

JUDICIAL REVIEW OF ADMINISTRATIVE PRACTICE IN THE FEDERAL DISTRICT OF MEXICO

Oliver OLDMAN *

In cases involving federal government taxes, either federal authorities or the taxpayer may appeal Fiscal Court decisions directly to the Supreme Court of Mexico. In cases involving the taxes of the Federal District of Mexico (hereafter the DDF) it used to be that only the Treasury of the DDF could take such direct appeals.¹ Taxpayers, however, could appeal adverse Fiscal Court decisions on DDF taxes through amparo suits brought in the local Federal Court, while the Treasury, as a government agency, lacks standing to seek amparo relief.² Although the amparo route to relief is more time-consuming, the appellant may raise constitutional as well as legal issues upon review.³

* This short paper is a slight revision of a part of a book published in 1967: Oldman, Aaron, Bird and Kass, *Financing Urban Development in Mexico City* (Cambridge, USA: Harvard University Press), pp. 43-47. This part was originally written after consultations with and advice from my distinguished colleague and friend, Professor Héctor Fix-Zamudio. I had hoped that student research assistants here at Harvard Law School would enable me to bring these pages up to date and permit reflection anew. Unfortunately the students failed to deliver their assistance before the deadline for submission to the organizers of this homenaje. My apologies are therefore due for not presenting new thoughts to honor this great man.

¹ Serra Rojas, Andrés, *Derecho administrativo*, 3er. ed. México, Librería de Manuel Porrúa, 1965, pp. 1141-43. Decree of Dec. 29, 1965.

² *Idem.*, pp. 1140-41. An amparo suit is brought in Federal Court by an individual seeking redress for the impairment of his fundamental human rights, or individual guarantees, as established by the twenty-nine Articles of the Mexican Constitution. The subject of the complaint may be a law or legislative act, the act of a government official or agency, or the act of a judge or court, in civil, penal, labor, or administrative, including fiscal, matters. In certain cases, interested third parties may intervene to oppose the complaint. The redress granted affects only the individual complainant in the suit at hand; it does not in any way modify the law or act complained of. See generally; Fix-Zamudio, Héctor, *El juicio de amparo*, México, Editorial Porrúa, 1964. For a description of amparo, in English, see Edelmann, Alexander T., *Latin American Government and Politics*, Homewood, Ill., The Dorsey Press, 1965, pp. 467-69.

³ Serra Rojas, *Derecho administrativo*, p. 1143. For a probing analysis of the

Apparently some doubt has existed whether or not the Fiscal Court is bound by the Supreme Court's jurisprudencia.⁴ Jurisprudence is established in Mexico by five consecutive Supreme Court decisions holding the same way on the same question of law.⁵ Individual decisions, while dispositive of the particular cases in which they are rendered, suggest the direction of judicial thinking but have no binding effect on future controversies. Generally speaking, even Supreme Court jurisprudencia is binding only on the federal and state courts specified in the Amparo Law, not on the executive branch as a primary legal obligation.⁶ This conclusion has provided a basis for the view that the Fiscal Court, as an administrative tribunal, is not directly affected by federal jurisprudencia. However, the Supreme Court has held at least once that the Fiscal Court is bound by the law as interpreted in the Supreme Court's jurisprudencia.⁷

As indicated elsewhere,⁸ Supreme Court decisions have significantly influenced the DDF's tax administration. In other areas of urban development, it appears that judicial review has been of little importance in reforming administrative practices. Several lawyers and land use planners have suggested that amparo proceedings serve merely to delay major municipal projects. It is said that a property owner whose land is condemned is able to delay a municipal project for several years through an amparo suit challenging both the compensation award and the legality of the project itself. Administrative officials, frustrated by such delays, are said to withhold information on public projects in order to avoid amparo suits by dissatisfied residents.

difficulties raised by these different appeal procedures, see Fix-Zamudio, Héctor, "Reflexiones sobre la naturaleza procesal del amparo", *Revista de la Facultad de Derecho de México*, 24:999-1006 (1964).

