

## CC: 70% OF AMPARO APPLICATIONS OBSTRUCT PROCEEDINGS

*The Constitutional Court (CC) received 2,691 amparo applications between January and November 2012.*

Between January and November last year, the Constitutional Court (CC) received 2,691 *amparo* applications, 70% of which sought to obstruct proceedings before the Judiciary (OJ). These figures were presented by Mauro Chacón, president of the CC, who also added that 2,145 application concerned *amparo* ruling appeals and the remaining 546 were legal actions in sole instance.

The judge declared there to be an excessive number of appeals of this kind: "Lawyers are using *amparo* applications as a means of subsistence and getting money out of their clients; the *amparo* applications are never going to resolve the client's dispute". Chacón stressed: "Amparo, in accordance with our Constitution, serves to protect people from having their fundamental rights violated, be they individual or social. Its purpose is not to change decisions made by ordinary judges".

He added that *amparo* is construed to be akin to a "Father of Mercy" offering protection against anything. Alternatively, it is a means of living and operating for many lawyers "so as to keep hold of their client, even though they are lying and prolonging their suffering". The President of the CC declared there to be two reasons that explain the proliferation of *amparo* applications: it is a legal action with minimal formal requirements and an applicant has 30 days after a ruling is issued, or an act they deem unconstitutional is committed, to file an application.

An amendment to the Amparo Law is pending before Congress; the amendment has been given a favorable opinion, but the plenum of the Court is yet to approve it.

Gabriel Medrano, president of the OJ, said the Supreme Court of Justice is waiting on Parliament's decision regarding the approval of the modifications.

**Years of Misuse.** Carmen Aída Ibarra, head of the Pro Justice Movement, stated that *amparo* applications have been used anomalously for a number of years. She said *amparo* applications have been abused to such an extent that its arbitrary and indiscriminate use, which seeks to generate impunity, has become a form of malicious prosecution, and the "use of *amparo* applications with such pernicious intentions is considered to be a means of creating impunity. The problem is serious and was detected a long time ago". Ibarra also said there were lawyers and law offices that specialize in this spurious use of *amparo* applications as a means of stalling judicial proceedings. Ibarra said efforts had been undertaken to eliminate this pernicious use of *amparo* applications, but so far, no positive results had been produced, because in reality "justice authorities use *amparo* applications for malicious prosecution".

According to Oswaldo Samayoa, an independent analyst, the abuse of *amparo* applications occurs throughout the OJ, including the peace courts, lower courts, the appeals chambers and the Supreme Court of Justice. He also believes that the passing of amendments to the Amparo Law by the Legislative would be positive.

*"Amparo protects people from having their fundamental rights violated, be they individual rights or social rights".  
Mauro Chacón, President of the CC*

*"Using an amparo with pernicious intentions is a means of creating impunity".  
Carmen Aída Ibarra, Pro Justice Movement*

*"The approval by Congress of amendments to the Amparo Law would be positive".  
Oswaldo Samayoa, Independent analyst*

## THE STRANGEST AMPARO APPLICATIONS: CUCURUCHOS AND PEDIGREES

The Constitution allows *amparo* to be requested on any grounds and hence the CC has received some unusual cases. Among the most noteworthy examples is the *amparo* application filed request by two devote carriers of the Buried Lord of Saint Dominic [in Holy Week processions]. The pair requested *amparo* against the decision to strip them of the right to carry the Lord out of the church. The carriers, known as *cucuruchos* due to their attire, were awarded provisional *amparo*. Other interesting *amparo* applications were filed to recognize the pedigree of a dog or appeal against the "stress" suffered by a mare.

## INTERVIEW WITH MAURICIO CHACÓN, PRESIDENT OF THE CC

*"They use amparo applications as a vehicle to get money out of clients"*

### When should amparo applications be used?

*Amparo*, according to the law, serves the purpose of protecting people from having their fundamental rights violated, be they individual or social. Its purpose is not to change decisions made by ordinary judges". However, we may have seen an abusive use of the institution of *amparo*. The problem with our institution is that when the Constitution was promulgated, we were coming out of a decade of losses and systematic violations of fundamental rights; authoritarian and de facto governments had systemically governed us. As a result, the widespread cry transcended the situation and called for the makers of the Constitution to create an instrument that would offer guarantees and uphold human rights.

### What steps can be taken to stop the overuse of amparo applications?

We will strive to establish parameters to stop this avalanche, and prevent the institution from being abused, based on jurisprudence and the principles of the Court. There are principles that must be respected, such as definitiveness. During the current presidency, we have begun to enforce more clearly. The Court incorporates new tendencies of constitutional law principles.

*"An amparo is not a vehicle to change decisions made by ordinary judges".*

### Why are so many amparo applications filed?

Because to file an *amparo* application, the necessary steps must be taken within 30 days. It has also been done after the time frame has expired. However, it cannot be rejected from the outset; therefore, we are going to establish a doctrine, through the interpretation of case-law, stipulating that court judges must declare the expiration of the 30 day period and, therefore, reject the *amparo* application.

Furthermore, the filing of an *amparo* application is less complicated for two reasons. Firstly, there are no strict formal requirements; it is open. Secondly, there is a time frame of 30 days within which to file it. An *amparo* application is straightforward in comparison to an extraordinary annulment appeal. Be it civil or criminal it is extraordinary, special, inapplicable in some cases, complex to file, and a party only has 15 days to file it. To file an *amparo* application, the party is entitled to 30 days.

Lawyers use the *amparo* application as a means of subsistence and a vehicle to get money out of their clients; the *amparo* will not solve the latter's problems.

## EDITORIAL

### AMPARO APPLICATIONS WITH SUSPENSORY EFFECTS OVERWHELM CC

Seven out of ten *amparo* applications filed before the Constitutional Court (CC) seek to obstruct judicial proceedings by slowing the progress of cases. Mauro Chacón, president of the CC, made this statement and indicated the majority of *amparo* appeals do not change the decisions issued by ordinary judges. They do, however, fill the pockets of those using this practice to "get money out of clients".

The writ of *amparo* is used to offer protection from threats and violations of peoples' fundamental rights. However, almost since the inception of the *amparo* instrument, some lawyers began to distort its use and maliciously employ this constitutional right.

The writ of *amparo* is abused by lawyers to stall proceedings, despite knowing that the application will be ultimately rejected by the CC; however, they can gain time for their clients, who are charged exorbitant amounts for the delays. A number of factors explain why some litigants have turned malicious *amparo* applications into their specialty. It all boils down to impunity.

*"Some lawyers have begun to distort the *amparo* function and use a constitutional right maliciously".*

Firstly, the CC imposes economic punishments on lawyers who file writs of *amparo* that are declared inadmissible. The fines, however, are rarely paid. Another aspect to consider concerns the Honor Tribunal of the Bar Association of Guatemala, which has the duty of imposing exemplary punishments on litigants who employ this practice to prevent proceedings from progressing normally.

There have been emblematic cases where more than 30 writs of *amparo* have been filed and rejected; however, there has been no sign of an exemplary punishment for the "jurists" who made the requests. The approval of a bill to amend the Amparo, Habeas Corpus and Constitutionality Act is pending before Congress. The bill already has a favorable opinion. The CC and Supreme Court of Justice authorities state that these amendments will make it possible to stop the avalanche of malicious *amparo* applications. Therefore, it is up to the legislative branch to prevent the malicious litigation that hinders the aspirations of obtaining prompt and fair justice.