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JUDICIAL REFORM AND THE SUPREME COURT OF MEXICO: THE TRAJECTORY OF THREE YEARS

HÉCTOR FIX-FIERRO*

INTRODUCTION

An important amendment to several articles of the Constitución Política de los Estados Mexicanos (1917) [Federal Constitution of Mexico] went into effect on January 1, 1995.¹ Among other significant changes², it undertook to profoundly transform the organization and powers of the Federal Judiciary. The amendment represents perhaps the most sweeping alterations in many decades.³ Specifically, the 1995 constitutional amendment rearranged the Mexican Supreme Court and granted it new powers of constitutional review.

However, the Court's new role is not limited to reviewing the constitutionality of federal and state laws or international treaties. Instead, the amendment broadened the court's authority to resolve constitutional controversies between federal, state, and municipal governments.⁴ Additionally, it established the Council of the Federal Judiciary for the governance and administration of all Federal courts, excluding the Supreme Court.⁵ Finally, it formalized the judicial career, charging it embrace the principles of "excellence, objectivity, impartiality, professionalism, and independence."⁶

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1. See the *Diario Oficial de la Federación* (Official Gazette of the Federation) of December 31, 1994. According to the eighth transitory article of the amending decree, the modifications to Article 105 of the Constitution would enter into force together with the corresponding implementing legislation (*Ley Reglamentaria de las Fracciones I y II del Artículo 105 de la Constitución Política de los Estados Unidos Mexicanos*). This Law was published on May 11, 1995 in the *Diario Oficial* and entered into force thirty days after its publication.

2. These changes concerned the appointment of the *Procurador General de la República* [Attorney General of the Republic], which now requires confirmation by the Senate (Article 102 A, as amended); the establishment of a national coordination system for federal, state, and municipal public security agencies; and judicial review of a public prosecutor's decision not to file criminal charges (Article 21, as amended).

3. For an overview of the evolution of Mexico's judicial institutions during the present century, see FIX ZAMUDIO, *SETENTA Y CINCO AÑOS DE EVOLUCIÓN DEL PODER JUDICIAL EN MÉXICO. SETENTA Y CINCO AÑOS DE REVOLUCIÓN, II, POLÍTICA* 289-382 (1988), and FIX ZAMUDIO & COSSÍO DÍAZ, *EL PODER JUDICIAL EN EL ORDENAMIENTO MEXICANO* 99-137 (1996).

4. See Vargas, *The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995*, in 11 *Am.U.J.Int'l L. & Pol'y* 295 (1995) and *HARV. L. REV., Note: Liberalismo Contra Democracia: Recent Judicial Reform in Mexico*, in 108 *HARV. L. REV.* 1919 (1995).

5. See MELGAR ADALID, *EL CONSEJO DE LA JUDICATURA FEDERAL* (2nd ed. 1997).

6. Article 100, paragraph six, of the Federal Constitution, as amended. It can be said that until 1994, an informal judicial career already existed at the Federal Judiciary: young recruits would ascend the internal hierarchy of judicial posts up to the position of *secretario [clerk]* at the Supreme Court. From there, they could be appointed as *jueces de distrito or magistrados de circuito* [district or circuit judges] by the court, at the proposal of one of the *ministros [justices]*. For an excellent description of the merits and flaws of this system, and of what the author calls its tutorial and cooperative periods, see COSSÍO DÍAZ, *JURISDICCIÓN FEDERAL Y CARRERA JUDICIAL EN MÉXICO* (1996). By contrast, the new *Ley Orgánica del Poder Judicial de la Federación* [Organic Law of the Judicial Power of the Federation], published on May 26, 1995 in the *Diario Oficial*, effective the next day introduced a formal recruitment system (Articles 106-117). Accordingly, district and circuit judges are now appointed by the Council of the Federal Judiciary after a *concurso de oposición* [competitive examination].

President Ernesto Zedillo introduced the bill containing the amendments to the Senate just a few days after taking office. With his support, the amendments were approved quickly by both Houses of Congress and a majority of the state legislatures.⁷ One of the most controversial aspects of the bill was the provision which forced all twenty-six sitting justices of the Supreme Court into early retirement.⁸

Whatever political reasons were behind this decision, the presidential bill acknowledged that the previous decade's intensive process of economic and political change required a major reform of the justice system.⁹ Although many citizens deemed other changes more urgent, such reform would necessarily have to address the Mexican judiciary's secular, institutional, and political weaknesses¹⁰. As a result, one of the bill's express purposes was to reaffirm the Supreme Court's role as a constitutional court by conferring it new powers and giving its decisions more weight and authority.¹¹

These changes were necessary because Mexico's Supreme Court is perhaps the least well known and understood of her public institutions. Its central role in the development of Mexican legal institutions, particularly the amparo suit, is unquestioned.¹² However, its social and political significance, especially in recent times, has been scarcely studied.¹³ This can be partially attributed to the crushing political dominance of the presidency since the end of the nineteenth century. As a result, the Supreme Court carefully avoided any major involvement in politically sensitive issues¹⁴ and cultivated a discrete image to escape public opinion.

The 1994 reform is the most recent attempt to bring the Supreme Court back into the political and policymaking process.¹⁵ Indeed, in light of the increasing levels of

7. The bill was passed with some important modifications introduced to it by the Congress. See FIX-ZAMUDIO & COSSIO DÍAZ, *supra* note 3, 548-549.

8. See, the second transitory article of the amending decree.

9. This is the central thesis in CIDAC, A LA PUERTA DE LA LEY. EL ESTADO DE DERECHO EN MÉXICO (1994). Zedillo had already expressed this conviction as a presidential candidate in a major campaign speech in the city of Guadalajara on July 14, 1994, together with a ten-point reform program for a new system of public security and justice. See ZEDILLO, SEGURIDAD Y JUSTICIA, in LAS POLÍTICAS DEL BIENESTAR (1994). This belief, however, was shared in many other political and legal circles. Opposition parties made it part of their campaign platforms, and justices of the Supreme Court prepared and discussed their own reform proposals. The North American Free Trade Agreement's negotiation and ratification process certainly helped heighten foreign interest the performance of Mexico's justice system.

10. Taylor, *Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch*, 27 N.M. L. REV. 141 (1997), identifies several sources of such weakness and concludes the shortcomings of the 1994 reform will not cure them.

11. The *Exposición de motivos* [Statement of motives] of the presidential bill, reprinted in FIX ZAMUDIO & COSSIO DÍAZ, *supra* note 3, 577, 579.

12. See, for example, the important essays collected in LA SUPREMA CORTE Y EL PENSAMIENTO JURÍDICO (1985).

13. For an empirical assessment of the Court's degree of independence *vis-a-vis* the other branches of government, See GONZÁLEZ CASANOVA, LA DEMOCRACIA EN MÉXICO (1st ed. 1965); there is an English translation) and Schwarz, *Judges under the Shadow: Judicial Independence in the United States and Mexico*, 3 CALIF. W. INT'L L.J., 260 (1973). Both studies conclude that the Court has managed to exercise a reasonable degree of independence. See also GONZÁLEZ AVELAR, LA CORTE SUPREMA Y LA POLÍTICA (2nd ed. 1994), reviewing Supreme Court decisions until 1957 that dealt with political issues.

14. This reluctance has historical roots that are described in MOCTEZUMA BARRAGÁN, JOSÉ MARÍA IGLESIAS Y LA JUSTICIA ELECTORAL (1994).

