a party to the dispute.\(^8\)

The authorities referred to therein must be other than administrative courts, against whose resolutions a direct amparo is admissible and an indirect amparo is not, as provided by subsection b of Section V of Article 107 of the Constitution. The creation of administrative tribunals as appeals courts has considerably reduced this administrative amparo.

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66. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 114, Diario Oficial del la Federacion [DO], 30 de Deciembre de 1935 (Mex.).
67. Id.
68. Id. at art 114 § III.
(c) "Against acts carried out either out of trial or after the trial’s conclusion, upon having exhausted any admissible appropriate remedies."

The Amparo Law clarifies that such acts correspond to judicial, administrative or labor courts.69

(d) "Against acts during trial which enforcement would render them impossible to be restituted."70

It refers to acts other than judgments against which a direct amparo is admissible.

(e) "Against acts which affect persons who are not involved in the lawsuit."

The Amparo Law clarifies that such acts may be exercised in court or out of court, whenever the law does not provide, in favor of the injured party, any means of defense which could result in the amendment or change of such acts.71

The Amparo Law establishes that the amparo is admissible "against Federal or State laws or acts of authority, in cases of invasion of competence set forth under sections II and III of Article 103 of the Constitution which the Amparo Law repeats in its first article."72

Section VII of Article 107 of the Constitution provides that any indirect amparo suit shall be filed before the district judge who has jurisdiction in the territory where the contested act is enacted or executed, or where such actions are attempted, and its proceedings shall be limited to the report rendered by the authority,73 regarding the alleged violations, to a hearing which shall be summoned in the same court order requiring the report. Where the evidence submitted by the interested parties shall be admitted, their allegations shall be heard and the resolution of the case shall be rendered all in the same hearing.

3. Appeal (Recurso de Revision)

The constitutional rules regarding appeals follow.

69. Id. at art. 114, § III.

70. Id. at art. 114, § IV.

71. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 114, § V, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).

72. Id. at art 145-157.

73. "Report in answer to the complaint" is a translation of the term "informe justificado," a term exclusively pertaining to amparo proceedings and which is a reasoned statement of the respondent authority (government or court defendant) providing that the act of the authority, or court decision contested, did not violate the petitioner’s constitutional rights and is, therefore, lawful.
In direct *amparo* the resolution rendered by collegiate circuit courts shall be final. It can only be reviewed in exceptional cases. Section IX of Article 107 reads:

The judgments rendered in Direct Amparo issued by Collegiate Circuit Courts shall not admit any further review, unless they decide on the unconstitutionality of a law or establish a direct interpretation of a provision of the Constitution. In these cases, the Supreme Court of Justice subject to its own general internal regulations\(^7\) shall decide which kind of judgments qualify for the establishment of a significant and transcendent criterion. Only under these premises shall the appeal before the Supreme Court of Justice be admissible, but the subject matter of the case in review shall be restricted exclusively to decide issues of a purely constitutional nature.\(^5\)

The Amparo Law specifies the term "law" covering "federal or state statutes, international treaties, regulations according to Article 89 Section I (administrative by-laws issued by the President) and any regulation of a law of a state issued by a governor of a state."\(^6\)

In indirect *amparo*, to the contrary, the rule is to review, which is why it is called an *amparo* in two instances.\(^7\)

The appeal for review is admissible against resolutions entered by district judges in this type of *amparo*. Such appeal shall be tried, in the terms set forth by Article 107, Section VIII, either by the Supreme Court of Justice or the collegiate circuit courts.

The Supreme Court shall hear the case:

(i) whenever the unconstitutionality issue shall persist after any Federal or State law, international treaty, any regulation issued by the President of the Republic according to Section I of Article 89 of the Constitution and any regulation of state law issued by the governor of the state or by the Governor of the Federal District that has been challenged, through an *amparo* claim, for considering it in direct violation of the Constitution;

\(^7\) The Supreme Court of Justice in full court may issue regulations on several topics such as internal government, jurisdiction and others.

\(^5\) Ley de Amparo [LA] [Legal Protection Law], as amended, art. 107, § IX, Diario Oficial del la Federacion [DO], 30 de Deciembre de 1935 (Mex.).

\(^6\) Id. at art. 84, § II; id. at art. 83, § V.

\(^7\) In Spanish the term is "Amparo amparo bi-instancial," or in two instances: trial and appellate review, or "amparo indirecto."
(ii) whenever the constitutionality issue shall persist in cases
the sentence contains a direct interpretation of an article of
the Constitution;

(iii) in the cases provided under Sections II and III of Article 103 of the Constitution, namely when the *amparo* issues from
the alleged violation of the regime of jurisdictional powers
constitutionally allocated between the Federation and the
States or the Federal District.

