

time of Blackstone, says Millard, the English Court of Chancery had developed the 'complicated, difficult and expensive' system of discovery of facts by a bill in that court which, with some minor adaptations, found lodgment in America . . ."²⁴

In effect, the Amparo procedure permits a "prior or instant inquiry" by the Federal District Court into the question of the alleged unlawful abuse or use of power in violation of an individual's human rights. If it concerns lack of procedural due process, the entire proceedings of the administrative agency may be summarily vacated. Whether a dismissal takes place with or without prejudice depends upon whether a constitutional guarantee of the aggrieved petitioner has been violated and if he may summarily be placed in his former status by a remand from the Federal Court to the authority involved.

COMPARISON OF AMPARO AND ORDINARY PROCEEDINGS TO REDRESS ADMINISTRATIVELY-CAUSED GRIEVANCES

In the absence of constitutional provisions, the trend of thought in Mexican legislation, legal opinions and doctrine up to 1936 was that physical acts of the working administration (excluding formal official acts) could be challenged by the individual only by means of ordinary proceedings before the courts in cases where the law under which the act was committed provided for the institution of such proceedings, or by means of Amparo in cases where ordinary proceedings were not provided by the law. For a proper understanding of the part played by Amparo in administrative disputes, a clear distinction must be made between those two types of proceedings.

After lengthy controversy, it was finally agreed that the ordinary proceedings mentioned above might have a constitutional basis in article 97, section I (now 104 I), since the disputes in question concerned the execution and implementation of Federal laws, a matter in which competence lay with the Federal courts. An appeal against the decision of the District Judge in the lower court could be lodged with the Central Circuit Court; and the latter's final decision could also be challenged, this time by means of Amparo proceedings before the Supreme Court of Justice. Thus the ordinary proceedings before the courts at two levels constituted a typical action in connection with administrative disputes, where competence lay with the judicial authorities. Amparo, as applied against the final decision in the ordinary proceedings, retained in this case its role of protecting the legality prescribed for legal proceedings of any type by Article 14 of the Constitution, which was exactly the role it played in civil proceedings.

Even in the most flourishing period of ordinary legal proceedings the number of administrative cases adjudicated in that manner was not great. With the passage of time, such cases have almost disappeared from the legal scene, because their slow course through the legal process caused a long period of uncertainty concerning acts of the administration often practically making moot the subject-matter of the case.

In 1936 an idea was put into practice which had been under consideration and discussion for some time—namely, the establishment of the Federal Fiscal Tribunal as a delegated organ of justice in Federal "fiscal" matters, with jurisdiction in cases of administrative disputes. The validity of a formal official act committed by the "fiscal" authorities becomes the subject of proceedings in the form of a case before the Fiscal Tribunal against the authority responsible for the act; the decision of the Tribunal declares that the act complained of is either valid or null and void. Actions for annulment before the Fiscal Tribunal are substantially equivalent to ordinary actions before the Federal courts of justice, but there are two principal differences between the two types of action. First, the former come before an administrative tribunal and the latter before the judicial courts; in other words, administrative justice in Mexico, which had been a matter for jurisdictional bodies forming part of the judicial system, was now entrusted to jurisdictional bodies introduced into the administrative system. Secondly, the rules of procedure in the two types of action are also different, the procedure of the Fiscal Tribunal having been devised in the light of the special nature of disputes in "fiscal" matters, whereas the procedure in an ordinary case is the normal procedure of the Federal Code of Civil Proceedings, which governs actions of any kind.

The decision of the Fiscal Tribunal may be challenged in two ways, according to which party is the complainant. If the authorities are the aggrieved party,

²⁴ *Journal of the State Bar of California*, Vol. 41, #4, July-August, 1966.