15. Some previous attempts have failed, partly because they have not taken the Court seriously as a Supreme Court. The Supreme Court has never exercised the powers conferred it in Article 97 to investigate electoral violations. In 1977, as a part of the political reform that legalized the clandestine parties of the left, a new remedy allowed the

social and political pluralism prevailing in Mexico, the Court's avoidance of its role in government is dysfunctional. There is no doubt that Mexico's courts will be increasingly called upon to resolve new and difficult social issues. The reforms have set the stage for the Court to develop a new assertiveness and occupy a new position in Mexican social and political life. At a minimum, the "new" Supreme Court is more visible than ever before.¹⁶

It may be premature to attempt a full-fledged evaluation of the reform's merits and shortcomings because its impact and benefits will only become apparent over time.¹⁷ It is not premature, however, to review some of the challenges and problems faced by the Supreme Court in the past three years which may lead to further change. This article will focus on the National Supreme Court of Justice as both a major actor and target of reform.

More specifically, this article intends to briefly examine the activities, decisions, and new legal interpretations of the Court, as well as the problems and challenges it currently faces. For this purpose, it is divided into four parts. Part I offers a short overview of the major reforms made after 1917 to the Court's composition and jurisdiction. These reforms include the major changes introduced in 1987/88 which in turn build the immediate background for the 1994 Constitutional amendments. Part II describes the Court's principal activities during the last three years, emphasizing its new interpretations and contributions to legal doctrine. Part III offers a point of view on the problems and challenges the Court presently faces and how they may lead to future changes. Part IV offers some brief concluding remarks.

I: THE SUPREME COURT 1917-1994

A. Transition of the Supreme Court's role

1. The Status and the Role of the Federal Judiciary

Before addressing the major changes introduced to the Court's organization and jurisdiction after 1917, it is important to understand the Court's role and general situation between 1917 and 1994. Although the bulk of the Court's activity was concentrated in amparo matters, a strong and independent constitutional doctrine was

Court to review the legality of the federal electoral process, subject to the veto of Congress. The remedy was eliminated in 1987. According to the 1993 electoral reform, the Court could nominate four federal judges to sit in the Chamber of second instance of the Federal Electoral Court. In 1996, the Electoral Court itself was incorporated into the Federal Judiciary and the Supreme Court received the power to nominate all electoral judges. See MOCTEZUMA BARRAGÁN, *supra* note 14, 318 ff, and II, B, 2, (b).

16. Supreme Court decisions seem to be more frequently reported in newspapers, although it may be the cases are more relevant. Of 1063 newspaper notes on the Court published between February and August 1997, 208 were classified by the Court's press department as positive (19.56%), 813 (76.48%) as neutral, and 42 (3.95%) as negative. The present Supreme Court justices seem more willing to give lectures and press conferences, and to express their views in academic and other non-judicial publications. See the lectures and speeches of the Supreme Court's president and justices collected in *EL NUEVO PODER JUDICIAL DE LA FEDERACIÓN* (1997) and *LA TOGA Y LA PALABRA* (1997). The Supreme Court has created a publication series containing the public and private discussion of major cases, a bi-monthly magazine (*Legis Verba*) and an internet web-page page. See SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, *INFORMES ANUALES* (1996) and (1997).

17. For a critical review of the constitutional amendment, See GARCÍA RAMÍREZ, *PODER JUDICIAL Y MINISTERIO PÚBLICO* (1996).

not developed. There are several reasons for this. Most of them flow from the almost absolute dominance enjoyed by the President of the Republic over the two other branches of government and the political system as a whole.

For example, the amazing ease with which the Constitution could be amended made it very difficult for the Court to develop, except for in a few legal areas, a broad and consistent constitutional doctrine. Likewise, the amparo suit has been excluded by the Constitution or the Court's interpretation from politically sensitive areas. For instance, elections, agrarian reform, authorizations to establish private schools, and the expulsion of pernicious foreigners have all been excluded at one time or another. Some of these exclusions are no longer in force as they have been gradually eliminated (for example, the authorization to establish private schools). Moreover, available amparo judgments, especially in the so-called amparo contra leyes [amparo against judicial decisions], have limited effect.

Another hindrance to the creation of Supreme Court doctrine was the state of federal courts before 1980. Specifically, the very modest growth in the number of federal courts and the resources available to them forced procedural dismissals of amparo suits.¹⁸ Similarly, the establishment of specialized federal tribunals outside the Judicial Power of the Federation for labor, fiscal, and agrarian matters weakened the Supreme Court's authority. This and other limited opportunities to solve conflicts between the different branches and levels of government through legal means abrogated the Court's power.¹⁹ Finally, changes in the terms of office and appointment procedure of justices and judges limited their term in office.

Thus constrained, it is not surprising the Supreme Court and the Federal Judiciary occupied a relatively weak position in the Mexican political arena.²⁰ Although they certainly managed to prevent and correct many violations of citizens' rights by the public authorities, at other times, they were unnecessarily deferential to those authorities.²¹ In any case, the Supreme Court was prevented from fully playing its role as a countervailing power and as the ultimate defender of the Constitution.

18. CIDAC, *supra* note 9, 63-80.

19. Between 1917 and December 31, 1994, a total of 55 constitutional controversies were filed before the Supreme Court: 14 between the Federation and a state; 22 among the powers of the same state; 1 between different states; and 13 between a state and its municipalities. See COSSÍO DÍAZ, *Comentario al artículo 105 constitucional*, in CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS COMENTADA, 1053 (9th ed. 1997). Very few of these controversies were resolved as to the merits. The most famous was the Oaxaca case, decided in 1932. The case involved the ownership of artifacts found at the archaeological site in Monte Albán, Oaxaca. The Federal Government challenged the Oaxacan state law on the Dominion and Jurisdiction over Archaeological Monuments which the Supreme Court invalidated because it encroached on federal powers. See FIX-ZAMUDIO, *INTRODUCCIÓN AL ESTUDIO DE LA DEFENSA DE LA CONSTITUCIÓN EN EL ORDENAMIENTO MEXICANO* 53 (1994).

20. For a more direct treatment of the Mexican judiciary's weakness, See TAYLOR, *supra* note 10. See SCHWARZ, and GONZÁLES CASANOVA, *supra* note 13.

21. CIDAC, *supra* note 9, 68-73, offers some instances of Supreme Court interpretations that either condoned or even fostered unintentionally such violations.

2. Reforms Between 1928 and 1968²²

In 1917, the amparo suit against judicial decisions was finally accepted by the Constituent Congress.²³ The Court recuperated its original composition of 11 members, working only en banc. The justices were appointed by Congress at the proposal of local legislatures. In 1928, the number of justices was increased from 11 to 16 and three chambers were reintroduced. The appointment procedure was modified and the justices were thereafter appointed by the President of the Republic and approved by the Senate.

In 1934, a fourth chamber with jurisdiction in labor matters was introduced and the number of justices increased to 21. In 1951 a fifth auxiliary chamber composed of five justices was created to help the Court with its tremendous backlog. The first five *Tribunales Colegiados de Circuito* [collegiate circuit courts], were modeled on the U.S. Circuit Court of Appeals. They were established to support the Supreme Court in deciding some procedural aspects of *amparos contra leyes*. Although 27,000 amparo suits were transferred to the circuit courts a backlog of more than 8,000 cases in 1960 and 16,000 by the end of 1965 remained.²⁴ A new distribution of jurisdiction between the Supreme Court and the circuit courts was attempted in 1968 to alleviate the backlog.

