



ADMINISTRATIVE LITIGATION REVIEW

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In Mexico, individuals have found that administrative litigation makes it possible to exercise their rights to challenge any arbitrary action taken by government authorities. These actions may occur in various sectors at the federal, state or municipal levels. It is not surprising that recent activity in this field is intensive.

Normally, when addressing issues of administrative law, reference is made to the general legal field whose scope includes principles governing the duties and powers invested in authorities affecting their relationship with individuals. However, the focus narrows when it is a specific sector of the law regulating the economic activity in question (eg, telecommunications, immigration, environment, consumer protection, tax, financial, transparency, energy, antitrust, etc).

There is a relationship between general and specific aspects of the law. The general rules for contentious administrative procedures (except in certain cases) are subsidiarily applied to the specific area of law in question. The administrative courts have jurisdiction to hear disputes that arise between the authorities and individuals in different cases.

Therefore, in Mexico, the litigator faces constant challenges in representing the interests of different clients in light of arbitrary acts or authorities of several kinds, which themselves apply and interpret the administrative laws both generally and specifically. This results in litigation whose purpose is for acts of authority, and whose legality and even constitutionality is often scrutinised.

Naturally, the most important development in recent months relates to the different acts of the administrative authority deemed to have affected individuals.

The cases resolved by the Federal

Institute of Telecommunications are especially relevant. This recently created agency has imposed countless fines upon influential economic agents in this sector. Also relevant are the cases resolved by the environmental authority – such as the one that sanctioned the state-owned company Pemex Exploración y Producción following the hydrocarbon spill at the Terra 123 well in October 2013. Although the amount of the fine was more symbolic than anything else, it was significant for the mere fact that a subsidiary of the state-owned oil company had been fined.

There are also cases where the Federal Transparency Institute resolved in favour of publicly disclosing data regarding those in receipt of a tax relief via a decree issued by the Federal Congress.

Some of these cases are public; many are not. These have been, and some continue to be, challenged and studied by the administrative courts.

As mentioned, the legal and regulatory framework in the contentious administrative practice is very extensive at the federal, local and even municipal levels. In this article, we refer solely to the federal level. In this sense, several legislations apply, depending upon the special practice area of administrative litigation in question.

First, we encounter rules for general application, such as the Federal Law for Administrative Procedures, the Federal Law for Contentious Administrative Procedures and the laws governing the Federal Court of Tax and Administrative Justice. Second, we find certain rules that apply to a specific sector or practice area for the case in question. These provisions govern matters of telecommunications, public contracting, procurement, leasing and services with the state, consumer protection, and many others.

In general, a resolution or an act by the administrative authority may

be challenged if arbitrary or illegal, provided its conclusion to a procedure is contrary to the interests of an individual. The objection may be filed before the administrative authority itself, through a motion for review, or – if the law on the subject matter does not provide otherwise – through the filing of an action for annulment before the Federal Tax and Administrative Court.

In most cases, resorting to any remedy is a matter of strategy. Nevertheless, in any instance the merits of the case would seek to challenge the illicitness of the actions taken by the authority.

If the resolution issued by the administrative authority, with respect to the motion for review, continues to affect the individual's interests, a petition must then be made to the Federal Tax and Administrative Court by means of an action for annulment. If the encumbrance continues, the individual may challenge the illegal action through the direct action for constitutional relief under *amparo* proceedings filed before the Collegiate Circuit Courts. As of recently, these court proceedings may also be carried out through the internet by the so-called “online trial”, which is becoming more widely accepted.

Finally, it is important to note that, when the act of the administrative authority results in a direct violation of the Constitution, said act may be challenged by filing an indirect action for constitutional relief under *amparo* proceedings. As a general rule, this action must be filed before the District Courts dependent upon the Federal Judiciary Power.

The most important changes with respect to contentious administrative matters have recently occurred across various practice areas; we will mention the most relevant two.