The Supreme Court of Justice, at its own initiative or at the
request grounded in law by the respective collegiate circuit
court, or by the General Public Prosecutor of the Republic,
may hear an appeal in cases in which transcendence and in-
terest are relevant.78

4. Coincident Jurisdiction

It is known as “concurrent jurisdiction,” though the correct des-
ignation should be “coincident jurisdiction.” Coincident jurisdic-
tion occurs where the *amparo* action may be tried in any of two
venues, either in federal jurisdiction or before the appeals court
standing directly above the trial court that committed the viola-
tion, at the choice of the petitioner. It is admissible, as provided
under Section XII of Article 107, in case of violations to the con-
stitutional rights provided under Articles 16 (such as personal secu-
rity, habeas corpus, due process) in criminal matters, while Arti-
cles 19 and 20 (fair process) shall be claimed before the appeals
court standing directly above the trial court that committed the
violation, or before the corresponding district judge or unitary cir-
cuit court. In either case, the judgments rendered may be chal-
lenged before the Supreme Court of Justice. The Constitution es-
tablishes in the provision discussed: “in either case, the judg-
ments rendered may be reviewed according to the terms provided
under Section VIII.”

78. *Ley de Amparo* [LA] [Legal Protection Law], *as amended*, art. 84, § III, *Diario Ofi-
cial del la Federacion* [DO], 30 de Diciembre de 1935 (Mex.).
5. "Suspension of the challenged act"

Clearly, Section X of Article 107 establishes that challenged acts "may be subject to" a "suspension," a sort of temporary injunction in the cases and under the terms and guarantees set forth by the Amparo Law. During consideration of a proposed suspension the judge or magistrate shall take into account the nature of the alleged violation, the difficulty of compensating for damages and losses that the petitioner may suffer if the challenged act is executed, and those which the said injunction may cause to the injured third party and to public interest. The suspension remains until the amparo is decided on the merits of the case, thus preserving its matter in issue.

"The consequences of the suspension challenged act are to preserve the status quo and not to restitute things to their previous one before, the constitutional violation occurred, which is a subject matter pertaining to the final judgment which decides the amparo on its merits."80

The precedents from the circuit courts have extended the scope of the "suspension," vesting it with "partial temporary restitution effects" if the case in question shows "apariencia del buen derecho" (appearance of good law), which means that the elements of the challenged act have shown sufficient grounds to conclude that the act could cause irreparable effects. The rules of suspension are discussed immediately below.

In the case of direct amparo, the injunction is actually addressed to detain the enforcement of the resolution or sentence challenged. It is tried in a separate ancillary procedure under a separate file: "in the case direct amparo actions brought forth before collegiate circuit courts, the responsible authority shall decide the issue . . . ."81

Said injunction must be awarded at the court's own motion (ex officio) in respect to final judgments in criminal matters. Furthermore, said temporary injunction will be cancelled if the other party gives bond to insure the reinstatement of the situation to

79. In the Amparo Law, this type of injunction is called "suspension," a term that means "suspension" and that has several effects, among which are: it can function as a court order directing the respondent authority not to pursue the action for which relief is being sought and to maintain the situation as is until a final resolution is issued on the amparo suit; it may also be used to obtain a stay of execution. (Becerra, Javier F, P. 743).

80. Weekly Court Report, thesis 198, P. 345. 5th stage, volume I, P. 566.

81. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. XI, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).
the state which it would have taken place should the *amparo* be awarded, and to pay for resulting damages and losses.

In civil matters, a temporary injunction will be awarded upon indemnity bond provided by the petitioner to answer for damages and losses that such injunction could cause, which will be cancelled if the other party provides any bond or assurance to insure the reinstatement of the situation to the state which it would have occurred if the *amparo* should be awarded, and to pay for resulting damages and losses.\(^{82}\) Indeed the purpose of said counter bond is to carry on the enforcement of the judgment, securing indemnity for the claimant, should he be granted *amparo*.

In the case of an indirect *amparo*, “the district judges . . . shall hear and decide the suspension” according to the terms and assurances set forth by the law.\(^{83}\)

The law provides that the temporary injunction in respect to the contested act shall be decided at the judge’s own motion (ex officio) or by motion of the injured party.\(^{84}\) The temporary injunction at the judge’s own motion (ex officio) is admissible according to Articles 123 and 233 of the Amparo Law:

(i) in the case of contested acts which imply a risk of deprivation of life, deportation, exile or any of the causes prohibited by Article 22 of the Federal Constitution;

(ii) in cases of deprivation or disturbance of agrarian property; and

(iii) in the case of any other act which, if consummated, would make it physically impossible to restore the injured party to the enjoyment of the individual guaranty claimed.\(^{85}\)

In these cases the injunction shall be granted without any further questions in the same order where the judge admits the claim.

Other than in the cases aforementioned, the temporary injunction shall be awarded at the request of the injured party, provided no damages are caused to public interests and there is no contravention to public policy provisions, and considering the difficulty

\(^{82}\) *Id.* at art. 107, frac. X.

\(^{83}\) *Id.* at art. 107, frac. XI.

\(^{84}\) *Ley de Amparo* [LA] [Legal Protection Law], *as amended*, art. 122, § III, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).

\(^{85}\) *Ley de Amparo* [LA] [Legal Protection Law], *as amended*, art. 123, 233, Diario Oficial del la Federacion [DO], 30 de Diciembre de 1935 (Mex.).
to compensate for damages and losses that such injured party may suffer should the challenged act be executed. In any of these cases, should there be an imminent risk that the challenged act was to be exercised and would cause notorious damages to the injured party, the district judge may enter a "provisional suspension" injunction, ordering the party to preserve things as they are.\textsuperscript{86}

Once the respondent authority and the necessary party are heard, the judge can issue a "definite suspension" valid until the final sentence. If the \textit{amparo} is not finally granted, the definite suspension is revoked. Therefore, the denomination of the latter suspension as "definite," is then inaccurate.

