

## El amparo para efectos como un obstáculo al debido proceso

*The writ of amparo as an obstacle to the required process*

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### Resumen

La naturaleza jurídica del juicio de amparo es de carácter constitucional adjetiva al establecer el procedimiento para lograr que se respete la parte sustantiva de la Constitución, para ello se requiere la aplicación del principio del debido proceso legal, el cual se encuentra en el artículo catorce de la Constitución Federal. Este establece como condición de validez de una sentencia, el respeto a las formalidades esenciales del procedimiento, originándose a partir de una notificación legal. De esta manera, el amparo para efectos es concedido por un juez cuando no se cumple alguna de las formalidades; sin embargo, es necesario el análisis de las pruebas en el juicio, las cuales podrán ofrecerse solo que se hayan rendido ante la autoridad responsable. Además, para la valoración de estas resultan aplicables las reglas previstas en los artículos 197 al 218 del Código Federal de Procedimientos Civiles, por lo que la confesión expresa en la demanda, cualquier otro escrito o informe de las autoridades, hace prueba plena. Así, se consigue una sentencia de amparo para efectos. Esta, en sentido general, es la decisión de un conflicto que implica evaluar aspectos de legalidad y de constitucionalidad, con lo que se llega a los alcances de las sentencias de amparo, para lo cual es importante determinar si la violación al derecho fundamental es un acto privativo o de molestia pues ello conllevará a los alcances de la sentencia. Un avance en esta temática es el amparo adhesivo, cuyo análisis se deja para otra etapa de la investigación.

**Palabras clave:** derechos humanos, amparo para efectos, debido proceso legal.

## Abstract

The legal nature of the writ of amparo is of a constitutional nature adjectival to establish the procedure for attaining the substantive part of the Constitution to be respected, this requires the application of the principle of due process of law, which is located in the fourteenth article of the Federal Constitution. This sets as a condition of validity of a sentence, the respect to the formalities of the procedure, originating from a legal notice. In this way, the amparo for purposes is granted by a judge when not met any of the formalities; However, the analysis of the evidence in the trial, which may be necessary only to have yielded to the responsible authority. In addition, for the assessment of these are applicable the rules laid down in the articles 197 to 218 of the Code of Civil Procedures, what the confession express on demand, any other writing or report of the authorities, is a full proof. Thus, gets a sentence of amparo for effects. This, in a general sense, is the decision of a conflict that involves assessing aspects of legality and constitutionality, with what comes to reaches the judgments of amparo, which is important to determine whether the violation of the fundamental right is a private act or discomfort as this will lead to the scope of the judgment. A breakthrough in this area is the adhesive amparo, whose analysis is left to another stage of the research.

**Keywords:** human rights, writ of ampar, required process.

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## Introduction

The framework of freedom of the governed in the Mexican United States, is established in its dogmatic in its basic law, which sets out the fundamental rights recognized and enshrined in the articles from the first to the twenty-ninth, What is the part substantive for the governed in the Constitution. To ensure this need constitutional adjective law, which

establishes in articles 103 and 107 of the mentioned Supreme order. These articles are born constitutional procedural guarantee known as trial of amparo (writ of amparo).

Therefore, the legal nature of the trial of amparo is of a constitutional nature adjectival, to establish the procedure to achieve respect for the substantive part of the Constitution that are individuals that inhabit the United Mexican States.

The principle of due process of law is specifically in article 14 of the Federal Constitution, to establish respect for the essential procedure formalities as a condition of validity of a sentence, originating from a legal notice for having ruled a proper defence by observance of the formalities of the procedure, which is a fundamental right of every person in Mexico.

The amparo for effects is awarded by the district judge or the Circuit Collegiate Court when not met any of the essential procedural formalities, This is so because in addition articles 159 and 160 of the Amparo Act establishes the legal assumptions that considered violated the laws of procedure and affecting the defenses of the complainants.