⁴ Serra Rojas, *Derecho administrativo*, p. 1136, citing a Fiscal Court opinion to the effect that such jurisprudencia is not binding on the Court.

⁵ Amparo Law (*Ley de Amparo*), Arts. 193, 193 bis, D.O., Jan. 10, 1936; Organic Articles 103 and 107 of the Federal Constitution (*Ley Orgánica de los Artículos 103 y 107 de la Constitución Federal*), D.O., Jan. 10, 1936. See discussion in Burgoa, Ignacio, *El juicio de amparo*, 5th ed., México, Editorial Porrúa, 1962, pp. 730-37.

⁶ Interview with Lic. Héctor Fix-Zamudio, July, 1965.

⁷ Amparo Administrativo en Revisión 2404/49, "Escocia, S.A.," Decided Oct. 20, 1949, *Sem. Jud.* 102:540 (1950). For Fiscal Court acknowledgement of the binding quality of Suprema Court jurisprudencia, see Juicios Nos. 725/57 (Pleno), Decided Jan. 8, 1964, and 4691/55 (Pleno), Decided Jan 15, 1964 (Tribunal Fiscal de la Federación).

⁸ Oldman, *et al*, *Financing Urban Development in Mexico City*, Chapters 2 and 3.

Such reports do suggest the need to reexamine amparo procedures in the urban development field. The mere allegation of insufficient compensation would not seem to justify a court's enjoining the project itself pending a decision on the compensation issue. Where the legality of the entire undertaking is challenged, it would seem appropriate to develop a summary procedure designed to check administrative compliance with required procedural formalities prior to the implementation of municipal programs. In most cases, compliance with appropriate procedural safeguards should be adequate assurance that the project is within the agency's authority. Where the existence of a valid governmental purpose for the project is challenged, a court might find that open consideration of the agency's plans provides sufficient protection to municipal residents to deny an injunction restraining the project's continuance.⁹

Another problem associated with amparo suits in the urban development field is the absence of an administrative tribunal like the Fiscal Court to translate Supreme Court jurisprudence into primary obligations for administrative officials. One view holds that constitutional jurisprudence is binding on administrative officials; this view seems not yet to be shared by the executive branch. For example, the DDF's zoning regulation provides that the crucial factor in limiting "nonconforming" uses in the District's "urban area" is whether or not they produce a molestia, defined as a nuisance to neighbors caused by noise, vibration, smoke, dirt, smell, etc.¹⁰ Although the Public Works office, through its Plano Regulador Branch, adheres to this nuisance standard in investigating neighborhood complaints, Plano Regulador, which also certifies that proposed uses conform with the plan before the Public Works Office issues building permits, applies quite different standards in deciding whether or not to approve a proposed land use in the first place. Interviews with zoning administrators indicate that Plano Regulador considers not only whether or not a proposed use will inconvenience the community at large but also whether or not the use is eco-

⁹ In Bogotá, Colombia, some safeguards are provided by entitling property owners to appoint an architect or engineer (paid from assessed taxes) to represent them when municipal authorities budget for public works, apportion taxes, and expend the funds. Harvard Law School International Tax Program, World Tax Series, Taxation in Colombia, prepared by G.J. Eder, J.C. Chommie, and H.J. Bercera (Chicago: Commerce Clearing House, 1964), p. 135.

¹⁰ Zoning Regulations (Reglamento de las Fracciones I, V y VII, del Artículo 3 de la Ley de Planificación y Zonificación del Distrito Federal), Arts. 6, 7, 16, D.O., Feb. 4, 1941.

nomically justified. Thus an application to locate a supermarket in a residential area will be evaluated in terms of Plano Regulador's estimate of the region's need for another market. Since both the zoning plan and Plano Regulador's administrative standards remain unpublished, permissible land uses are determined by ad hoc decisions based largely on "administrative discretion."¹¹ The DDF's planning authority¹² might provide the basis for an argument that the Public Works Office may control land uses without reference to the zoning plan adopted by the Planning Commission.

