

doctrine of *stare decisis* does not come into play and action is prompt because the threatened imperiling of an individual's constitutional rights takes precedence over other court cases.

When Amparo is brought before the Federal District Judge, he does not concern himself with the merits in the controversy before the administrative body or the civil Court.²² His examination is limited to the guarantees of the Constitution and its possible violation as to the individual who has petitioned.

Under the Rules of Amparo, the procedures which govern ordinary civil actions do not apply, nor do the rules of evidence concerning the presumption that official duty has been done, nor is it presumed that determinations of fact by administrative or legislative bodies who themselves are in control of the evidence and official files are true. *The purpose of Amparo is to force the government agency or instrumentality to disclose its records and its evidence with relation to the particular person whose individual rights are alleged to have been violated.²³*

The petition (*demanda*) must be presented within 15 days from the date that the petitioner has received actual knowledge that his individual constitutional rights have been directly violated, coupled by some affirmative act which may carry or attempt to carry the violation against the aggrieved party into effect by the responsible authority—federal, state or local. If the Amparo proceedings are not presented in a timely manner, the right to raise the constitutional violation is not waived but it can only be raised in an ordinary civil action, not the special Amparo process.

In seeking the protection of one's individual guarantees or freedoms, the specific violation must be spelled out by the petitioner. The Federal District Court will not supply or write in deficiencies of substance nor guess what has been violated by the "responsible parties" (*autoridades responsables*). Nor may the Federal District Court volunteer defenses on behalf of the administrative or executive agencies which they themselves do not set forth in their respective answers. The Federal Court may not decide the case solely upon a precedent decided in another case and hold under the principle of *stare decises*. It is not compulsory to adjudicate the case at hand in accordance with prior rulings. The Federal Court, thus, does not become an advocate for either side, which could be dangerous by reason of its expertise. The purpose of the Amparo proceeding is to permit each case to stand or fall upon its own special and particular merits as to the law applied, regulations sought to be enforced, and as to the facts which may exist in the special individual proceedings.

The administrative agency must itself justify the action taken by it against the aggrieved party. The Amparo procedure requires that the accused authorities or the agency, administrative body, or other State or Federal instrumentality, file an answer, which is called its "informe con justificacion"; i.e., facts and records in its custody or control tending to justify its action as against the aggrieved party. If the authorities do not justify their action within a given number of days, or refuse to answer, it is presumed that there is no defense to the charge made by the aggrieved party and an immediate, automatic decision is rendered to secure redress of the plaintiff's grievance.

In the Amparo procedure, the aggrieved party ordinarily serves a bill of particulars on the responsible authorities alleged to have violated his individual guarantees, demanding of said authorities that they submit certified copies of the records itemized in the bill of particulars. Written interrogatories are likewise served and filed. These interrogatories permit the asking of leading questions and facts are permitted to be assumed so as to get a "yes" or "no" answer. This questioning is called "posiciones" in Spanish—"posiciones."

The use of an adaptation of the Amparo process interrogatories in the form of "posiciones" is also not without relevance to our own necessity for discovery before trial in seeking to redress citizen grievances. Judge Philbrick McCoy of the Superior Court of Los Angeles County recently addressed himself to this problem, saying:

"It may come as a shock to some lawyers that discovery before trial in civil actions is by no means new . . . and is not the invention of the devil. Millar tells us that discovery as we know it today had its origin in the Romano-canonical procedure which, beginning in the 1200s, employed so-called 'positions' consisting of affirmative propositions to be answered by the adversary under oath. By the

²² Op. Cit., Tomo XVII, p. 1042

²³ *Ibid.*, Tomo 11, p. 498.