

Amparo Trial:
**a Mexican
Institution**

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I. Introduction to the *Amparo Trial*

- **Mexican *Amparo*** is a federal trial where a complainant alleges violation of her constitutional rights by an authority
- It is an individual or a corporation against the Government
- The *Amparo* trial is conducted and decided by a federal district judge (*Juez de Distrito*), federal magistrate (*Magistrado*) or Supreme Court justice (*Ministro*)

I. Introduction to the *Amparo Trial*

- *Amparo Trial* (A.T.) proceeds against almost any act of authority, from any branch of government
- Exceptions: *Supreme Court* resolutions, Resolutions given in any A.T., Electoral and Political resolutions & Military orders given to Armed Forces members
- Objective of A.T. → restoration of the violated Individual Guarantee to the Claimant. It does not seek monetary compensation

II. History of the *Amparo Trial*

1840. Manuel Cresencio Rejon. *Amparo Trial* in new Constitution of the State of Yucatan

1847. Mariano Otero. *A.T.* into the Federal System in that year's Constitutional Reform

Both **Rejon** and **Otero** are considered the *Fathers of the Amparo Trial*

Recently → Supreme Court presented a project of reform for a new *Amparo Trial*. Congress is still considering it, but it is not on the immediate legislative agenda

III. Principles of the *Amparo Trial*

- 1. Complainant's request.** An *A.T.* can be started only *ex parte*; not *ex officio A.T.'s* (but simplified requirements for emergencies)
- 2. Personal and direct harm.** Act of authority must affect complainant's Constitutional Rights. No personal and direct harm → *A.T.* is dismissed

III. Principles of the *Amparo Trial*

- 3. *Definitivity*.** Before *A.T.* → exhaust ordinary means of defense. But see exceptions (*e.g.*, risk of deprivation of life, exile, infamous, cruel or unusual punishment, mutilation, torture or lashing)
- 4. *Relativity*.** *Amparo* sentence only benefits the complainant. No general – *erga omnes* – effects. This is called the “Otero Formula.” Exception: *jurisprudencia obligatoria*

III. Principles of the *Amparo Trial*

5. Strict right. *Amparo request* → analyzed as submitted by complainant, and technical requirements go under strict scrutiny. Court is not allowed to emend complainant's deficiencies

Exceptions where the court may amend:

- ✓ Action based in a law that has been declared unconstitutional
- ✓ Criminal cases
- ✓ Agrarian law
- ✓ Labor law
- ✓ When complainant is a minor or incapable

IV. Parties

- **Complainant** (*Quejoso*). Individual or corporation that is entitled to the Individual Guarantee violated by the claimed action of an authority

- **Responsible Authority** (*Autoridad responsable*). Federal, State or Municipal agency from any branch of gov't who is accused by the complainant as the author, executor or author and executor of the claimed action

IV. Parties

- **Third affected (*Tercero perjudicado*)**. A person not the complainant, who could be affected if the latter wins the *A.T.* Not all *A.T.s* have a third affected as a party (*e.g.*, no 3rd affected in *A.T.* vs. arrest warrant)
- **Federal Prosecutor (*Ministerio Público Federal*)**.
Role → to ask for the respect of the constitution

V. *Claimed Act*

Concrete act of authority that attacks a Constitutional Right. This act can be:

- **Positive:** an *action*; a gov't agent is doing something against complainant's constitutional rights
- **Negative:** an *omission*; a gov't agent isn't doing something it should, therefore affecting complainant's constitutional rights

V. Claimed Act

Remember exceptions:

no *A.T.* vs. resolutions by: S.Ct., *A.T.* tribunals, Electoral and Political matters or Military orders given to Armed Forces members

Also, see **ripeness** and **mootness** issues

VI. Indirect *Amparo*

Generally handled by a District Judge

- (1) Against unconstitutional laws, treaties, decree or rules.
- (2) Against actions of members of the Judicial Branch
- (3) Against third non-parties
- (4) Against laws or acts that restrict State sovereignty or interferes with Federal competence