Whether Plano Regulador operates under the nuisance test of the regulations or asserts an independent zoning authority, the exercise of administrative discretion on such an ad hoc basis would appear vulnerable to amparo review as a violation of Articles 14 and 16 of the Constitution. Article 103 of the Mexican Constitution and Article 1 of the Amparo Law provide that amparo protects only those "individual guarantees" specifically enumerated in the first twenty-nine articles of the Constitution. The effort to broaden the amparo into a general writ for controlling nearly all government abuses of power has focused primarily on Articles 14 and 16 of the Constitution.

Article 14 provides, in part: "No law shall be given retroactive effect to the prejudice of any person. No one shall be deprived of life, liberty, property, possessions or rights, except by a trial held before previously established courts, in conformance with laws issued prior to the fact, and in compliance with the essential requisites of procedures. . . In trials of a civil nature, the final judgement shall be in conformance with the letter, or the judicial interpretation, of the law, and in the absence of the latter, it shall be based on general principles of the law." Article 16 provides, in part: "No one shall be molested in his person, family, home, papers, or possessions except on written order of the competent authority establishing the legal cause of the proceeding."

Article 14, paragraph 4, permits review of civil, mercantile, and administrative decisions, which allegedly conflict with relevant statutes.¹³ The constitutionality of such statutes, regardless of their reference to any particular individual guarantee, has also been thought subject to attack on the basis of Article 14, paragraph 2. Article 16 has been seen as providing even broader protection of constitutional limitations without reference to particular individual guarantees. The

¹¹ Interviews with Plano Regulador officials, Feb. 1965.

¹² Oldman, *et al*, *Financing Urban Development in Mexico City*, Chapter 5.

¹³ See Burgoa, *El juicio de amparo*, *cit.*, pp. 226-34.

phrase "competent authority" opens the way for judicial review on the basis of the entire constitution, of an official's power to undertake a given action. Moreover, it has been argued that Article 16's reference to the "legal cause" of an official proceeding justifies judicial scrutiny of both the statutory authorization for an action and applicability of the statute or regulation to the case at hand. Thus an agency must state both its standard and its reason for applying that standard to the complainant's case.¹⁴

The Supreme Court has reportedly overturned Plano Regulador's refusals to approve proposed uses for reasons other than the probability of nuisance. However, zoning officials insist that they do not consider the possibility of judicial review in reaching zoning decisions, for they assert that such decisions are rarely challenged in court.¹⁵

Because amparo suits have not always assured fair and consistent administrative practices, several commentators have proposed the creation of a general administrative tribunal in México.¹⁶ For some years the movement toward such an institution took the form of proposals to broaden the Fiscal Court's jurisdiction. It appears that amendments (Decree of Dec. 29, 1965) which grant the Fiscal Court jurisdiction over federal and DDF tax controversies and over fines arising out of violation of any federal or DDF law, not merely federal tax laws, would serve to overcome many of the difficulties encountered in the past with amparo suits. One aspect of the proposed reform requiring attention is the effect of an expanded jurisdiction on the Fiscal Court's operating procedures. Should the entire Court, or merely one or two specialized panels, be charged with reviewing, for example, the DDF's zoning or subdivision determinations? This and other questions need to be decided after further study of the practical implications.

¹⁴ Burgoa, *Las garantías individuales*, 3rd ed., México, Editorial Porrúa, 1961, pp. 441-42.

¹⁵ Interviews with Plano Regulador officials, Feb. 1965.

¹⁶ See, e.g., Nava Negrete, Alfonso, *Derecho procesal administrativo*, México, Universidad Autónoma de México, 1958, pp. 302-03; Heduán Virués, Dolores, *Tribunal fiscal*, pp. 317-19; Serra Rojas, *Derecho administrativo*, p. 1116.