6. \textit{Inadmissibility, Dismissal, and Lapse of Time}

Article 107, Section XIV of the Constitution creates two concepts: dismissal and the lapsing of the proceedings for procedural inactivity. The law creates a third concept that does not appear in the constitutional text, but which in procedural matters, has a logical priority: inadmissibility.

It pertains to the law to decide the inadmissibility of the \textit{amparo} action and in such a case, neither a procedural relationship, nor a jurisdictional obligation is created. The claim is not admitted without further question.\textsuperscript{87}

The Constitution establishes a cause for inadmissibility, in Article 33, vesting on the President of the Republic the power to compel any alien whose permanence he may deem inconvenient, to leave the country immediately and "without previous hearing." The \textit{amparo} action is not granted to the alien in these cases. If it were exercised, its admissibility should have to be decided. This provision is strongly criticized and has been rarely used in the past, while it is not used at all presently.

All other inadmissibility causes are set forth in the law.\textsuperscript{88} The \textit{amparo} is inadmissible against: resolutions of the Supreme Court or issued in an \textit{amparo} trial; claims whose subject matter of \textit{amparos} already sentenced or of an \textit{amparo} trial in course claimed by the same injured party and for the same laws or acts; laws or acts not causing personal and direct injury to the plaintiff; acts of electoral authorities; sovereign acts of federal, state or Federal District legislatures regarding election, impeachment, discipline or

\textsuperscript{86} Id. at art. 122-124, 130.
\textsuperscript{87} Id.
\textsuperscript{88} Id. at art. 73.
dismissal of government officers; laws or acts having been express-
ly or tacitly consented; acts already executed; acts still able to be
appealed according to the law or when that appeal is still in
course; and act or consequences of the act extinguished.

“Dismissal” is understood as an act by the Court that closes the
case in course without deciding it on the merits. Amparo law pro-
vides as dismissal causes the following: 89

(i) when the injured party explicitly withdraws the claim; 90

(ii) if the injured party should die during trial, if the guaran-
tee claimed affects only such party; 91

(iii) when the existence of the challenged act is not proven or
when it does not exist; 92

(iv) when, during the course of the proceedings, there shall
appear or occurred any of the inadmissibility causes set forth
by the law. 93

Section XIV of Article 107 reads:

Except as provided in the last paragraph of Section II of this
article (cases of actions filed in defense of ejidos and rural
communities claiming acts of deprivation of their property or
possessions), the amparo shall be dismissed for the lapsing of
the proceedings for procedural inactivity of the petitioner or
the appellant, respectively, in cases where the contested act is
of a civil or of an administrative nature, and in accordance
with the terms set forth by the Amparo Law. The lapsing of
the proceedings in an amparo shall render final and conclu-
sive the judgment under review. 94

The respective rules are established in the law.

Both in cases of dismissal as in lapsing of the proceedings, the
procedural relationship is extinguished. The amparo court or
judge does not decide the constitutionality or the unconstitutional-

89. Id. at art. 74.
90. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 74, frac. I, Diario
Oficial del la Federacion [DO], 30 de Deciembre de 1935 (Mex.).
91. Id. at art. 74, frac. II.
92. Id. at art. 74, frac. IV.
93. Id. at art. 74, frac. III.
94. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107,
frac. XIV, Diario Oficial de la Federación [DO], 2005 (Mex.).
ity of the act. The contested act remains upheld because it was never invalidated as unconstitutional.

In agrarian procedures:

neither dismissal of the for procedural inactivity nor for the lapsing of the proceedings shall be admissible to the detriment of ejido or communal population, or ejidatarios or comuneros, but either one may be admissible to their benefit. Whenever any of the acts claimed should affect the collective rights of a rural settlement, neither their express motion for dismissal nor having consented the act claimed shall be admissible, unless such motion is determined by the General Assembly or said consent is granted by the latter.⁹⁵

As to amparo in labor matters, according to the law, dismissal of the suit for procedural inactivity or for the lapsing of the proceedings is admissible when the injured party or the “appellant,” is the employer. On the other side, it favors the worker in respect to whom it does not apply.⁹⁶

E. Unification of Binding Court Precedents

Section XIII of Article 107 sets the rules to unify binding court precedents.

Whenever collegiate circuit courts should hold contradictory judgments in amparo within their jurisdiction, the Justices of the Supreme Court of Justice, the Attorney General of the Republic, the aforesaid courts or the parties that intervened in the trials where said judgments were held, may denounce the contradiction to the Supreme Court of Justice, so that the latter in full court or the respective chamber, as appropriate, may decide the judgment that must prevail as binding judicial precedent.⁹⁷

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⁹⁵. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. II, pfo. IV, Diario Oficial de la Federación [DO], 2005 (Mex.).
⁹⁶. Ley de Amparo [LA] [Legal Protection Law], as amended, art. 74, Diario Oficial del la Federación [DO], 30 de Diciembre de 1935 (Mex.).
⁹⁷. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. II, pfo. I, Diario Oficial de la Federación [DO], 2005 (Mex.).
So far the Supreme Court of Justice is still preserved as the one who has the last decision in respect to the guarantee of due legal enforcement of the law.