The problem considered and which seeks to address this topic in a first approach, the comparison between the fundamental right of due process and the injunction to conclude with a statement to the effect of replacing the procedure when they violated a right fundamental. Several questions arise here: the protection for the purposes constitutes an obstacle to the implementation of the fundamental right of due process for the protection ?, effects is suitable constitutional procedural guarantee to restore the fundamental right of due process ?, should proceed or not, pure and simple protection when there is a violation of the fundamental right of due process?

### **Legal nature of the amparo**

It is a constitutional judgment that is initiated by the action exercising any person before the courts of the Federation against laws or acts of authority, in the cases provided for in Article 103 of the Constitution, which it considers a violation of their individual rights, given by seeks a declaration of unconstitutionality of the act or law invalidating or molificándose regarding who promotes, returning him to the full enjoyment of those

guarantees have been violated.<sup>1</sup> In a strict legal and technical sense, the term constitutional guarantee to all procedural institutions established by the basic rule, in order to restore constitutional order when it is violated by an organ of authority.<sup>2</sup>

Also, it is considered that the legal nature of the injunction is constitutional adjective, because it establishes the procedure to make the substantive part of the Constitution which respects they hold individuals living in the United Mexican States and the authority, in general, is bound to respect. This in order to be restored to the individual fundamental right, transgressed illegally and unconstitutionally. An example is the figure of international extradition, which means the injunction is sought that the governor has adequate defense by meeting the essential procedural formalities. This was considered the Plenum of the Supreme Court of Justice, under the following legal criteria:

International extradition. Article 33<sup>3</sup> of the law on, by not providing an ordinary means of defense against the resolution granting does not violate the right to a hearing. The above provision, which states that the resolution of the Ministry of Foreign Affairs for granting extradition only be challenged by the injunction does not violate the guarantee of the derivative audience of Article 14 of the Constitution of the United Mexican States because that does not entail the obligation to establish more than one instance, but ruled that the defense has adequate compliance with the essential formalities of the procedure, according to the jurisprudence P. / J. 47/95 of the Full Court of the Supreme Court of Justice, so that given the purpose of extradition proceedings in the form of judgment, his relief should be expedited; Furthermore, if only the source of amparo is established is because through this extraordinary means of constitutional control the governed can claim the violation of their

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<sup>1</sup> Chavez Castillo, amparo, Editorial Porrúa, Mexico, Eighth Edition, 2008, Raul, p.21.

<sup>2</sup> Carbonell, Miguel, Coor., *Diccionario de derecho constitucional*, Soberanes Fernández, José Luís, *Garantías constitucionales*, Editorial Porrúa y Universidad Autónoma de México, México, 2002, p.262.

<sup>3</sup> In all cases, if the judgment is in the sense of granting extradition, it will notify the claimed. This resolution will only be challenged through amparo. after a period of fifteen days without the claimed or their legitimate representative has brought claim for protection or, if this is denied in the end, the Ministry of Foreign Affairs shall inform the applicant been the favor of extradition agreement and order that it delivered the subject.

individual rights.<sup>4</sup> Shelter or constitutional procedural guarantee protects the fundamental right of due process of the complainants in Mexico. Did prejudice the due process of the counterpart!

## **DUE PROCESS**

The general obligations of "respect" and "guarantee" that all the Mexican authorities of the Mexican State are required, have motivated a rich jurisprudence of the International Court of Human Rights in interpreting Article 1 of the American Convention, in which they have I been developing its content, scope and consequences. The knowledge of the interpretation of that provision has made American Court is essential, considering that these treaty obligations are now explicitly contained in Article 1. Constitutional, particularly in its third paragraph, which also establishes the principles of universality, independence, indivisibility and progressive realization of the rights to guide their actions. In this regard, it is important to note that the jurisprudence of the Inter-American Court has a direct effect on the Mexican legal system, which produces an essential source of renewed constitutional procedural law, specifically from June 11, 2011, upon entry into force transcendental constitutional reform on human rights. The obligations to "respect" and "guarantee" analyzed become an essential source of Mexican constitutional procedural law, which affects the whole system of guarantees to give effect to the rights and fundamental freedoms.<sup>5</sup>

The right to due process includes the right not to be judged on evidence obtained outside the constitutional and legal requirements. Demand the annulment of the illegal evidence is a guarantee that the accused is assisted throughout the process and whose protection can make to the courts alleging as grounds: (i) Article 14 of the Constitution, setting as a condition of validity of a statement criminal, respect the essential procedural formalities,

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<sup>4</sup> Jurisprudencia, P./J. 23/2008, Semanario Judicial de la Federación y su Gaceta, Novena Época, No. Registro 170320, Tomo XXVII, Febrero de 2008, p. 6.