Appeal against final decision in Indirect *Amparo*:
Revisión

VII. *Direct Amparo*

Direct Amparo can be requested against any final sentence or resolution that concludes a trial or trial-like proceeding

Difference from *Indirect Amparo* → *Direct Amparo* proceeds against final decisions that are otherwise *res judicata*

VII. Direct *Amparo*

Only the highest courts handle Direct *Amparos*:
Collegiate Circuit Court and *Supreme Court*

Unconstitutional laws and treaties can also be attacked through *Direct Amparo*

Generally, No *Revisión* in Direct *Amparos*

VIII. Stay Order

Court order that stops the execution or continuance of execution of the gov't act

Granted at claimant's request or *ex officio* in extraordinary cases

This order binds *Responsible Authority* to effectively cease and desist the execution of the *Claimed Action* as long as the Stay order is in force

Stay order unavailable in some cases (*e.g.*, no stay order to keep a prostitution house open)

VIII. Stay Order

Complainant must give a bond for the possible damages to Third Affected if *Amparo* is denied. Third Affected can then give a bond – a counter-bond?, and Stay order will be revoked. This is good business for bondmen!

No bond is required in criminal cases, but different requisites are imposed. And Stay Order does not impede the arrest against most serious crimes like murder, rape, drug traffic, et cetera.

Violation of a stay order is a Federal Crime

IX. Final resolution

Amparo can be **granted** or **denied**, depending on whether the complainant proved or not that *Claimed Act* violated her Constitutional Rights

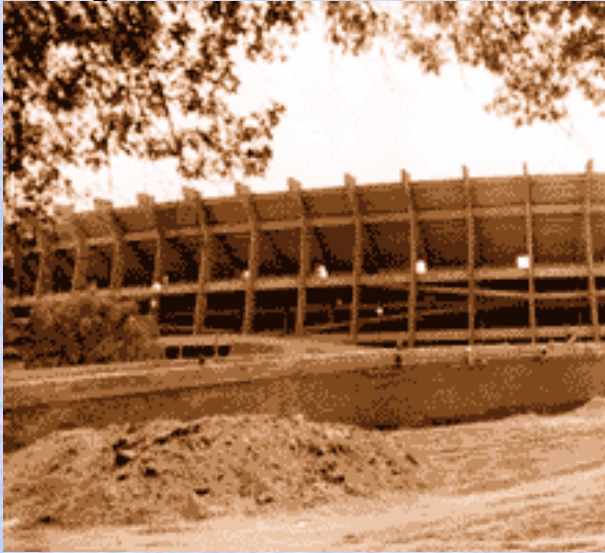
When **granted**, Court can remand, modify *ex novo* or cancel the *Claimed Act*

In *Indirect Amparo*, this sentence can be appealed through *Revisión*

A.T. does not seek economical compensation, but *Substitute Execution* allows to liquidate damages when execution is impossible or affects the social interest

IX. Final resolution

Recent example: expropriation of 81 acres in Mexico City, near *Estadio Azteca* :



← 1965

Now →



What to do? Demolish the houses?

Instead → give \$\$\$ to the claimant

\$121 million
dollars

X. Appeals on the *Amparo Trial*

- *Revisión* (“review”)
- *Queja* (“claim”)
- *Reclamación* (reclamation)

Conclusions

- The *Amparo* is a federal trial
- Its goal is to reinstate the claimant in the same position as she was before the violation of her constitutional right
- It does not seek monetary compensation, but \$ can be granted in exceptional cases. Who pays? The gov't
- Bind authorities to the observance of Human Rights

Conclusions

- It is an effective means to prevent and stop abuse of discretion by authorities, and a working protection for Human Rights
- This is a slight view of this Institution. *Amparo Trial* is vast, very technical, specialized and elaborated
- It is **Mexico's** best tool to protect the people from governmental abusive actions

Comments and notes