Two important reform bills were introduced into Congress in 1944 and 1959, though neither passed, addressing the backlog problem. Essentially, both would have transformed the Supreme Court into a court specialized in constitutional matters. This was finally accomplished by the 1987/88 and 1994 reforms.²⁵

B. The Supreme Court as a Constitutional Court

1. The Reform of 1987/88²⁶

An important reform entered into force on January 15, 1988. Specifically, the final decision making power on all *amparos contra leyes* was transferred to the circuit courts. However, the final decision on the constitutionality of general legal provisions remained with the Supreme Court. The Court also maintained the power to resolve inconsistencies between circuit courts' interpretations. Additionally, it

22. See CABRERA, *EL PODER JUDICIAL FEDERAL MEXICANO Y EL CONSTITUYENTE DE 1917* (1968); FIX-ZAMUDIO, *supra* note 3; FIX-ZAMUDIO & COSSIO DIAZ, *supra* note 3, and TAYLOR, *supra* note 10.

23. Originally, the amparo suit didn't apply to judicial decisions, per Article 8 of the Amparo Law of 1869. However, Article 14 of the 1857 Constitution, provided persons could be judged or sentenced only under laws enacted prior to the case and exactly applicable to it (no *ex post facto*). This allowed the Court to consider that a constitutional right was violated whenever an ordinary law was incorrectly applied by a court. The Court adopted this policy for complex reasons including mistrust of the state courts. This resulted in the concentration of all ordinary judicial matters before the Court, giving way to what Emilio Rabasa termed the impossible task of the Supreme Court in his classic study on Article 14 of the 1857 Constitution. It also had the effect of obliterating the functions of the Court as an organ of constitutional control in favor of its role as a guardian of ordinary legality.

24. *Id.*, at 306.

25. *Id.*, at 301-302, 305. The first bill, proposed by the President of the Republic, failed due to opposition by the Court. The second, proposed by a senator, was dismissed by the Senate as too radical. See also BRENA SESMA, *Un 'radical' proyecto de reformas al Poder Judicial*, in *REFORMAS AL PODER JUDICIAL*, 37-44 (Mario Melgar Adalid ed., 1995).

26. See FIX-ZAMUDIO, *La Suprema Corte como tribunal constitucional*, in *LAS NUEVAS BASES CONSTITUCIONALES Y LEGALES DEL SISTEMA JUDICIAL MEXICANO. LA REFORMA JURIDICAL 1986-1987*, 345-90 (1987).

received new administrative and governance powers, such as the power to establish new courts and, in general, a broader administrative autonomy.

2. A New Beginning? The Reforms of 1994 and 1996

a) The 1994 reform

The 1994 reform carried the previous reforms further. It introduced changes that brought the Supreme Court closer to a European-style constitutional court, but without completely abandoning its roots in the American model of constitutional justice.²⁷ The changes made to that end were:

- The Court is again composed of 11 justices, who will stay in office for a fixed, non-renewable period of 15 years;²⁸
- The transfer of governance and administration of the federal courts, excluding the Supreme Court itself, to the Council of the Federal Judiciary;²⁹
- The introduction, in Article 105 section II of the Constitution of the 'abstract' actions of unconstitutionality,³⁰ and,
- The new regulation of the constitutional controversies between the federal, state, Federal District, and municipal governments in Article 105 section II of the Constitution.

Additionally, actions of unconstitutionality and constitutional controversy are to be decided directly and exclusively by the Supreme Court sitting en banc. The Supreme Court is subjected, however, to two important limitations. First, electoral matters were exempted from review. Second, while the Court may invalidate *erga omnes* [with general effects] a legal provision it deems unconstitutional, it may do so only with a qualified majority of eight votes out of eleven. This type of vote is difficult to achieve, especially where controversial constitutional issues are involved.³¹

27. For a brief description of the differences and converging trends between the U.S. and the Austrian (or European) models of constitutional adjudication, See CAPPELLETTI, *THE JUDICIAL PROCESS IN COMPARATIVE PERSPECTIVE*, 132-49 (1989).

28. Until December 1994, Supreme Court justices could only be removed from office for a good cause and were subject to mandatory retirement at age 70. The present fixed-term system, with no mandatory retirement age, has been criticized because it allegedly eliminated the life tenure [*inamovilidad*] of Supreme Court justices. However, the majority of justices rarely stayed in the Court for long. Many justices retired after a few years to move to more politically attractive positions, such as governor of a state. The average term of the 79 justices appointed after 1947 and who retired before December 1994 is 10.27 years. 36 justices (45%) remained for a longer period (up to 29 years); and 43 justices (55%) did not complete 10 years (one served under one year); 62 justices (78%) stayed in office less than fifteen years. The new rules increase the likelihood judges will complete the 15 year term. (estimates based on data from FIX-ZAMUDIO & COSSIO DÍAZ, *supra* note 3, 630-33).

29. Constitutional courts usually do not belong to the ordinary court system and consequently do not have any governing or administrative responsibilities with respect to it.

30. *Acciones de inconstitucionalidad*. This action is called abstract because the plaintiff is not required to demonstrate a specific legal interest (standing).

31. In the case of constitutional controversies, laws challenged from below (for example, a federal law challenged by a state government or a state law challenged by a municipal government) are not subject to this requirement. However, they cannot be invalidated with general effects [*erga omnes*], thus impacting only the case at hand [*inter partes*]. Therefore, a federal law successfully challenged by a state as unconstitutional is invalid only in the territory of that state.

b) The 1996 Reform

The exception of electoral matters was eliminated as a part of an important federal reform in 1996.³² Consequently, local and national political parties may now challenge electoral laws.³³ Further, the Federal Electoral Court was incorporated into the Judicial Power of the Federation and its organization and jurisdiction were redefined. Specifically, the Chamber of Deputies now appoints electoral judges at the proposal of the Supreme Court. Two new procedures, which redress violations of political-electoral rights citizens' and unconstitutional determinations of state electoral authorities, were established and entrusted to the Electoral Court. These procedures form a special kind of electoral amparo suit.

Decisions by the Electoral Court of the Judicial Power of the Federation [Electoral Court], as its name now officially reads, cannot be further challenged and are not subject to any form of review by the Supreme Court. The Supreme Court may only resolve the contradictions that arise between its own and the Electoral Court's constitutional interpretations and precedents.³⁴

II. THE SUPREME COURT'S ACTIVITIES 1995-1997

A. Actions of Unconstitutionality and Constitutional Controversies

1. Actions of Unconstitutionality

According to the official statistics of the Supreme Court, only one action of unconstitutionality was filed with the Court in 1995. In 1996 the number increased to eight, and in 1997, to sixteen.³⁵ Fifteen judgments were published between April of 1995 and January of 1998.³⁶ All but one of the actions concerned the constitutionality of local and federal electoral laws. Five actions were dismissed for procedural reasons. One because the party that brought it had no standing for lack of official registration as a political party.³⁷ Another for having not been brought within the constitutionally stipulated time frame.³⁸

32. See ANDRADE SÁNCHEZ, *LA REFORMA POLÍTICA DE 1996 EN MÉXICO* (1997).

33. The constitution now explicitly states that the constitutional challenge under Article 105, section II, is the only procedure to challenge the constitutionality of electoral laws.