<sup>5</sup> Lelo de Larrea, Arturo Zaldívar, coord., Volumen, Derecho procesal constitucional. Ferrer MacGregor, Eduardo y Pelayo Moller, Carlos María, La obligación de RESPETAR y Garantizar los Derechos Humanos a la luz de la jurisprudencia de la Corte Interamericana. Una fuente convencional del Derecho Procesal Constitucional Mexicano. Editorial Porrúa y Centro de Investigación e Informática Jurídica, México, 2012, pp.241-243.

(ii) the right of judges are conducted impartially, in accordance with Article 17 of the Constitution and (iii) the right to an adequate defense that every accused person in accordance with the Article 20, section IX of the Constitution of the United Mexican States. In this sense, respect for the right to be tried by impartial courts and the right to a proper defense, it is clear that a test whose preparation has been irregular (either because they violate the constitutional order or legal) aims, can not but be considered invalid. Otherwise, it is clear that the accused would be in disadvantage condition to assert his defense. Therefore, the exclusion rule of illegal evidence is implicitly under our constitutional order. Furthermore, Article 206 of the Federal Code of Criminal Procedure states, conversely, that any evidence that goes against the law must be upheld. This derives from the preferred position of fundamental rights in the system and its affirmed inviolable condition.<sup>6</sup>

So it is considered that the fundamental right of due process, coupled with the aforementioned constitutional reform, presented a tendency to modify the injunction to effect a broader guarantor arrangement must assess all those violations so that you view in appreciation of an injunction, resulting in a protection for greater constitutional protection effects.

### **PURSUANT TO THE EFFECTS**

The protection is granted for the purpose by the federal authority, ie District Judge or Circuit Court when not one of the essential procedural formalities fulfilled, the above is supported with legal criteria as follows:

Essential procedural formalities. They are the ones that guarantee adequate and timely defense prior to the privative act. The right to a hearing provided for by Article 14 of the Constitution is to give the governed the opportunity of defense prior to the privative act of life, liberty, property, possessions or rights, and due respect requires the authorities, among other duties, that of that the trial to continue "the essential procedural formalities are met." These are what are needed to ensure the adequate protection before the act of deprivation and, in general terms, result in the following requirements: 1) The notice of initiation of the

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<sup>6</sup> 1st thesis. / J. 139/2011, Judicial Weekly of the Federation and its Gazette, Tenth Time, Registry No. 160 509, December 2011, p. 2057.

procedure and their consequences; 2) The opportunity to offer and present the evidence on which the defense is based; 3) the opportunity to respond; and 4) The issuance of a resolution which addresses the issues raised. Failure to fulfill these requirements, it would comply with the order of the right to a hearing, which is to prevent helplessness of the victim.<sup>7</sup>

This is because also in Articles 159<sup>8</sup> and 160<sup>9</sup> of the Regulatory Law of articles 103 and 107 of the Constitution of the United Mexican States, the legal assumption that the upgrade

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<sup>7</sup> opinion P. / J. 47/95 Judicial Weekly of the Federation and its Gaceta, Ninth Period, Registration No. 200234, December 1995, p. 133.