When the chambers of the Supreme Court of Justice shall hold contradictory judgments tried under their jurisdiction, any one of said chambers or the Attorney General of the Republic, or the parties who intervened in the trials where said judgments were held, may denounce the contradiction to the Supreme Court of Justice, who acting in full court, shall decide which judgment shall prevail.98

The resolution rendered by the chambers of the Supreme Court of Justice or by the latter acting in full court, in the cases provided under the two previous paragraphs, shall only be effective for the purpose of establishing binding judicial precedents and shall not affect the specific legal situation arising from the judgments rendered in trials where the contradiction occurred.99

F. Default of Amparo Judgments

The *amparo* decisions have *res judicata* effects and must be carried out by the responsible authority in question. To avoid situations where the resolutions of federal courts are defaulted, a system has been set that allows the Supreme Court of Justice to count with necessary elements to attain the efficiency and at the same time, the flexibility required to deal with real situations of great complexity. The regime in force comes from the 1994 amendments and is included in section XVI of Article 107:

When the Amparo has been granted and the responsible authority should insist in carry on the challenged act or if it should try to avoid the judgment issued by the Federal authority, and should the Supreme Court of Justice consider that such a failure to carry it out is inexcusable, said authority shall immediately be separated from office and brought to trial before the appropriate district judge. Should such failure to comply be excusable, upon rendering a previous declaration of failure to comply or repetition of the contested act, the Supreme Court shall grant it a prudent term to obey the judgment. Should said authority not comply with the judgment within the term granted for that purpose, the Supreme Court

98. *Id.* at art. 107, frac. II, pfo. II.
99. *Id.* at art. 107, frac. II, pfo. III.
of Justice shall act in accordance with the terms set forth hereinbefore.

Whenever the nature of the act should allowed it, the Supreme Court of Justice, once it has determined failure to carry out the resolution or in case of repetition of the challenged act, may decide at its own motion, to substitute the enforcement of the amparo judgment, when its execution should seriously affect society or third parties in a larger proportion than the economic benefits that the injured party would obtain. Likewise, said injured party may request from the appropriate body, to substitute the enforcement of the amparo judgment whenever the nature of the act should permit it.

The lack of procedural activity or of motions by an interested party, in procedures pursuing the enforcement of amparo judgments, shall lead to the lapsing of the proceedings as provided by the Amparo Law.100

Lastly, it is provided that:

Charges shall be pressed against the responsible authority before any appropriate authority, if it does not obey the suspension of the challenged act, having the duty to do so, and whenever it should admit an insufficient or false bond, in these two last cases, said authority shall be jointly liable with the person offering the bond and with the one providing it.101

G. Amparo Overall Coverage of Suits and Processes of Different Nature

The idea of constitutional protection was present in the minds of Mexican lawmakers since independence, achieved in 1821. The Spanish liberal Constitution of Cadiz was obeyed until the first Mexican Constitution was enacted in 1824; the former charter established the surveillance of the Constitution by the Legislature (Cortes). In 1836 seven constitutional laws were the result of a conservative revolution: in one of them a Supreme Conservative Power was established to control the conformity to the Constitu-

100. Id. at art. 107, § XVI.
101. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 107, frac. II, pfo. XVII, Diario Oficial de la Federación [DO], 2005 (Mex.). [Note: Translation is the author's].
tion of laws and acts of the three traditional branches. The conflicts were inevitable and this fourth branch was abrogated.

The ideas of Rejón and Otero were poised to avoid such a confrontation: inspired in Tocqueville and, through his work, in the American writs. A jurisdictional mean was conceived and the principle of the relative effects of the *amparo* resolution established. The "*juicio*" evolved to satisfy the necessities of the prevailing political and social circumstances and from the experiences drawn from its own performance. The *amparo* developed its own logic and the result has been its broad coverage.

The outstanding Mexican jurist Héctor Fix Zamudio has stated in many of his works that the *amparo* covers different actions and processes that in the rest of the countries are differentiated and separated. In a very recent work Fix Zamudio and the distinguished professor Eduardo Ferrer Mac-Gregor identify three major suits and trials, which are generally independent of each other in the rest of the countries:

(i) The "*habeas corpus*" or protection of freedom and personal integrity. It is covered by rules included in the two instances or indirect *amparo* allowing in such cases any person to file the suit, the reception of it by any court or judge and the provision of protective measures to be taken.

(ii) The *amparo* against laws that has been extended to international treaties and by-laws. It can be filed by the injured: in two instances or indirect *amparo* when the law, treaty or bylaw affects him or her by its sole enactment or by its first act of enforcement; or in one instance or direct *amparo* when the sentence or resolution of any court applies an unconstitutional law, treaty or bylaw.

(iii) The *amparo* "*cassation,*" which is the final review of the judicial sentences and resolutions by an appeals court. This power is vested in Mexico in the collegiate circuit courts and exceptionally in the Supreme Court of Justice.