First, following the incorporation

of human rights in administrative proceedings (resulting from the landmark decision of the Inter-American Human Rights Court and the Supreme Court of Justice), court authorities at every level were invested with the power to interpret and protect human rights. This protection included not only the rights embodied in the Constitution, but also those provided by international conventions signed by Mexico.

Second (and related to the first) the consequences of the Constitutional amendment of 2011, with respect to the action for constitutional relief under *amparo* proceedings, prompted the passing of a new law for the *Amparo* Law in April 2013.

Although both topics also affect other contentious procedures, the administrative practice area is obviously the most constitutionally amended.

Therefore, it is important to mention that the Federal Tax and Administrative Court, despite being an organ whose structure depends upon the executive branch, carries out a jurisdictional function. It has rendered many innovative rulings in cases decided in favour of the individual – not only with respect to government actions of any kind that are considered illegal, but also to actions that are considered contrary to human rights. There was, for example, a landmark ruling in late 2013, in which the High Chamber of this Court resolved to annul the administrative resolution that failed to recognise a Nigerian citizen as a refugee. The Court not only ruled according to Mexican Law, but also according to the International Convention relating to the Status of Refugees and Articles 1 and 11 of the Mexican Constitution. Although the decision did not involve a significant monetary sum, it is considered a landmark case in terms of the interpretative scope of the administrative court and offers the possibility of petitioning for the

protection of human rights in light of arbitrary government actions. This ruling became final and conclusive at a subsequent date, through the action for constitutional relief under *amparo* proceedings.

In matters of administrative litigation, the Mexican Supreme Court has issued extensive precedents. One of the most important rulings was rendered in January 2014 by the Plenary of Supreme Court, which recognised the fundamental right of presumption of innocence with respect to the sanctioning administrative procedure. Naturally, as a result of this principle, the individual who is encumbered by a government action shall be considered innocent until the authority proves otherwise. The authority shall have the burden of proof, which did not happen before. In this regard, prior to said ruling, the authors of this article represented a commercial entity in an administrative lawsuit related to financial law, in which the Second Chamber of the Mexican Supreme Court ruled not to apply this principle in administrative matters. According to the Chamber, this principle only applied to criminal cases; clearly, we did not share this opinion. Therefore, it is pleasing that the Plenary of the Mexican Supreme Court overruled said decision by ratifying its opinion through the ruling of January 2014. This criteria also results in respecting the principles contained in the Universal Declaration of Human Rights; the American Declaration of the Rights and Duties of Man; and in the American Convention of Human Rights.

CLIENTS THAT ARE PARTICULARLY ACTIVE IN THIS SECTOR

Since state intervention is, to a greater or lesser extent, present in many (if not all) sectors of Mexico's economy, the clients and industries that are more affected by government actions are economic agents participating in highly regulated sectors,

such as finance, telecommunications, construction, air transportation, land transportation and – very soon – the energy sector, which is opening to private investors.

DEVELOPMENTS PREDICTED FOR THIS SECTOR

In terms of anticipated changes, it is worth mentioning that there are pending developments in the federal contentious administrative procedure laws. According to the public reports of the Federal Tax and Administrative Court (June 2014), its purpose is, first, to reduce the time limits and resolve litigations between individuals and the federal authorities with an approximate value of 537 billion pesos; and second, to streamline the “online trial”.

In our opinion, this type of reform will be extremely beneficial if it actually reduces the time to resolve the cases filed in this field of law.

It is also important to note that administrative law will govern a significant portion of the energy reform undertaken by the Mexican government this year in various stages. So, any dispute arising between the different players and the competent authorities may find a solution by administrative litigation.

In terms of the action for constitutional relief under *amparo* proceedings, it will be interesting to observe how evolving technologies are applied, as provided under the new law, over the next few months – especially those that allow actions for constitutional relief to be filed and to follow the proceedings through the internet by using a certified electronic signature of the Federal Judiciary Branch. This certification proceeding was made available to the parties from 17 September 2014.