<sup>8</sup>Be considered violated in prosecutions in civil, administrative or labor courts, the laws of procedure and that the complainant defenses are affected: I. When he is quoted to trial or he is acknowledged in shapes other than prevented by the law; II When the complainant has been bad or misrepresented in the trial in question; III When you are not receiving the evidence lawfully offered, or when not received in accordance with law; IV When illegally confessed declare the complainant, his representative or attorney; V. When an incident is resolved illegally invalidity; VI When the terms are granted or extensions to which he is entitled under the law; VII When not at fault received, without her knowledge, the evidence presented by the other parties, with the exception of public documents as may be; VIII When you are not showing some documents or parts of cars so you can not rely on them; IX When resources are disposed to which he is entitled under the law with respect to measures that affect substantial portions of helplessness producing procedure, according to other fractions of the same article; X. When judicial, administrative or labor tribunal, continue the procedure after a competition has been promoted, or when the judge, magistrate or member of a court prevented or recused work, continue to hear the trial, except where the law expressly empowered to proceed; XI. In case of forfeiture procedure, all those violations committed in it, unless it is direct to the Constitution or acts of impossible repair violations, and XII. In analogous to those of the preceding fractions, according to the Supreme Court or the Circuit Court, as the case.

<sup>9</sup> Be considered rape in criminal cases, the laws of procedure, so that its infringement affecting the complainant defenses: I. When you do not know the reason for the procedure or the cause of the accusation and the name of the private prosecutor if any; II When you are not allowed to appoint counsel in the manner prescribed by law; when it is not provided, where appropriate, the list of public defenders, or you do not know the name of seconded the court or tribunal hearing the case, if you have no one to defend them; when he is not given the way to let his appointment to designated counsel; when she would be forbidden to contact him or assist him in this defending some diligence process, or when, having refused to appoint counsel, without expressly stating that it will defend itself, will not trade name; III When you are not confronted with the witnesses who have deposed against him, if surrender his statement in the same place of judgment, and the complainant also being in it; IV When the judge acting secretary or witnesses to attend, or where proceedings are practiced otherwise than prevented by the law; V. When it is quoted to the proceedings who is entitled to attend when summoned or illegally, provided that this does not appear; when he was not admitted to the act of diligence, or when it's abridging the rights that the law grants; VI When you are not receiving evidence lawfully offered, or when not received in accordance with law; VII When resources are discarded which he has under the law with respect to measures that affect substantial portions of the procedure and produce helplessness, according to other fractions of this article; VIII When you can not provide the data required for their defense; IX When the public hearing is held that Article 20, section VI, of the Federal Constitution, which should be heard in defense, that he may be tried concerns; X. When the audience of law without the assistance of the Public Prosecutor the person concerned to formulate the indictment is held; without the judge who

is considered violated the laws of procedure and affect the defenses of the plaintiffs, that is, they are set to be updated one of these legal hypothesis in a particular case and if it is shown with legal technique, the result should be an amparo judgment to the effect that the procedure is restored from the point where the violation was committed, this will be achieved by providing testing the trust in the legal technical terms required.

## **EVIDENCE IN THE TRIAL OF AMPARO**

Article 150 of the Law of Amparo establishes that the injunction is admissible all the tests, except for positions and contrary to morality or the law. However, they may only be offered the evidence that has been given to the responsible authority, or being strange at trial or origin of amparo procedure third party, they have not been able to pay to that authority or, for some reasons not attributable to the provider of the test was prevented from offering it to the responsible authority. This is explained in the sense that when a person has had opportunity to provide evidence such as expert, testimonial or visual inspection with the responsible authority and do not, can not be met at the shelter, this is so because the act in question must be assessed as I tried to appear before the responsible authority. With the exceptions mentioned in Article 150 of the said Act and which have been cited in the indirect under any kind of evidence is admissible, meaning that the indicated in article 93 of the Federal Code of Civil Procedure shall apply in . terms of Article 2 of the Law of Amparo, except the confession, which are public documents, private documents, expert

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must fail, or the secretary or witnesses of assistance should authorize the act; When XI must be tried by a jury, he is judged by another court; XII Not to integrate the jury with the number of persons determined by law, or be denied the exercise of the rights it gives to the integration of the former; XIII When subjected to the jury issues of a different nature from that provided by law; XIV When the sentence was based on the confession of the accused, if he was held incommunicado before granting it, or if his statement was obtained through threats or any other coercion; XV When the sentence was based on an errand which revocation expressly established by law; XVI.- When the process followed by the particular offense in the detention order, the complainant it were convicted of various crimes. It is not considered that the offense is different when it is expressed in the judgment only differ in degree than has been the subject of the process, or when referring to the same material facts that were the subject of the investigation, provided that in the latter case, the public prosecutor has made charges made by changing the classification of the offense made the formal arrest or restraint to process, and the complainant had been heard in defense on the reclassification, during the trial as such; XVII On the other analogous to those of the previous sections, the judgment of the Supreme Court or the Circuit Court, as the case.