34. CONST., Art. 99, ¶ 5.

35. See *Suprema Corte de Justicia de la Nación, Informes anuales* (1995), (1996) and (1997) and Table 2, below.

36. Actions of Unconstitutionality [Acción de Inconstitucionalidad] (hereinafter AdI) 1/95, in 3 *Semanario Judicial de la Federación y su Gaceta* (hereinafter: *SJF*; all references to the ninth epoch [novena época. An "época" is started each time an important reform is made to the structure and jurisdiction of the Federal Judiciary. So for example, the seventh period was started in 1968 and the eighth in 1988.], March, 84 (1996); *AdI* 1/96, in 3 *SJF*, March, 350-434 (1996); *NESTFORM* (*AdI* 7/96, 6/96, 8/96, 9/96 and 10/96, in 5 *SJF*, February, 357, 373, 411, 436, 470 (1997); *AdI* 2/97, in 5 *SJF*, March, 567 (1997); *AdI* 5/96, in 5 *SJF*, April, 107 (1997); *AdI* 3/97, in 5 *SJF*, May, 397 (1997); *AdI* 6/97, in 6 *SJF*, December, 447 (1997); *AdI* 7/97, 8/97, 9/97 and 10/97, in 7 *SJF*, January, 677, 653, 778 and 735 (1998)". *AdI* 9/97, in *Diario Oficial de la Federación*, January 511 (1998).)

37. *AdI* 7/96, *supra* note 36.

38. *AdI* 2/97 and 3/97, *supra* note 36. CONST. art. 105, Sec. 11, ¶ 2 requires challenges to the constitutionality of new laws be filed within 30 days of their publication.

Two actions were dismissed by a vote of six to five. The first³⁹ referred to the Law of Citizens' Participation for the Federal District (1995). This law established *consejos ciudadanos* [citizens' councils]⁴⁰ in each of the sixteen administrative districts of the capital. The law prohibited political parties from nominating their own candidates for these councils.⁴¹

The minority in the Legislative Assembly of the Federal District, which had passed this law, challenged it before the Court. They claimed the law violated the constitutional right of parties to nominate candidates for popular elections granted to them by Articles 41 and 122 of the Constitution. The majority of the Court held the claim fell under the electoral matters exception and ordered a dismissal. Specifically, it held that:

...although it is true that from a theoretical or doctrinal point of view a distinction can be drawn between the right to nominate and the nomination itself, such difference lacks support in the positive law, on account that the former is a right intended to be exercised precisely in the electoral process, and which cannot be separated from the effect or consequence sought through it, which is no other than to intervene in that process.⁴²

The two dissenting opinions sought to circumvent the electoral exception. The first argued that not every election belonged in the category of electoral matters. It further argued that citizens' councils were not one of the organs of government of the Federal District provided for by Article 122. Interestingly, it also argued that the violations claimed by the plaintiffs were not sufficient to challenge the validity of the law. The challenged provisions were based on the Statute of Government for the Federal District⁴³ which was passed and amended by the Congress of the Union. Therefore, this Statute could not be implicitly declared unconstitutional and invalidated by the Court in the proceedings at hand.⁴⁴

The second dissenting opinion, formulated by four justices, attempted to dissociate the right of political parties to nominate candidates for popular election from electoral matters. The opinion arrived at a restrictive and procedural concept of such matters. Consequently, the right to nominate a candidate was viewed as belonging to the broader category of political rights and as necessarily pre-existing the electoral process proper.⁴⁵

The second action for unconstitutionality was dismissed on grounds that the secretary general of the political party did not legally represent the party. The minority opinion criticized the majority's decision, considering it too rigorous and

39. *AdI 1/95, supra* note 38.

40. *Consejos ciudadanos* [citizen councils].

41. Understandably, the parties sought ways to circumvent the prohibition by supporting candidates of their political affinity and by making this somehow known to the citizenry.

42. P. CXXX/95, *AdI 1/95, supra* note 36, 84-85 (translation by HFF). "P." refers to the full Court [*Pleno*]; the Roman number indicates that it is an isolated thesis or interpretation that might not be binding precedent, depending on the vote. Binding precedents are designated by "J" (*jurisprudencia*), followed by Arabic numbers.

43. *Estatuto de Gobierno del Distrito Federal* (1994), as amended.

44. *Voto particular del Ministro Castro y Castro, AdI 1/95, supra* note 36, 224.

45. *Voto de minoría de los Ministros Aguirre Anguiano, Azuela Güitrón, Góngora Pimentel y Gudiño Pelayo, AdI 1/95, supra* note 36, 238. Although the exception for "electoral matters" has been removed from the Constitution with regard to the actions of unconstitutionality, it is still applicable to the constitutional controversies, so this discussion on the definition of "electoral matters" may become relevant again in the future.

formalistic. In other words, it was not conducive to the central purpose of an action of unconstitutionality: to ensure the supremacy of the Constitution over ordinary legislation.⁴⁶

In addition to the two actions of unconstitutionality which were dismissed, ten actions were decided on the merits. Eight of the ten cases sustained the constitutionality of the challenged statutes. In two cases the court partially invalidated the local statutory provisions challenged.

One action involved the constitutionality of the General Law that Establishes the Coordination Bases for the National System of Public Security.⁴⁷ The parliamentary minority that challenged it essentially claimed the law conflicted with Article 129 of the Constitution. Article 129 prohibits military authorities from exercising functions not strictly connected with military discipline in times of peace. In this case, the Secretary of National Defense and the Secretary of the Navy were made members of the National Council of Public Security. The Court held that participation of the Armed Forces in actions related to public security is constitutional. However, the express request of civilian authorities, the strict subordination to such authorities, and subordination to the laws are required.⁴⁸

Four actions challenged different aspects of the 1996 amendments to the Federal Code of Electoral Institutions and Processes.⁴⁹ The most controversial issues were the changes to the public financing and accounting procedures of political parties. However, the Court unanimously declared them constitutional and no legal provision was invalidated.⁵⁰

The 1996 electoral reform introduced important improvements to the regime of public financing and the monitoring mechanisms for enforcing the respective rules. A substantial increase in the amount of public funds served as the catalyst for the two main opposition parties filing an action of unconstitutionality.

The new rules increased funding to approximately 2 billion pesos, or about 280 million U.S. dollars, for the 1997 electoral year. The increase was justified publicly by the President of the Republic for reasons of State. The purpose was to make public financing the predominant form of funding for the parties, consequently reducing their dependence on private donation. Both opposition parties challenged the new procedures for calculating a minimum campaign cost. The procedures form the basis from which their allocation of public funds would be made. The Supreme Court ruled the procedures were not unconstitutional.

The five state electoral actions of unconstitutionality arose in Oaxaca, Baja California (two) and Chihuahua (two), but resulted only in the partial invalidation of

46. *Voto de minoría de los Ministros Aguirre Anguiano, Azuela, Góngora Pimentel, Gudiño Pelayo y Sánchez Cordero*, *Adl 5/96*, *supra* note 36, 119, 123, 125. Moreover, the justices noted that no one had challenged the plaintiff's standing nor had he alleged and proven it. (at 124, 128).

47. *Ley General que Establece las Bases de Coordinación del Sistema Nacional de Seguridad Pública* (1996).

48. *P. XXVII/96, Adl 1/96*, *supra* note 36, 350, 436-437.

49. *Código Federal de Instituciones y Procesos Electorales (CFIPE)*(1990), as amended.