Fix Zamudio and Ferrer Mac-Gregor give relative importance today to the administrative *amparo* and to the agrarian *amparo,* which in the past were performed under special rules. At present, there are administrative and agrarian appeals courts and their resolutions can be challenged through the *amparo directo.*

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II. CONSTITUTIONAL CONTROVERSIES

The 1994 constitutional amendments expanded considerably the concept of constitutional controversy (which was imprecisely included in Article 105 of the original text) and granted it trial status.

A. Concept and Admissibility

Article 105 confers exclusive jurisdiction on the Supreme Court of Justice of the Nation to try, in the terms provided by the respective regulatory law, any:

Constitutional Controversies, except the ones referring to electoral matters, arising between:

a) The Federation and a State or the Federal District;

b) The Federation and a Municipality;

c) The Executive branch and the Congress of the Union; The Executive branch and any of the Chambers of said Congress, or, as the case may be, the Permanent Commission, either as Federal entities or as entities of the Federal District;

d) One State and another one;

e) Any State and the Federal District;

f) The Federal District and a Municipality;

g) Two Municipalities from different States;

h) Two government branches of one same State, regarding the constitutionality of their actions or general provisions;

i) A State and one of its Municipalities, regarding the constitutionality of their actions or general provisions;

j) A State and a Municipality from another State, regarding the constitutionality of their actions or general provisions; and
k) Any two government entities of the Federal District, in respect to the constitutionality of their actions or of any general provisions.\textsuperscript{104}

There is no definition as to what a constitutional controversy is. Although only the condition of admissibility “over the constitutionality of its actions” was included in the last four paragraphs; so, from a systematic interpretation of the Constitution, it can be understood that a constitutional controversy, can be grounded in the “constitutionality” of the actions of entities or bodies. If they were political conflicts, the intervention of the Supreme Court of Justice could not take place, since such activities are alien to its function.

The constitutionality of actions may generate several sorts of controversies:

(i) Any controversies which arise from the exercise of the powers allocated by the Constitution to federal,\textsuperscript{105} state,\textsuperscript{106} Federal District\textsuperscript{107} and municipal courts.\textsuperscript{108}

(ii) Controversies which arise from default of requirements in respect to substance and form, which the laws and the enforcement actions must satisfy, in accordance with the Constitution.

(iii) The problems related to borders between states are conflicts of constitutionality when their nature is contentious. If political, the Federal Congress has the power to settle it according to Article 73, Section IV.

(iv) It must be clarified that controversies acquire constitutional nature when they are grounded in the application of the Constitution of the United Mexican States. Therefore, the following issues are excluded:

- All controversies arising from the constitutions of the states. The Judicial Branch of the Federation exercises powers within the total range of the Constitution, namely the interpretation of the Constitution of the Republic; not of the constitutions of the states unless any of them contravene the Supreme Law.

\textsuperscript{104} Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 105, Diario Oficial de la Federación [DO], 2005 (Mex.). [Note: Translation is the author's].

\textsuperscript{105} Id. at art. 73.

\textsuperscript{106} See id. at art. 124.

\textsuperscript{107} Id. at art. 115.

\textsuperscript{108} See id.
Any controversies with municipal bodies, other than those which specifically arise from a violation to any constitutional provision, mainly Articles 115 and 116, which set forth the essential organizing provisions for free municipal government, providing an area of competence as well as the powers to freely manage their treasury.

In respect to municipalities, only what is explicitly regulated by the Constitution of the Republic is outside the scope of the states' autonomy. In all other matters, it is the Constitution of each federal entity that acts as the instrument which governs the municipality.

If the Constitution of the Republic is not involved in a dispute, the powers to decide the controversies between state powers and between the states and the municipalities, or between the municipalities amongst themselves, is an exclusively local subject matter.

A state's control over compliance of its own statutes and provisions is governed by the Constitution of each of the states respectively.

(v) Lastly, controversies “which refer to an electoral issues” are excluded form being tried by the Supreme Court of Justice, under an explicit provision of the first paragraph of Section I of Article 105.

The only definition which is clear in the Constitution with respect to the meaning of “electoral subject matter,” is set forth in Article 99, as the jurisdictional subject competence of the Federal Electoral Court. It is on the ground of the nine sections therein that the respective exclusion must be made in the future. We make a further reference to this competence.

B. Trial

Constitutional controversies are structured as a trial.

In all the cases mentioned, the Nation’s Supreme Court of Justice of the Nation has jurisdiction. A trial is held according to the terms provided in the Regulatory Law of Sections I and II Article 105 of the Political Constitution of the United Mexican States.

109. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 99, Diario Oficial de la Federación [DO], 2005 (Mex.).
110. Diario Oficial de la Federación [DO] (Official Gazette of the Federation), 11 de Mayo de 1995 (Mex.).
For procedural purposes, both the plaintiff and the defendant must necessarily be a federal, state or municipal government body mentioned in Article 105 of the Constitution.

The regulatory law creates two additional parties. First, the "necessary party," who is any entity, government branch or body, which, not being the plaintiff or the defendant, may end up being affected by the resolution to be issued. Second, the Attorney General of the Republic, whose intervention is confusedly explained in the draft of the amendments previously discussed, but which is similar to the participation it has in the *amparo* action: to ensure that the obligation imposed on the President of the Republic to uphold and to enforce the Constitution is performed.