reports, judicial inspection, witnesses, photographs, writings and shorthand notes and generally all those elements provided by the discovery of science, and assumptions.<sup>10</sup>

The tests should be offered in the injunction are all known legal science, as the expert, testimonial, documentary, legal and human presumptive, instrumental performances, except for the positions and that contraías are the moral and the right to do so, one must consider the specific rules for each of them, in the incident of suspension, pursuant to the indirect and direct.<sup>11</sup>

The offer testing legal technique to adhere to the provisions of the law will allow admission, relief and assessment in trials the courts, and in the constitutional trial analysis and precisely at this point is where to evaluate the evidence the judge federal and appreciate that a test is not value or appreciate improperly appropriate to grant an injunction to the effect that those are properly valued.

### **THE ASSESSMENT OF THE EVIDENCE IN THE TRIAL OF AMPARO**

For the proper assessment of the evidence in the injunction should be noted that doctrinally has been considered there as systems of evaluation of evidence, the free conviction on the judge may have the evidence leading and value according to the dictates of their conscience and responsibility in fulfilling their function, that is, that its assessment is at the discretion of the judge; legal system or appraised evidence, which pre abstract rules that bind the judge said, the way it should evaluate them, making it a simple applicator of the law, for no other reason than the legislator, while the sound system or mixed rational criticism, is a combination of the above, in which the means of conviction are determined by law, but the judge can accept or even seek any evidence to proof that can be provided it respects the relevant legal way, there also freedom for appreciation, gaining particular relevance the principles of identity, of contradiction, of sufficient reason, and the excluded. In our Mexican legal system, incur these three forms of evaluation of evidence.<sup>12</sup>

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<sup>10</sup> Chávez Castillo, *Juicio de amparo*, Editorial Porrúa, México, Octava Edición, 2008, Raúl, pp.155-156.

<sup>11</sup> See Articles 150, 151, 152, 153, 154 and 155 of the Law of Amparo.

<sup>12</sup> Tondopo Hernandez, Carlos Hugo, *Theory and Practice of the process of indirect protection in administrative matters*, Editorial Porrúa, Mexico, 2008, p.553.

For the evaluation of evidence are applicable rules under Articles 197 to 218 of the Federal Code of Civil Procedure, so that confession demand expressed in any other written or report to the authorities, it makes full proof without it offered by the disputing parties, in terms of Articles 199 and 200 of that code provided that it is carried by a person with capacity to commit knowingly and without coercion or violence, which relates to own facts or represented, without overlook that is supported, vents and values, the mode expressed or spontaneous confession, but not the positions being limited by Article 150 of the Law of Amparo.<sup>13</sup>

In addition to this, the assessment of the evidence in the amparo, and any other judgment, is a formality regards judicial decision and not the procedure and has considered the jurisprudence in terms like the following:

The assessment is a formality as regards the substance of judicial decision and not the procedure, on the grounds that while the essential formalities of this safeguard guarantees adequate and timely defense prior to the privative act, in terms of case law established 218 by the plenary of the Supreme Court of Justice, visible on page two hundred and sixty, volume I, constitutional, ninth period, the appendix to the Judicial Weekly Federation 1917-2000, under the heading "are what guarantees adequate and timely defense prior to the privative act. "evidence assessment requires addressing the formal structure, sequence, argumentative and justifying the same resolution, the wording of the elementary principles of logical order of congruence, consistency and contradiction, applied directly in exposing the arguments supporting the decision and, where relevant, justify the persuasive purpose. Second Collegiate Court in Criminal Matters of the First Circuit.<sup>14</sup>

Admission, study and evaluation of evidence in the amparo constitute a substantial part of the right to a hearing enshrined in Article 14 of the Federal Constitution, they have established the collegiate circuit courts, by law, in terms like the following :

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<sup>13</sup> Ídem.