50. *Adl 6/96, 8/96, 9/96 and 10/96*, *supra* note 36. See binding precedents *P./J. 32/97, P./J. 33/97 and P./J. 34/97* on the public financing of political parties, in *5 SJF*, June, 339 (1997), reproduced in the *Anexo al Informe Anual*, 39-43 (1997). National political parties receive public funds for the different kinds of activities they carry out (CONST. art. 41). They receive money for participating in federal electoral campaigns, for access to communication media, and for research activities and publications. Part of the money is distributed according to the electoral force of each party (number of votes obtained in the last election), and another is allocated on an equal basis.

two statutory provisions.⁵¹ First, the invalidated Oaxacan provision granted political parties an additional amount of money for an electoral year in which the state's governor would be elected. The Supreme Court decided that the provision could not be applied during the electoral process of 1998. Simply, it had not been promulgated and published at least 90 days before the beginning of such process as mandated by Article 105 section II of the Constitution. Second, the Chihuahua provision was invalidated for insufficient definitions, and the state legislature was ordered to correct it by defining two missing subsections.

2. Constitutional controversies

According to official statistics of the Supreme Court, 21 constitutional controversies were filed in 1995, 63 in 1996, and 32 in 1997.⁵² Between April 1995 and January 1998, 24 judgments and incidental decisions on constitutional controversies were published.⁵³ All suits but three were brought by municipalities against state governments. Four controversies were dismissed on procedural grounds.⁵⁴

Several of the challenges concerned the powers of a state legislature to fix salaries for members of municipal governments. These controversies centered on state legislature's powers to approve budgets, review the use of public funds, and promulgate laws regarding the official accountability of municipal public servants. Essentially, these challenges questioned the power of the state comptroller general to intervene in municipal finances.⁵⁵ Specifically, plaintiffs claimed that such powers provided for in the state Constitution were in contradiction with the autonomy granted to them by Article 115 of the Federal Constitution.

The Court ruled unanimously that municipalities were autonomous but not sovereign. That is, their autonomy does not preclude the state legislature from moderating the power of a municipal government to approve its own budget.⁵⁶

51. *Adl* 6/97, 7/97, 8/97, 9/97 and 10/97, *supra* note 36.

52. See *Suprema Corte de Justicia de la Nación, Informes Anuales* (1995), (1996) and (1997) and Table 2, below.

53. Not all judgments are published. Similar controversies are resolved by similar judgments, and only one is published. Several judgments concern controversies that were filed before the constitutional amendment entered into force.

54. One of them, because the plaintiff failed to move in a two-year period; in another, the plaintiff withdrew its claim; and in a third one, the constitutional controversy was not the appropriate action to challenge an ordinary court decision. See *Controversia constitucional 2/94*; *controversia constitucional 12/95*, in 5 *SJF*, May, 409, 416 (1997); *controversia constitucional 1/94*, in 5 *SJF*, March, 579 (1997); *Controversia constitucional 18/95*, in 5 *SJF*, June, 562 (1997).

55. *Controversia constitucional 3/93*, in 3 *SJF*, March, 262 (1996); *controversia constitucional 13/95*, in 3 *SJF*, June, 394 (1996); *controversia constitucional 4/95*, in 4 *SJF*, July, 240 (1996); *controversia constitucional 8/95*, in 4 *SJF*, August, 304 (1996); *controversia constitucional 9/95*, in 4 *SJF*, September, 402 (1996). All these actions were brought by several municipalities, governed by an opposition party, of the northern State of Nuevo León.

56. However, in subsequent controversies, two justices decided to change their opinion, and considered instead that MEX. CONST. Article 115, section IV, was clear that although the state legislatures had the power to pass the municipalities' revenue laws (municipal taxes), but also the municipal governments alone had the power to approve their own budgets, including the remuneration for municipal officials, without the intervention of any other agency. See *Voto minoritario de los Ministros Gudiño Pelayo y Aguirre Anguiano, controversia constitucional 13/95*, *supra* note 55, 446. CONST. art. 115, sec. IV, ¶ 3 states: "State legislatures shall pass the municipalities' revenue laws and shall review their public accounts. Budgets shall be approved by the municipal governments on the basis of their available income". CONST. art. 115, sec. IV refers generally to the financial autonomy of municipalities. Municipalities may freely administer their revenue, such as real-estate taxes.

Another challenge concerned the powers of the state legislature to establish an administrative tribunal for hearing claims brought by private citizens against the state and municipal public administration. The plaintiff argued the state government had to either establish a separate tribunal or sign an agreement with the municipalities allowing controversies against them to be brought before the state tribunal.⁵⁷

An amendment to the state Constitution and Organic Law of the State Judicial Power was also challenged. The amendment conferred on the State Superior Court of Justice the power to resolve all kinds of disputes between two municipalities and between municipalities and the state governments. The Court rejected the claim that this power was inconsistent with and encroached upon the powers of the federal courts. While a state court may decide constitutional conflicts, it may do so only with reference to the state Constitution. It is an exclusive power of the federal courts to decide federal constitutional questions.⁵⁸

In another suit, the establishment of a State Institute for Municipal Development with training, advisory, and research functions was challenged. The Court held these functions were not an unconstitutional intervention in the responsibilities entrusted to municipal governments.⁵⁹

The creation of the Board for Moral, Civic, and Material Betterment of the State of Nuevo León was also challenged. The Court held the Board did not encroach upon the constitutional functions of the municipal government nor intervene between the state and municipality. They found that the board was not an "intermediate authority" exercising independent and unilateral decision-making powers because its funding was approved by the state legislature. Furthermore, the Board was held to not effect the autonomous economic administration of the municipalities.⁶⁰

Only one municipality was able to win its case against a state government. The municipal government of Río Bravo, Tamaulipas, successfully challenged a provision in the state Constitution which gave the governor the power to appoint a chief of police in each municipality. The Court held this power to be unconstitutional since the Federal Constitution reserves to municipalities control of public security. This includes the power to appoint and remove police officials.⁶¹

Of the three other controversies mentioned, one case was brought by a state against the federal government to prevent the Attorney General of the Republic from investigating the alleged misuse of electoral campaign funds. The state considered the investigation an invasion of its sovereignty. In the second case, a municipality challenged a section of the Federal Budget which grants certain funds to state and municipal governments. Plaintiffs claimed they were a part of the municipal treasury and therefore subject to its free administration. The third case involved a challenge by the federal government to municipal regulations.

In the first case, the Court ruled that a federal criminal investigation does not invade a state's jurisdiction. It also held that the federal public prosecutor had an

57. *Controversia constitucional* 1/95, in 3 *SJF*, May, 315 (1996).

58. *Controversia constitucional* 7/95, in 4 *SJF*, September, 359 (1996).

59. *Controversia constitucional* 6/96, in 5 *SJF*, March, 584 (1997). In the same sense were 21 other controversies resolved, all brought by municipal governments of the State of Oaxaca.

60. *Controversia constitucional* 2/95, in 5 *SJF*, June, 344 (1997).

61. *Controversia constitucional* 19/95, in 4 *SJF* November, 250 (1996). Since this controversy was filed by a municipality against a state government, the declaration of unconstitutionality of the challenged provision in the state Constitution did not invalidate it *vis-a-vis* the rest of the state's municipalities.

obligation to investigate alleged federal crimes.⁶² In the second case, the Court rejected the challenge to a section of the federal budget. The section contained federal revenue shares, which can be freely administrated by municipal governments.⁶³ In the third case, the Court invalidated the Regulations for the Protection and Security of Banks of the Municipality of Guadalajara, Jalisco. The Court ruled that it encroached upon the exclusive federal power to regulate banking institutions, including the devices and actions required for their protection and security.⁶⁴

B. Amparo Proceedings

The Supreme Court has established new and important binding interpretations and isolated precedents in amparo proceedings. Some of the most relevant are described hereafter.