The regulatory law establishes the following procedure: the claim is entered within the term set forth; the President of the Supreme Court appoints a justice to act as director of the proceedings; the defendant is served notice of process so that it may furnish its reply, and any other parties are also served notice of process; a date is set for a hearing to offer and discharge evidence; other means to gather evidence to decide can be ordered; the justice in charge of the investigation prepares the draft of the resolution that shall be submitted to the Supreme Court in full.

As for injunctive relief or pre trial measures, a "suspension" may be ordered by the court on its own motion or by motion of a party, to suspend the act which caused the controversy anytime until the final resolution ending the case is issued. This rule does not apply to general provisions, exclusion of which is understood because of the serious political and social harm which would result if the efficiency and force of the laws were suspended during the course of the trial.

The Supreme Court of Justice is obliged to correct mistakes in the quotes of the provisions invoked and to correct any deficiencies in the claim, the reply thereto, and in the arguments and statements of grievances.

C. Effect of Decisions

The resolutions by the Supreme Court, in principle, are binding only for the parties in the controversy, whether they refer to general provisions or individualized ones. Nevertheless, the last paragraph of Section I of Article 105, which we are currently discuss-
ing, provides that it can have general effects (*erga omnes*) under two conditions.\(^{111}\)

First, if controversies deal with general provisions of the states or the municipalities challenged by the Federation; general provisions of the municipalities challenged by the States; between the Executive Branch, the Congress of the Union or one of its Chambers or the Permanent Commission (either as federal bodies or bodies of the Federal District); among branches of a same state in respect to the constitutionality of their acts or general provisions, or among two government bodies of the Federal District in respect to the constitutionality of their actions or general provisions.

Second, if the resolution of the Supreme Court, declaring them null, has been approved by a majority of at least eight votes out of the eleven justices.

In these cases, an unconstitutionality ruling, contrary to what happens in the case of an *amparo* resolution, does reach "*erga omnes*" effects and may declare null a general provision, to the extent the aforesaid conditions are both satisfied.

### III. ACTIONS OF UNCONSTITUTIONALITY

Actions of Unconstitutionality are a creation of the 1994 amendment and of a later amendment in 1996, which amended aspects related to electoral laws and which, due to carelessness, had been originally excluded from constitutional control.

#### A. Concept and Admissibility

Section II of Article 105 empowers the Supreme Court of Justice to try "actions of unconstitutionality."\(^{112}\) Such actions constitute individual rights of minorities, represented by collegiate legislative bodies, and in defense of the Supreme Law, against possible violations thereto by general statutes approved by the majority. The same right was granted to political parties in respect to election laws and to the General Prosecutor of the Republic, a public officer upon whom an unusual action is vested, a fact which is not satisfactorily explained in legislative precedents. Also an action has been provided to the National Commission for the Protection of Human Rights, which is an autonomous agency which surveys

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\(^{111}\) Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 105, § I, Diario Oficial de la Federación [DO], 2005 (Mex).

\(^{112}\) *Id.* at art. 105, § II.
the administrative actions of both the federal and state levels, and makes recommendations.

Actions of Unconstitutionality "seek to establish a possible contradiction between a general legal provision" and the Constitution. Actions of Unconstitutionality may be brought forth, within thirty calendar days immediately following the date of publication of the contested provision, by:

a) The equivalent of thirty three percent of the members of the Chamber of Deputies of the Congress of the Union, against Federal laws or laws of the Federal District enacted by the Congress of the Union;

b) The equivalent to thirty three percent of the members of the Senate, against Federal laws or laws of the Federal District, enacted by the Congress of the Union or against international treaties celebrated by Mexico;

c) The Attorney General Public of the Republic, against Federal, State and Federal District laws, as well as against international treaties signed by Mexico;

d) The equivalent to thirty three percent of the members of any of the Legislative Bodies of the State, against laws enacted by such same body, and

e) The equivalent of thirty three percent of the members composing the Assembly of the Federal District, against laws enacted by said Assembly;

f) Political parties registered with the Federal Electoral Institute, through their national directorships, against federal or State electoral laws; and political parties registered in a State, through their directorships, exclusively against electoral laws issued by the legislative body of the State that granted their registry.

The only procedure to contest the constitutionality of electoral laws is the one established in the following Article:

113. Id.
g) The National Commission of Human Rights against federal or state laws or international treaties that violate human rights.114

B. Trial

Actions of Unconstitutionality are exercised in trial. The same regulatory law referred under the above Section is applicable hereto.

The purpose is first, to avoid violations to the Constitution by majorities in the issuance of votes during legislative processes, where careful consideration and serenity are overcome by precipitation, political opportunism and overheated arguments. In this case, the plaintiffs in such action are the minorities even if they have voted in favor and, therefore, they can resort to the respective action. Such is the case provided in Subsections “a”, “b”, “d” and “e” of Section II, which is explained herein. The main interest of the provisions discussed is to preserve the constitutionality “of the legislative body.”

Actions by the members of State legislatures against laws issued by the Congress of the respective state are understood in the light of the criterion that they may only be admissible in cases where such action is grounded in violations to the Constitution of the Republic. If the violations are to a state constitution, and if they resulted in a problem of constitutionality, without involving disagreements with the Constitution of the Republic, it is the state constitution that must establish adequate proceedings to decide the controversy.