<sup>14</sup> 1.2 or thesis. PJ / 30, Federal Judicial Weekly and its Gazette, Ninth Period, Registration No. 166586, August 2009, p. 1381.

The right to a hearing that the wording of Article 14 of the Constitution refers to integrated, not only admitting evidence from the parties but also expressing the specific reasons, if any, these proofs are ineffective judgment of the responsible. Therefore, if the resolution ended a procedure was totally remiss in making any reference to the evidence provided by the complainant today, it is clear that there has been a violation of the constitutional provision invoked, which gives reason to grant the relief requested regardless of whether the content of such proofs will be or not to influence the final decision by rule. Such an approach, which is harmonized with the legal principles that give the administrative authority the power to give to the evidence the value that creates wise, is consistent also with the jurisprudential trend that seeks to prevent material replacement organ of constitutional control, on the responsible authorities, in an area which corresponds exclusively to them as it is, without doubt, the appreciation of the evidence offered to them during the conduct of the proceedings.<sup>15</sup> Of which is the lack of appreciation and improper evaluation of the evidence by the judge, will result in obtaining a judgment of amparo, to the effect that the conduct omitted by the responsible authority is made.

### **THE JUDGMENT OF AMPARO FOR EFFECTS**

The sentences, as one of the assumptions in the protection act in question may be the most complex of all. The decision of a conflict involves assessing aspects of legality, but may also involve the application of any provision or provisions in the direct amparo can combine the peculiarities and problems of both the cessation under which problems are studied law as the protection against laws that deals with issues of constitutionality. The study of the concepts of rape, which are the questions about the "pathologies" of a statement, I think that requires, as a methodological budget, a cursory reference to the structure and formal validity of the decision, as the basic substrate and a necessary reference for its functionality.<sup>16</sup>

The legal guarantees are right to petition the authority to answer any request written agreement; retroactivity of the law; disenfranchisement only by trial followed the

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<sup>15</sup> 1.3 or thesis. AJ / 29, Federal Judicial Weekly and its Gazette, Ninth Period, Registration No. 195 182, November 1998, p. 442.

<sup>16</sup> Tron Petit, Jean Claude, *Argumentación en el amparo*, Tercera Edición, Editorial Porrúa, México, 2012, p.5

formalities of the process; rule of law; prohibition of analogy and reason in most criminal trials; principle of authority; written injunction, founded and motivated, to be bothered in the individual, family, home, papers or possessions; single arrest with a warrant; abolition of prison for purely civil debts; prohibition of taking justice into their own hands; prompt and effective administration of justice; remand only for crimes for which corporal punishment; guarantees detention order; guarantees the accused in all criminal prosecutions; prohibition of degrading punishment and transcendent; nobody can be tried twice for the same offense; and criminal trials can not have more than three instances.<sup>17</sup>

Considering the formal structure of a sentence that usually integrate the following parts: identification data, header, resulting considering, paragraphs, foot, and dissent. The identification data are the number of trial, the name of the complainant, the name of the reporting judge and secretary; the header, is structured like the following example: "Mexico, Federal District. According to the twentieth Civil Collegiate Court of the First Circuit, corresponding to August 5, two thousand. Watched the trial transcript direct protection of civil 156/2005 "; the resulting contains the succinct account of the trial of the issues or facts at issue, and the evidence they surrendered, some procedural laws prescribe the minimum content, in each case the contents depend on the style of each court, the type of matter which the judgment is issued and procedural issues; recital, is the chapter of the judgment on which contain the motives or reasons of law on which the decision is based, for example, in an indirect amparo, there will be a point to study the competence of the judge, one for the claimed certainty act and another to study the causes of invalidity; paragraphs, the contents of the paragraphs is normative, so that wording should follow the rules for drafting standards, must be clear, precise and concise, without frills or rhetorical. Usually, prayers are made in the present tense; bottom of the sentence, is the legend with the judgment, in which it is stated that the sentence was handed down by the judge before authorizing or secretary attests concluded; and the dissenting opinion, part of the sentence in which one of the judges expressed the reasons for dissenting from the majority, in the

