

there is no recourse to Amparo. Legal opinion in Mexico does not concede that a governmental authority, as such, possesses the "personal" rights to which Amparo applies. The authorities may, however, appeal for a reversal of the decision to the Second Chamber of the Supreme Court of Justice, which then assumes the functions of an appeal court in relation to the Fiscal Tribunal. Thus the appeal becomes the second stage of the proceedings in connection with an administrative dispute, and the Second Chamber of the Supreme Court discharges at that level the same functions, in matters of administrative dispute, as those which devolved on the Fiscal Tribunal at the lower level.

But, if the aggrieved party is the individual, he has a right of recourse to Amparo against the decision of the Fiscal Tribunal which, for the individual, is the final arbiter in the case. The Amparo procedure then resumes its function of pronouncing upon the action of the Fiscal Tribunal from the standpoint of guaranteeing the legality of the proceedings, against the background of individual rights, as provided for in Article 14 of the Constitution.

However, outside the area of administrative actions subject to ordinary proceedings (before the judicial authorities) or to annulment proceedings (before the Fiscal Tribunal), there remains a vast range of administrative activity proper which is not subject to any method for redressing administratively-caused disputes, whether judicial or delegated. Within this range, the working administration preserves its reserved jurisdiction intact.

Nevertheless, the guarantee contained in Article 16 of the Constitution allows the Federal judicial power to intervene even in this area of reserved jurisdiction, precisely and exclusively by means of the Amparo procedure. It must be emphasized that there is no question in this case of Amparo protecting the guarantee set forth in Article 14, which presupposes the existence of a process consisting of legal proceedings before the courts—since that presupposition applies in administrative matters only where ordinary proceedings are instituted before the judicial courts, or annulment proceedings before the administrative tribunal in "fiscal" matters. But, no such presupposition exists where the act of the working administration is a formal official one and the law provides no means of challenging it by litigation—in other words, of bringing it before the jurisdictional bodies.

In circumstances where the purpose of Amparo is to provide direct protection, against the administrative authorities, of the guarantee set forth in Article 16 of the Constitution, without the interposition of any juridical decision between the act of the administrative authorities and the intervention of the Amparo judge, the proceedings are a substitute for the normal proceedings in administrative disputes, for which the laws make no provision in administrative matters not covered by ordinary legal proceedings or by annulment proceedings. The function of serving as a substitute for, or replacing, other procedures in administrative matters should be noted as a further additional attribute of the Amparo procedure.

AMPARO AND DUE PROCESS OF LAW

Due process of law commenced in our ken with Chapter 39 of the Magna Carta of 1215: "No freeman shall be arrested, or imprisoned, or disseized, or outlawed, or exiled, or in any way molested; nor will we proceed against him, unless by the lawful judgment of his peers or by the law of the land." Four hundred years later, in the Petition of Right, the phrases "law of the land" and "due process of law" became interchangeable. The Petition of 1628 prayed that "freedom be imprisoned or detained only by the law of the land, or by due process of law, and not by the King's special command without any charge."

So, for half a millennium or more the concept of due process had been part of the heritage of the framers of our Constitution, but primarily as a limitation on the executive and not the legislative branch of government. It was thought that if the King could be forced to act only in accordance with Parliament's laws, this would be sufficient protection for individual rights. It was not until about 100 years ago in 1855 before our Supreme Court advanced beyond traditional English concept of due process to hold that it operated not only against the executive but also on the other departments of Government. Said the Court, "The article [fifth amendment] is restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any process 'due process of law' by its mere will."²⁵

²⁵ *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 How. 272 (1855).