

# Legal Update

by Allan Garro N.

## Being Damaged by the Government? SUE THEM!

Costa Rica is a small country with over 260 Public Institutions. This includes all kinds of structures such as Ministries –Health, Security, Tax and Revenue and Justice to name a few-, Public Enterprises – National Insurance Institute or INS, Electrical Company or ICE, the Oil Refinery or RECOPE-, Municipalities –there are 81 plus at least 2 other entities considered as Municipalities- and the list continues to almost infinite. It is obvious that the Country does not need such a complex system but that's our current reality and the truth is new decentralized institutions appear on a daily basis.

All of those institutions have direct contact and influence over all citizens and corporations by applying different rules and regulations, approving or denying all kinds of permits, licenses and authorizations as well as granting or removing rights of all kinds. The common denominator seems to be that basic rights of both citizens and companies are violated every day by said governmental monster. The necessary question that arises is: Can anything be done to find remedy against such violations? And the answer is yes.

For many years there was a special law to file lawsuits against the various institutions of the Government, but the procedure became a nightmare because of how hard it was and how long, extending up to ten years or more. This changed in 2008 when a new law came into force called CODIGO PROCESAL CONTENCIOSO ADMINISTRATIVO, creating more expeditious and simpler rules including an essentially oral and much faster procedure to get any conflict solved. The change also included the creation of a new Court specifically to handle all cases filed against any Institution belonging to the government in any form.

Included among the changes is the possibility of applying for an injunction with immediate effect to stop actions that are against the law and can cause damages impossible to repair if the actions are not stopped. Should the injunction requested be upheld, an oral hearing shall be quick to decide whether the measure is maintained or revoked. Also included is a faster judicial procedure where only the complaint and the answer are



made in writing, and the rest is done by oral hearings, including the final judgment. In some cases if the judge believes that by meeting certain requirements the case also involves the public interest it can then be processed preferentially whereby the issue is resolved quickly.

Two basic rights often violated are the Right to Petition and Prompt Answer and rights related to Administrative Due Process. Usually the protection of these rights is called before the Constitutional Court, but the new procedure created a figure named AMPARO DE LEGALIDAD with which the Court applies a new expedited procedure to protect them by applying severe warnings to the involved institution in order to force said prompt answer or to apply the correct procedure respective to the basic rules of Due Process established by the SALA IV.

There is also a procedure to request Court protection in the event of default, i.e. when an institution is required to do something and it does not. For example when the local municipality fails to install signs in neighborhoods and does not repair the holes in local roads. In this case you must submit a letter to the institution in which it is indicated in the omission while it grants a period of 15 days to comply. If the fault persists then you can file a complaint with the aforementioned new Court

Whatever the problem you have with a public institution is important to know that there are now new procedures that have a reasonable length and can effectively protect the basic rights of citizens and businesses even providing compensations when there are economic damages challenged by the plaintiffs. It is good to know that damages caused by the government operation can now be compensated respecting the Constitutional principle of Prompt Justice.

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