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<sup>17</sup> Carbonell, Miguel, Coord., *Diccionario de derecho constitucional*. Carpizo, Jorge y Carbonell, Miguel, *Garantías individuales*. Editorial Porrúa y Universidad Nacional Autónoma de México, México, 2002, p.264.

event that the dissident judges more exposed to one and all in a single text the reasons that it disagrees with the majority, the vote is called "minority vote".<sup>18</sup>

However, in the sentences passed in the science of constitutional procedural law, you should always take into account the principles enshrined in the procedural law such as: the relativity of judgments, by which only covers and protects the individual they have requested protection of the federal courts, although this principle tends to be overcome; setting clear and precise act in question; the assessment of the evidence to be shown or not the acts complained; the grounds to dismiss, deny or grant the protection as well as paragraphs; the appreciation of the act in question as it appears demonstrated to the responsible authority; consideration of the evidence to establish the existence of the claimed act and its constitutionality, fulfilling the object of judgments of amparo, which is to restore the individual in the enjoyment of individual security or fundamental right violated and, in the case of sentencing for effects, it is considered to have the scope to order that the procedure is restored from the point where the violation was committed.

### **THE SCOPE OF THE JUDGMENT OF AMPARO FOR EFFECTS**

Materially and all statements have an effect, but the protective guarantees is necessary to specify what those in order not to cause confusion in compliance gaps and avoid letting the responsible, so they can stand there and chicanery delay the implementation of the resolutions of protection; therefore, the effects are summarized without exposing the reasons, the scope of the amparo judgment, if that certain tests are valued and decision is taken immediately to a procedure and from what stage is reset, how they should be resolved.<sup>19</sup>

A historical background as a clear example of the scope of the orders of amparo for the purpose, is the following legal criteria: appeal in the devolution effect. Constitutionality of Articles 636 and 668 of the Civil Procedure Code of the State of Michoacan.

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<sup>18</sup> Orduña Sosa, Héctor, *Redacción judicial, cuaderno de trabajo 4*, Editorial Porrúa, México, 2008, pp. 3-10.

<sup>19</sup> *Ibidem*, p.567.

Articles 636 and 668 of the Civil Procedure Code of the State of Michoacan not violate Articles 14 and 16 of the Constitution of the United Mexican States, to establish the possibility of executing the judgment of first instance when the party who had helped give sufficient security to ensure both the replacement of the state of things kept as payment for damages. It follows that those articles do not produce helplessness detriment of the losing party but, on the contrary, restore the balance between the demands of justice and speed; in addition, it establishes the requirements to keep the litigious matter, during the pendency of the appeal, because if it is true that it has not completed the trial, being pending the appeal mentioned, so is that deprivation of rights, the losing party, is not final, since, by express provision of Article 668, the actor is required to provide appropriate security for the execution of sentences. This warranty covers the return of the thing, its fruits and interests, as well as compensation for damages, if the ruling is revoked. Thus, if the judgment of the hierarchical supervisor is favorable to the appellant, the part that was favored by the contested judgment is obliged to return the property to its counterpart not exist, therefore final deprivation.<sup>20</sup>

Now it is important to determine whether the violation of the fundamental right is a proprietary or discomfort act by the authority to the ruled, because it will lead to the scope of the judgment in the shelters for effects and to determine the substantive difference between an act of private authority and an act of authority hassle, its essential element is set by the following legal criteria, must distinguish between the origin and the effect of injurious act and the act of deprivation:

Thus, it holds that: Article 14 of the Constitution provides in its second paragraph, that no one shall be deprived of life, liberty or property, possessions or rights without a trial before previously established courts in where the essential procedural formalities are observed in accordance with laws promulgated prior to the fact; while Article 16 of the same Supreme Planning determines, in its first paragraph, that no one may be molested in his person, family, home, papers or possessions, except by written order of the competent authority,