1. Constitutional rights

a. Freedom of association

The Court declared the mandatory affiliation of businesses with the chambers of industry and commerce to be in conflict with Article 9 of the Constitution.⁶⁵ The laws in two states which permitted only one employee union in government departments and agencies were also invalidated.⁶⁶

b. Excessive fines

The Court ruled the prohibition of excessive fines in Article 22 of the Constitution comprises all kinds of fines, not only those imposed as a criminal sanction. The Court further ruled that fixed fines that do not take into account the specific circumstances of the violation or of the offender are unconstitutional.⁶⁷

c. Administrative arrest for contempt of court

The Court decided that an arrest for contempt of court⁶⁸ may not exceed 36 hours.⁶⁹ The ruling analogized limits imposed by Article 21 of the Constitution which provides limits for an arrest as a sanction for administrative violations.

d. Proportionality and equitableness of taxes

Article 31 section IV of the Federal Constitution states that Mexican citizens have the obligation to contribute to the public expenses of the Federation, the Federal District, or the State or municipality in which they reside. The contribution is "in the

62. *Controversia constitucional* 11/95, in 3 *SJF*, May, 362 (1996). See the binding interpretations with numbers P./J. 31/96 to 39/96, in 3 *SJF*, June, 385-394 (1996).

63. *Participaciones fiscales federales*. See *Controversia constitucional* 6/95, in 5 *SJF*, June, 421 (1997).

64. *Controversia constitucional* 56/96, in 6 *SJF*, July, 173 (1997). The judgment was also published in the "Diario Oficial de la Federación", July 14, 1997, second section.

65. P./J. 28/95, in *Anexo al informe anual*, 37-38 (1995).

66. P. 1/97, in *Anexo al informe anual*, 91-92 (1997).

67. P./J. 7/95, P./J. 9/95 and P./J. 10/95, in *Anexo al informe anual*, 14-18 (1995).

68. *Arresto como medio de apremio*. Arrest as a method of applying pressure.

69. P./J. 23/95, in *Anexo al informe anual*, 31-32 (1995).

proportional and equitable manner provided for by the laws.⁷⁰ The Court reviewed a great number of tax laws relating to this section and found some to be unconstitutional.⁷¹ The Court also extended and applied the requirement of equitableness to fees charged by the state for public services.⁷²

e. Domiciliary visits

Article 16 of the Constitution allows public authorities to carry out domiciliary visits for the purpose of monitoring the compliance of taxpayers with tax laws. The Court issued some binding and isolated interpretations that further define and circumscribe the rights of citizens. The interpretations also spoke to the obligations and prohibitions on officials carrying out a visit. For example, officials may not take accounting books to the tax authority's offices for inspection.⁷³

f. Access to the courts

The Court ruled that requiring mandatory exhaustion of conciliation proceedings before resorting to the courts contradicts the guarantee contained in Article 17 of the Constitution.⁷⁴

2. Jurisdiction and procedure in amparo matters

The Supreme Court has been very active in defining and redefining some jurisdictional and procedural aspects of the amparo suit:

a. Non-compliance with amparo judgments

Reversing a previous interpretation, the Court ruled non-compliance exists not only when the public authority completely fails to comply with an amparo judgment, but also when compliance is not effective. That is, an authority is in non-compliance when they take action that can viewed as secondary, preliminary, or insignificant regarding an amparo ruling.⁷⁵

70. MEX.CONST. art. 31 § IV.

71. For example, the *impuestos al activo de las empresas* [tax on business assets], which the Court declared unconstitutional a few years ago, because doesn't give taxpayers the opportunity to offset it with their income tax. However, some interpretations were adopted by a majority of six votes, which don't constitute binding precedent. See P. XLVI/95 and XLVII/95, in *Anexo al informe anual*, 104-105 (1995). However, the Court held also that the exemption of financial institutions from this tax violated the principle of equitableness. P.JJ. 10/96, in *Anexo al informe anual*, 22-23 (1996). On the elements that define tax equitableness, See P.JJ. 41/97 and P.JJ. 42/97, in *Anexo al informe anual*, 50-52 (1997).

72. So, for example, P.JJ. 21/95 (fees for the discharge of water in the public sewers) and P.JJ. 26/95 (fees for the use of air space by aircraft), both in *Anexo al informe anual*, 29-30, 34-36 (1995).

73. P.JJ. 52/95, in *Anexo al informe anual*, 11-12 (1996). Officials may place a seal or mark on accounting books and correspondence, in order to secure them, but not on furniture, file cases and offices. See P. IV/96 and P. CXXV/95, in *Anexo al informe anual*, 97-98, 88 (1996).

74. P. CXII/97, in *Anexo al informe anual*, 177-178 (1997).

75. P. LXV/95, in *Anexo al informe anual*, 19-20 (1995). Non-compliance is a significant problem with amparo judgements as attested by the number of related petitions the Supreme Court has to decide each year. Under the Constitution (MEX. CONST. art. 107, § XVI), any public official who repeats the action challenged in amparo or who evades compliance with the judgement shall be immediately removed from office and prosecuted before a district judge. However, the Supreme Court has rarely used this power (recently, it removed an official of the government of the Federal District, in a case that concerned license plates for public transportation two years after the amparo judgement). MEX. CONST. art. 107 § XVI was also amended in 1994. The amendment allows the Supreme Court to find the non-compliance excusable or inexcusable. If it is inexcusable and the offending public authority has had

b. Suspension of challenged actions

Under certain circumstances, an action by a public authority that is challenged through an amparo suit may be suspended for the duration of the proceedings. The Court ruled that in ordering a suspension or injunction, the judge may consider the nature of the right and alleged violation involved. That is, the judge may consider the probability that the final judgment will grant the protection sought by the plaintiff.⁷⁶

c. Concept of public authority for amparo suits

The amparo suit can only be used to challenge actions by public authorities. Consequently, the concept of public authority is of central importance to the admissibility of a suit. The Court formulated a broader concept than established in the 1920's which was restrictive.⁷⁷ According to the new definition, a public authority is any official of a public agency who can legally adopt unilateral actions that create, modify, or extinguish the rights of citizens.⁷⁸ This concept is designed to include actions by public decentralized organisms, such as PEMEX, against which the amparo suit was generally unavailable. This new definition has the potential of expanding constitutional protection against actions by public agencies, such as utilities, which are not considered part of the government.⁷⁹

d. Amparo against constitutional amendments

The Court recently dealt with whether a constitutional amendment could be reviewed through an amparo proceeding. The Court decided by a vote of six to five that the concept of laws in Article 103 section I of the Constitution should be given a broad meaning. Therefore, the legislative process that results in a constitutional amendment can be challenged but the amendment's substance cannot.⁸⁰

e. Amparo against the public prosecutor for not bringing criminal charges

The 1994 constitutional amendment incorporated in Article 21 the ability to challenge a public prosecutor's decision not to bring criminal charges. Since this

a reasonable period of time to comply with the judgement the Supreme Court can remove him from office. The new constitutional regulation also provides for other sanctions including compensatory damages. The amendment has not yet entered into force, pending the amendment of the Law of Amparo.

76. P.J. 15/96 and P.J. 16/96, in *Anexo al informe anual*, 28-30 (1996).

77. This restrictive definition worked later to a certain extent as protection against rising caseloads.

78. P. XXVII/97, in *Anexo al informe anual*, 112-13 (1997).

79. *Organismos públicos descentralizados* [public decentralized organisms] are governmental agencies which enjoy varying degrees of autonomy including regulatory powers. They have legal personality (incorporation) and manage their own funds. Public decentralized organisms include state monopolies like *Petróleos Mexicanos* (Pemex) or the *Comisión Federal de Electricidad* (CFE), the governmental commissions for the protection of human rights, and public universities like the *National University* (UNAM), and the central bank (*Banco de México*).