The intervention of the Attorney General of the Republic is unusual and incongruent. We repeat that the cause of this agency’s existence is to support the Executive Branch in upholding and enforcing the Constitution. Regardless of the new provision, which indicates that his appointment requires approval by the Senate, the Attorney General of the Republic is still a collaborator of the Executive Branch. Therefore, it is not conceivable that he would carry out any actions attributed to him by such Article without previous agreement with the Executive Branch.

The Attorney General’s intervention in challenging federal laws only reinforces the President of the Republic, granting him a clear “remedy” against overcoming the Congress’s veto. It breaks the

114. Id.
traditional balance of powers, but the clarity of the constitutional text leaves no place for doubts. His intervention in challenging international treaties causes legal uncertainty in international issues. The President of the Republic could have an escape hatch against an acquired obligation if he should obtain a favorable resolution, or the Attorney General could question the foreign policy of the Mexican state.

Lastly, the Attorney General's intervention in challenging State and Federal District laws seems to be justified by his role as guardian of constitutionality. But in these cases, it would be enough to make him a party in the respective trials, and not to vest on a federal department an action which is not compensated with a parallel and symmetric one for the public prosecutors of the states to claim the unconstitutionality of federal laws.

As to the challenges to electoral laws, such right of action is fully vested in political parties who, in this manner, acquire an indisputable privilege, which is denied to state entities and bodies. Such a privilege is most certainly denied to private individuals as well.

The trial starts with the filing of a claim; the President of the Supreme Court appoints a judge in control of the proceedings; the State body that issued the provision challenged is served process, as well as the Public Prosecutor of the Republic (if the later has not filed the action) so that the body which issued the provision challenged, may render a report, and so that such justice may prepare a resolution draft; court records must be available to be examined by the parties so that they may prepare their arguments.

C. Consequence of the Decisions

The resolutions may have "erga omnes" effects according to the provisions of the final paragraph of Section II of Article 105.

"The resolutions of the Supreme Court of Justice may only declare null and void the provisions contested, provided such resolutions are approved by the vote of a majority of at least eight Justices."\textsuperscript{115}

\textsuperscript{115.} Id. [Note: Translation is the author's].
IV. PROTECTION OF POLITICAL RIGHTS AND ELECTORAL DECISIONS

A. Electoral Justice

Elections in Mexico were largely questioned since the 1917 Constitution entered in force. As democratic demands advanced, political amendments and means to protect and foster respect for the right to vote were created.

There had been a tradition in Mexico of avoiding to submit electoral issues to the Judicial Branch of the Federation, keeping the judiciary outside of political involvements. The new electoral system changed this focus with an electoral jurisdiction under an autonomous and specialized court which is part of the Federal Judicial Branch: the Electoral Court, whose justices (seven) are appointed by the Senate upon proposals submitted by the Supreme Court of Justice. It is organized in a high chamber and regional chambers distributed throughout the Republic. The Electoral Court has powers to qualify the election of the President of the Republic and to hear and decide controversies regarding federal deputies’ and senators’ elections, as well as challenges to decisions by the federal electoral authority: the Federal Electoral Institute. It also has powers to protect citizens’ political rights and to review the resolutions of state electoral authorities, the state institutes.

The respective regulatory law is the General Law of the System of Means to Contest Electoral Subject-Matters.

B. Action to Protect Citizens’ Electoral Political Rights

This is an “amparo” on political rights issues introduced into the Constitution by the 1996 amendments. Its current structure

116. For a historical analysis of the election of 1929, the reader is directed to: DULLES, JOHN W.F., YESTERDAY IN MEXICO, University of Texas Press, chapters XLIV to LVI, Austin (1961); Knight, Allan, La Ultima Fase de la Revolución Cardenista, en HISTORIA DE MEXICO, Editorial Critica, Barcelona (2001); for information on the election of 1988, the reader is directed to BECERRA RICARDO, SALAZAR PEDRO Y WOLDENBERG JOSE, LA MECANICA DEL CAMBIO POLITICA EN MEXICO, Ediciones Cal y Arena, México (2000). Elections have been recognized as clean and impartial since the creation of the Federal Electoral Institute, an organ integrated by representatives of all political parties, the Chamber of Deputies and the citizens, for the last twenty years. The FEI has published ATLAS DE RESULTADOS ELECTORALES FEDERALES 1991-2009.
117. Ley General del Sistema de Medios de Impugnación en Materia Electoral [General Law of the System of Means to Contest Electoral Subject-matters], Diario Oficial de la Federación [DO], 22 de Noviembre de 1996 (Mex.).
has been carried in a manner parallel to the one set forth, for the respective action, by the Amparo Law.

Article 99, Section V of the Constitution empowers the Electoral Court to finally and undisputedly decide any “challenges against actions or resolutions which violate political electoral rights of citizens to vote, be voted, and to unrestrictedly and pacifically affiliate to participate in the political affairs of the country, in the terms provided by this Constitution and the laws.”¹¹⁹

Our constitutional law has always made a distinction between “human rights” and “political rights.” Until very recently, Mexican constitutional law excluded political rights from any protection in an attempt to avoid the involvement of the Judicial Branch in such issues.