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<sup>20</sup> Jurisprudencia./J., Semanario Judicial de la Federación y su Gaceta, Octava Época, No. Registro 205930; Pleno; Tomo IV, Primera parte, Julio- Diciembre de 1989; pág. 127.

which melts and motivate the legal procedural cause. Therefore, the Federal Constitution distinguishes and regulates differently the privative acts for acts of nuisance, for the former, which are those that produce the effect of reducing, impairment, or permanent removal of a right of the Governor, authorizes only through the fulfillment of certain conditions specified in Article 14, such as the existence of a proceeding conducted before a tribunal previously established that meets the essential formalities of procedure and the laws issued before the act apply I tried. However, acts of nuisance that despite involvement constitute the legal sphere of the governed, not produce the same effects as the proprietary act, because only provisionally restrict or preventive right in order to protect certain legal interests, It authorizes, as provided by Article 16, provided that precede written order rotated by an authority with legal competence to do so, where is the grounds and legal cause of the procedure. Now, to clarify the constitutionality of an act of authority challenged as proprietary, you must specify whether indeed it is and, therefore, requires compliance with formalities established by the first of those paragraphs, or if an act of nuisance and therefore is sufficient compliance with the requirements of the second one requires. To make that distinction should be advised in order that the act is pursued, that is, if the deprivation of property tangible or intangible is the inherent objective pursued by the act of authority, or if by its nature tends to only one provisional restriction.<sup>21</sup>

## **CONCLUSION**

Whereas the fundamental right of due process, which is credited is undoubtedly a fundamental right in Mexico and once analyzed the legal concept of amparo for the purpose, it can be concluded that according to the existing law is not an obstacle analyzes the fundamental right of due process and that the final scope of the protection for the purpose, is precisely to guarantee the fundamental right of due process. But it appropriate, when there is a violation of a fundamental right, is a smooth relief, however, one must consider the rights of the third party in the constitutional trial, and the administrative responsibility of the responsible authority to continue the lines research.

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<sup>21</sup> Jurisprudencia P./J. 40/96, Semanario Judicial de la Federación y su Gaceta, Novena Época, No. Registro 200 080; Pleno; Tomo IV, Julio de 1996, pág. 5.

One possible response to the issues raised, is that instead of the almost daily practice of federal judges to grant protection to the effect that violated the guarantee without making a comprehensive assessment of the file is restored, by which they can overcome other existing violations at the time, to fill them all and even pure and simple shelter where appropriate, would be a guarantor attitude in compliance with the provisions of article first constitutional and not an obstacle the protection for the purposes and granted, the fundamental right of due process.

## Bibliografía

- Carbonell, Miguel, Coord., Diccionario de derecho constitucional. Carpizo, Jorge (2002), Garantías individuales. Editorial Porrúa y Universidad Nacional Autónoma de México, México. Carbonell, Miguel, Coord., Diccionario de derecho constitucional, Soberanes
- Chávez Castillo, Raúl (2008), Juicio de amparo, Editorial Porrúa, México, Octava Edición.
- Fernández, José Luis (2002), Garantías constitucionales, Editorial Porrúa y Universidad Autónoma de México, México.
- Lelo de Larrea, Arturo Zaldívar, coord., volumen, Derecho procesal constitucional. Ferrer Mac-Gregor, Eduardo y Pelayo Moller, Carlos María (2012). La obligación de respetar y garantiza los derechos humanos a la luz de la jurisprudencia de la Corte Interamericana. Una fuente convencional del derecho Procesal Constitucional Mexicano. Editorial Porrúa y Centro de Investigación e Informática Jurídica, México, pp.241-243.
- Orduña Sosa, Héctor (2008), Redacción judicial, cuaderno de trabajo 4, Editorial Porrúa, México.



Tondopo Hernández, Carlos Hugo (2008), *Teoría y práctica del proceso de amparo indirecto en materia administrativa*, Editorial Porrúa, México.

Tron Petit, Jean Claude (2012), *Argumentación en el amparo*, Tercera Edición, Editorial Porrúa, México.

IUS (2011), *Poder Judicial de la Federación*, Suprema Corte de Justicia de la Nación.