80. *Amparo en revisión* 1995/96, in 5 *SJF*, March, 497, 562 (1997). The minority opinion considered that this interpretation could have harmful effects, since the courts cannot be certain of the constitutional provisions which might conflict with statutes.

provision has not been implemented by ordinary legislation, the Court recently decided that the amparo suit is available in these cases before a district judge.⁸¹

C. Other Proceedings

1. Review of Council of the Federal Judiciary decisions

Pursuant to Article 100 of the Federal Constitution decisions of the Council of the Federal Judiciary are final and not subject to further challenge. However, decisions that concern the appointment, assignment, and removal of district and circuit judges can be reviewed by the Supreme Court. The review is limited to “verifying that they have been adopted according to the rules set forth by the respective organic law.”⁸²

Between 1995 and 1997, a total of 22 administrative review proceedings were filed with the Supreme Court.⁸³ The Court has issued some important interpretations:

- The Supreme Court has the power to carry out a careful and complete review of the procedure, facts, evidence, motives, and grounds that support the decision of the Council, and to determine if the formal and substantive requirements of the law have been satisfied;⁸⁴
- The completion of a six-year judicial term does not allow the Council to prevent judges from staying in office unless the Council justifies their decision denying a judge continued service. Any other interpretation would run counter to the newly created judicial career system;⁸⁵
- The clerk temporarily replacing a circuit judge who was removed for bad behavior may start the administrative review procedure;⁸⁶ and,
- On charges of notorious ineptitude or negligence by a judge, the Council of the Federal Judiciary may not review the legality of judicial decisions. However, the Council may assess the foundations and motives that support a decision to determine if a judge’s attitude displayed in a decision is consistent with the nature of judicial functions.⁸⁷

Thus, the Court had the opportunity to decide some important issues related to its own powers and the powers of the Council of the Federal Judiciary. While the Court does not appoint or remove federal judges anymore, it may play an important role in shaping the legal status, rights, and responsibilities of the Federal Judiciary.

81. P./J. 91/97 and P. CLXIV to P. CLXVII, in *Anexo al informe anual, suplemento noviembre*, 16-17, 45-49 (1997).

82. MEX. CONST. art. 100.

83. See *Suprema Corte de Justicia de la Nación, Informes anuales*, (1995), (1996) and (1997), as well as Table 2, below.

84. P. XXI/96, in *Anexo al informe anual*, 110-111 (1996).

85. P. XLIX/97, in *Anexo al informe anual*, 130-131 (1997). In other words: the six-year term to which Article 97 of the Constitution refers does not conclude by the mere lapse of time. It necessarily requires a decision by the Council ratifying, promoting or denying ratification to the judge concerned. The absence of a qualified majority needed for ratification (five votes out of seven) is not equivalent to non-ratification. P. LII/97, in *Anexo al informe anual*, 133-134 (1997).

86. P. CXLIII/97, in *Anexo al informe anual*, 204-205 (1997).

87. P. CXLV/97, in *Anexo al informe anual*, 205-206 (1997).

2. Article 97 investigation

Article 97, second paragraph, of the Federal Constitution states that the Supreme Court:

[M]ay appoint one or several of its members, a District or a Circuit judge, or designate one or several special commissioners, whenever it so deems to be convenient, or at the request of the Federal Executive, a Chamber of the Congress of the Union or the governor of a state, only for the purpose of investigating an event or events that may result in a grave violation of an individual guarantee.⁸⁸

In March 1996 the President of the Republic requested the Supreme Court conduct an investigation on the tragic events of June 1995 pursuant to this provision.⁸⁹

The Court designated two justices to carry out the investigation. The justices, acting as would a Special Master, collected evidence and interviewed government officials and other interested persons. Their report was adopted by the full Court on April 23, 1996, and sent to the President of the Republic, the Congress, the Attorney General, and the governor and Superior Court of Justice of Guerrero.⁹⁰ The report concluded that a grave violation of individual guarantees had occurred and that several officials of the state government, including the governor at the time, were directly responsible for the cover-up that followed the investigated events.

The Court was assigned to investigate the matter in hopes that its report would have credibility in the public opinion.⁹¹ However, the Court was well aware the report's findings would not have any legal consequences.⁹² Nevertheless, it was unfortunate the report had no visible effects⁹³ other than the precedents and interpretations issued on the scope and meaning of its investigative powers under Article 97.⁹⁴

III. THE SUPREME COURT: CHALLENGES AND PERSPECTIVES

A. Position and powers

The 1994 reform has several technical errors that can and should be corrected, such as the requirement of eight votes for the invalidation of a law with general effects.

88. Translation by H.F.F.. This power was last used in 1946 to investigate a massacre in the State of Guanajuato. See MOCTEZUMA BARRAGAN, *supra* note 15, 320-321.

89. *Solicitud* 96, in 3 *SJF*, June, 460 (1996). In Aguas Blancas, Guerrero, the police killed 17 persons and wounded 20.

90. *Id.*, at 511.

91. It should be noted that prior to the Court's intervention, the National Commission of Human Rights had conducted an investigation and made recommendations that led to the resignation or prosecution of several high officials of the state government. For this reason, the Court rejected previous petitions by private organizations to exercise its powers under Article 97.

92. *Id.*, at 468.

93. The governor took a voluntary leave of absence during the proceedings to prevent the possibility he might obstruct or interfere with the investigation.

94. P. LXXXVI/96 to P. XC/96, in 3 *SJF*, June, 459, 513-517 (1996) and *Anexo al informe anual*, 162-166 (1996).

However, an aspect that will be much more difficult to modify is the position of the Supreme Court itself. Much as the U.S. Supreme Court does, the Court now enjoys a rather ambiguous position as both a constitutional court and the highest ordinary court of the country. While this situation is not completely unproblematic in the United States, it is made manageable by the Supreme Court's discretionary power. Specifically, the U.S. Supreme Court may select its caseload by certiorari. Also, U.S. state courts, where most cases are heard and finally judged, have a high degree of autonomy.

Conversely, Mexican courts have no power of certiorari nor are the state courts as autonomous as their U.S. counterparts. The issue is further complicated by new functions the Court has assumed following the European model of constitutional courts. Clearly, the most desirable solution would have been to create from the beginning, as many civil-law countries have done, a separate constitutional court alongside an ordinary Supreme Court. Such a solution is not likely to be realized any time soon, so the existing institutional design will have to be taken as an appropriate basis for further developments.

B. Workload

The Presidential Bill of December 1994 justified reducing the number of justices by stating the Supreme Court's backlog was practically non-existent. Furthermore, the bill said the proposed reduction would not generate a new backlog because the Court's administrative functions would be transferred to the Council of the Federal Judiciary.⁹⁵ However, the bill understated both the backlog and impact of the reduction. The new Court started with a backlog of 2,366 filings in February 1995. Furthermore, the new responsibilities of the Court combined with the old ones have translated into a considerable and growing workload, as shown by the following tables:

95. Statement of motives [*Exposición de Motivos*], *supra* note 11, 583-584.

Table 1
Supreme Court dispositions
(December 1, 1994-November 30, 1997)

	1994-95					1995-96				1996-97			
	Backlog	Filings	Dispositions		Pending	Filings	Dispositions		Pending	Filings	Dispositions		Pending
			Pres	Drf			Pres	Drf			Pres	Drf	
Full C.	1 614	938	295	767	1 490	—	1 169	730	1 453	—	—	567	—
1st Ch.	365	1 382	364	1 002	381	—	621	1 304	382	—	—	1 505	—
2 nd Ch.	387	1 290	94	1 268	315	—	181	1 525	251	—	—	1 486	—
Total	2 366	3 610	753	3 037	2 186	5 430	1 971	3 559	2 086	6 280	2 875	3 558	1 933

Source: Annual Reports, Supreme Court of Justice of the Nation (Pres=disposition by president; Drf=draft resolution by a justice).