Binding court precedents established that: “any violation to political rights is not protected by the amparo action, because it is not concern individual guaranties”¹²⁰

The action to protect political electoral rights¹²¹ is admissible when the citizen personally and individually claims alleged violations to his right to vote and be voted in government elections, to his right to unrestrictedly and pacifically affiliate to participate in the political affairs of the country, and during the elections process, whenever the documents required to exercise his right to vote is not delivered to him or when he has been excluded from the list of electors of the corresponding section.

The trial starts with the filing of the claim; the authority who is challenged for the alleged violation, when receiving the claim must serve notice to the Electoral Court and to publicly disclose it; any interested third party must then introduce her briefs; the claim is then sent to the court along with a report from the challenged authority and the briefs by interested third parties; the court’s president delivers it to one of the justices in control of the proceedings, who carries out the trial. Once the case has been processed and passes to the resolution stage, a statement is issued to declare the instruction stage closed and a resolution draft is prepared, which is afterwards submitted to the final decision.

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¹¹⁹. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 99, § V, Diario Oficial de la Federación [DO], 2005 (Mex.). [Note: Translation is the author’s].
¹²⁰. Court precedent 623 appendix to the Weekly Federal Court Report, published in 1988, second part, precedents pertaining to full court and chambers t.II, p.1061
¹²¹. The electoral procedures are established in the general law of the system of means of challenges to acts related to electoral laws: “Ley general de sistema de medios de impugnación en material electoral.”
The consequences of a favorable judgment, which is final and uncontestable, are to revoke or amend the act or the resolution challenged and to restore the petitioner in the use and enjoyment of the right in question.

Article 41 of the Regulatory Law establishes “in electoral matters the interpretation of constitutional or legal means of dispute shall not produce the suspension effects on the resolution or action challenged.”

C. Action to Challenge Any Resolutions or Acts by Electoral Authorities of the States

Article 99 of the Constitution vests in the Electoral Court the powers to hear any:

Challenges against final and conclusive resolutions or acts by authorities of the states with jurisdiction to organize and qualify elections, or to decide the controversies arising there from, which may result determinant for the development of the respective process or for the final result of elections. This procedure shall be admissible only when the remedy requested is substantially and legally possible within electoral periods and provided it is feasible, before the date constitutionally or legally set forth, for the installation of the bodies or for the taking of office of the individuals elected.122

Such actions may only be brought forth by political parties. Once electoral authorities receive the claim bringing forth the suit, they send it to the court’s High Chamber along with its attachments, and the complete case file where the decision or resolution disputed has been issued, together with its respective challenged authority’s report. The dispute shall be publicly disclosed and any necessary parties may then introduce any allegations they deem pertinent; the Chamber shall then send the file to one

122. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 99, Diario Oficial de la Federación [DO], 2005 (Mex.).
justice in charge of the trial so that he may prepare a draft of the respective resolution.

Should the decision be positive, the respective resolution or contested act may be revoked or amended\(^{124}\) and consequently any acts required to redress the constitutional violation shall be ordered. The prohibition to suspend the contested act, set forth in Article 41 above, is applicable in these cases.

**D. Prevalence of the Supreme Court's Decisions on Constitutionality of Laws**

The principle of the Supreme Constitutional Court of the Supreme Court of Justice is thus asserted, also in electoral issues. Article 99 (fifth paragraph) provides:

Whenever a chamber of the Electoral Court shall uphold a judicial precedent regarding the unconstitutionality of an act, or of a resolution, or the interpretation of a provision of this Constitution, and such precedent were inconsistent with another one upheld by the chambers of the Supreme Court of Justice or by Supreme Court assembled in full court, any of the Justices, then, any chambers or the parties, in the trial, may denounce the contradiction according to the terms established by the Law, so that the Nation's Supreme Court of Justice, in full court, may finally decide which precedent must prevail. The resolutions adjudged in accordance with this premise shall not affect the cases already decided.\(^{125}\)

**V. CONSTITUTIONAL POWERS TO DECIDE JURISDICTIONAL CONFLICTS BETWEEN FEDERAL AND LOCAL COURTS**

Article 106 of the Constitution establishes the jurisdictional competence of the Federal Judicial Branch, in terms of the respective law, to decide any controversies "arising by conflicts of jurisdiction, between the Courts of the Federation, between the later ones and State Courts, or the Courts of the Federal District, be-

\(^{123}\) Ley General del Sistema de Medios de Impugnación en Materia Electoral [General Law of the System of Means to Contest Electoral Subject-matters] arts. 89-92, Diario Oficial de la Federación [DO], 22 de Noviembre de 1996 (Mex.).

\(^{124}\) Id. at art. 98.

\(^{125}\) Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 99, pfo. 5, Diario Oficial de la Federación [DO], 2005 (Mex.).
between a State Court and a Court from another State, or between a
State Court and a Court of the Federal District.”

The Constitution is the last source of federal and state jurisdic-
tions, either for the States or the Federal District, where jurisdic-
tion of the courts are placed. It is mandatory to decide the respec-
tive conflicts on the grounds of the fundamental law.

126. Id. at art. 106.