Table 1 shows that the Supreme Court's total workload has steadily increased between 1995 and 1997, although the Court has been able to achieve a modest reduction in the backlog at the end of each year.

Table 2
Average number of draft resolutions per justice
(December 1, 1994-November 30, 1997)

	1994-95	1995-96	1996-97	1993	Variation	
	(n=3037)	(n=3559)	(n=3558)	(n=4760)	(%)	
	/10	/10	/10	/25		
					94-97	93-97
Average number of draft resolutions per justice	303.7	355.9	355.8	190.4	+17.2	+87.3

Source: Annual Reports, Supreme Court of Justice of the Nation.

Table 2 shows that Supreme Court justices are working as hard as ever. At the end of 1997, the justices were submitting to the Court, on the average, 17% more ponencias [draft resolutions]⁹⁶ than in 1995, and more than 87% in comparison with

96. The total number has been divided by ten because the president of the Court doesn't usually submit draft resolutions, but does vote.

the 1993 Court. Although the number of clerks⁹⁷ at the service of each justice has increased to seven, there are limits to the amount of work that a justice can direct and supervise.

Table 3
Matters before the Supreme Court
(December 1, 1994-November 30, 1997)

Type of case	1994-95	1995-96	1996-97	Total	1993
Amparo suits	2 652	3 281	2 175	8 108	2 722
Contradictory rulings	320	219	215	754	212
Const. controversies	21	63	32	116	1
Actions of unconst..	1	8	16	25	----
Non-compliance	916	945	394	2 255	477
Administrative review	1	4	17	22	----
Jurisdictional conflicts	543	409	456	1 409	391

Source: Annual Reports, Supreme Court of Justice of the Nation.

Are there possibilities for relieving the Court of some of its burden? Table 3 shows the main categories of matters decided by the Court. The most numerous are amparo suits, contradictory interpretations of circuit courts' opinions, incidental petitions regarding non-compliance with amparo judgments, and jurisdictional conflicts. In relation to this, two proposals might bring some relief to the Court:

- The establishment of a superior chamber of the circuit courts composed of circuit judges which would decide non-constitutional business. This business includes contradictory interpretations, jurisdictional conflicts, and, perhaps with some final intervention of the Supreme Court, the petitions regarding non-compliance with amparo judgments; and,
- Modification of the 'Otero clause' which limits the effects of an amparo decision in the amparo contra leyes. This change is required for reasons of efficiency, justice, and equality before the law.

C. Constitutional interpretation

The main responsibility of a constitutional court is to interpret the constitution. The authoritarian presidential system and flexible ambivalence⁹⁸ of the Mexican Constitution has hindered the development of a broad and consistent constitutional

97. *Secretarios de estudio y cuenta* [court clerks].

98. See Díaz Díaz, *La Constitución ambivalente. Notas para el estudio de sus polos de tensión*, in 80 ANIVERSARIO. HOMENAJE. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, 59-85 (*Instituto de Investigaciones Jurídicas ed. 1997*), who argues that in the Constitution of 1917 two models coexist: the orthodox model of Western constitutionalism, and the authoritarian and vertical model that resulted from the acknowledgment of the heterogeneous and premodern elements in Mexican society and history.

doctrine.⁹⁹ However, under the democratization process occurring in Mexico a constitutional doctrine may slowly emerge.

Therefore, we are witnessing no less than the beginnings of a real constitutional debate in our country. The potential parties (and to a much lesser extent, the justices too) have to undergo a learning process on how to formulate and rigorously discuss real constitutional issues. Particularly the justices will have to grapple, sooner or later, with the dilemmas of constitutional justice. These include the need for self-restraint and the expectations that a more democratic society places on it.

The emerging dialog for change suggests another important question: Do the Supreme Court justices share a common sense of purpose and direction? There is no doubt that the present justices agree with the purposes of the 1994 reform and that the Supreme Court must play a more prominent role in Mexican life. However, when it comes to controversial legal issues, the general consensus practically breaks down.

Within the court there are essentially two positions or attitudes: the 'prudent' and the 'innovative.' The former position is mindful of tradition and therefore careful in analyzing and introducing changes in the existing system.¹⁰⁰ The latter position perceives the need to adapt more rapidly to a changing world, and is therefore more eager to explore and incorporate new opinions and interpretations.¹⁰¹ It is also more insistent on the new role the Court must play in Mexican society.¹⁰²

The two positions or attitudes are not represented by fixed groups of persons within the Court. However, some justices identify more with one position than with the other. To an observer impatient with the pace of change, the philosophical division of the court can only be regarded as a nuisance. Nevertheless, it can also be seen as a guarantee that more than one opinion will be considered and that the issues will be more deeply, seriously, and responsibly discussed. This can be an advantage in a society learning the rules of constitutional debate. In any case, much depends on the value that society places on such debate and its willingness to invest intellectual and material resources in it.

V. CONCLUSION

The new formal powers and responsibilities conferred on the Supreme Court closely correspond to the social and political expectations that are now being placed on legal institutions and processes. It may still require some time for society to see the full impact of the judicial reform process. Further, such impact may turn out to

99. Cossío Díaz & Raigosa, *Régimen político and interpretación constitucional*, 60 ESTE PAÍS, 32-41 (1996), maintain that the authoritarian nature of the Mexican political regime specifically prevented the development of a constitutional doctrine that could seriously consider the Constitution as a legal norm.

100. A good example of this is the minority opinion in the case where the Court accepted the possibility of reviewing a constitutional amendment, *supra* note 80.

101. So, for example, in the minority opinion four justices propose to reverse the Court's traditional interpretation with respect to the expropriation of private property. They argue that, in view of the process of economic globalization, it is important that "the highest court of the land -the Supreme Court- facilitates the access of capitals, eliminating obstacles to the risks that an attack on private property carries" (translation by HFF), in 5 *SJF*, May, 378, 382 (1997). See also, the three minority opinions in 6 *SJF*, August, 435-54 (1997).

102. See the minority opinion in the *AdI* 1/95, *supra* note 36 at 260, in which the justices expressly state: "For many years the idea has prevailed that the Supreme Court should be a power to settle the disputes of private citizens; it is necessary for it to become a power for the sake of the Nation and its purposes."

be more profound and lasting than the consequences of other more apparent changes. Hence, impatience is not warranted.

The Mexican democratic transition, of which judicial reform is an important manifestation, has unfolded for a long time without dramatic ruptures. The old and the new are forced to coexist, sometimes at odds with each other. As shown by this article, the trajectory of the Supreme Court in the last three years is a valuable case in point. There are good reasons to be confident that this important institution will become a central arena in which the constitutional struggles of Mexican society will be fought in the future. Review has shown some of these struggles have begun to emerge and take shape.

For example, the distribution of powers and resources between the different units and levels of government and the amendments introduced into the federal and state electoral laws. Notwithstanding this progress, the rigorous redefinition and effective protection of citizens' fundamental rights is still needed. A thorough reform of the law of amparo may help to reinforce these rights. Fortunately, not everything has to wait for tomorrow. Mexico already has a more visible and interesting Supreme Court.

