

Translation

**"EVOLUTION, STRUCTURE AND FEATURES  
OF THE CONSTITUTIONAL JURISDICTION  
IN PANAMA"**

Intervention of the President of the Supreme Court of Justice  
of the Republic of Panama, José Eduardo Ayú Prado Canals,  
at the VII International Legal Forum of Saint Petersburg.

With the purpose of addressing the proposed subject, we believe it is necessary to begin with the evolution of our Constitutional Justice System through the four Political Constitutions ruling the Republic of Panama from its separation from Colombia, so as to then make reference to the current regulation of each of the mechanisms established to guarantee the Constitution Safeguard.

I. **Evolution of the Constitutional Justice System**

The starting point of the Panamanian Constitutional Justice System can be found in the Political Constitution of **1904**, the first Fundamental Rule governing us after our Separation from Colombia. This Constitution included the **Unenforceability Objection** as constitutional control mechanism, which was left in the hands of the Supreme Court of Justice when the Executive Branch objected a draft bill for considering it unconstitutional and the Assembly insisted on its adoption; and the **habeas corpus**, because although it was not expressly called this way, its wording contemplated the right of *any person under arrest or in jail without the legal formalities or outside the cases provided for in the Constitution or in the laws... to be... set free upon his/her request or upon the request of any third party.*

From 1904 to 1941, no mechanisms or tools which enable the constitutional control were established; however, legally the Civil Code and the Judicial Code, approved in 1916 and 1917 contemplate what was considered a **vague constitutionality control**, when the first one indicates that in the light of an incompatibility of a constitutional provision and a legal provision, the first one should be preferred, and the second one bans the judicial officers from applying laws, municipal agreements or decrees of the Executive Branch contrary to the Constitution in the Administration of Justice.

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In **1941**, with a more revolutionary and more protective Constitution, the Constitutional Jurisdiction is regulated and strengthened when the **Unconstitutionality Action** is included. Its competition is exclusively attributed to the Plenary Session of the Supreme Court of Justice; the **Unenforceability Objection**, the **Habeas Corpus Recourse**, expressly called that way, the **Protection Action of Constitutional Guarantees** and the **Unconstitutionality Consultation**, which may exercise the officers in charge of imparting justice.

The Political Constitution of **1946** only incorporates the **Notice of Unconstitutionality**, which may be exercised by the parties to a proceeding, different to the **Unconstitutionality Consultation** added to the Constitutional Justice System in the Constitution of 1941.

The Political Constitution of **1972**, as amended by the legislative acts in **1978, 1983, 1994** does not incorporate any guarantees.

In **2004**, its last amendment includes the **Habeas Data**, which, in spite of not having been incorporated before the Constitution, it had been legally established and regulated by means of law 6 of January 22, 2002 **"THAT DICTATES RULES FOR GOVERNANCE TRANSPARENCY, ESTABLISHES THE HABEAS DATA ACTION AND DICTATES OTHER PROVISIONS"**.

## II. **Current Regulation.**

Due to this evolution with the inclusion of procedural mechanisms in the different Constitutions ruling our country since the separation from Colombia, the Constitutional Justice System in Panama currently comprises the **objective** Constitutional Jurisdiction, also called constitutionality rules or control, as well as the **subjective** Constitutional Jurisdiction; each of them constitutionally contains instruments guaranteeing its effectiveness.

Regarding the **objective** constitutional jurisdiction, our system presents a concentrated control, exclusively attributed to the Plenary Session of the Supreme Court of Justice. This control can be a previous or subsequent control.

In the Republic of Panama, the **previous** constitutionality control is materialized upon request through the so-called **unenforceability objection**.

This mechanism is contemplated in article 171 of the Constitution and regulated in articles 2555 and 2556 of our Judicial Code.

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This is not a public action. Active legitimation to promote it is only acknowledged to the President of the Republic, who is in charge of submitting to the Supreme Court of Justice the bills he/she objects due to unenforceable, when the National Assembly insists on its adoption.

The President of the Republic also is legitimated to object due to unenforceable a constitutional amendment after having received it for its enactment and before this for considering it does not adapt to the provisions set forth in the Constitution.

The **subsequent** control that, as mentioned above, is part of the Objective Constitutional Jurisdiction becomes effective through three mechanisms, the Unconstitutionality Claim, by means of **popular action**, and consultation and notice of unconstitutionality, through **ancillary proceedings**.

The **Unconstitutional Action or Claim** is contemplated in the first paragraph of article 206(1) of the Political Constitution of the Republic and regulated in articles 2559 to 2573 of the Judicial Code.

Said action has the purpose of protecting or defending the Constitution, the wording and spirit thereof. Its awareness and decision exclusively corresponds to the Plenary Session of the Supreme Court of Justice, with hearing of the Attorney General of the Nation of the Administration Attorney.

Through this claim, the laws, decrees, agreements, resolutions and other act acts from the authority are subjected to control. That is to say, acts from the Legislative body, the Executive Branch and the Judicial Branch.

It is a public action since any person is legitimated to activate the constitutional process in order to defend the constitution; it has **no statute of limitations**, the time to file the action does not expire; the **process begins upon request** of the parties, but once the claim or action is admitted, there are no parties since the acts and not the person issuing the act is attacked.

The Constitution defense in this Proceeding is unofficial, in one way or partially, in virtue of the universality principle since the constitutionality analysis is not only performed with respect to the rules deemed violated but with respect to all the rules in the Constitution.

It is not a new instance in the judicial process. It does not admit any waiver. Before filing it against subjective acts, all remedies should be exhausted.

As part of the objective control, the Plenary Session is also responsible to deal with the **Consultations** and **Notices of Unconstitutionality** provided for in the second paragraph of article 206 (1) of the Constitution and regulated in articles 2557 and 2558 of the Judicial Code.

Consultations and Notices are submitted to the Plenary Session by the officers in charge of imparting justice or by any of the parties of the proceeding, when the legal or regulatory provision applicable to the case is deemed unconstitutional.

The purpose of this specific constitutionality control is to prevent a legal or regulatory rule contrary to constitutional orientations to serve as basis to a decision or ruling ending a proceeding.

In many judgments the Supreme Court of Justice has maintained that for the notice of unconstitutionality to proceed, a proceeding in place is necessary, that the attacked provision has not been applied, and that the Court has not made any previous statement regarding its constitutionality.

Court decisions issued regarding unconstitutional matters are final and mandatory (**Constitutional Res Judicata**), should be published in the Official Gazette and have no retroactive effect.

The **subjective** Constitutional Jurisdiction, also called of acts, is exercised through three mechanisms: **Protection Action, Habeas Corpus and Habeas Data**.

The **Protection Action** is contemplated in article 54 of the Constitution and regulated in articles 2615 to 2632 of the Judicial Code.

This action has the purpose of protecting the fundamental rights contemplated in the Constitution, conventionally or legally.

The Political Constitution of 1972, when referring to the action of Protection of Constitutional Guarantees sets forth that is appropriate against an order to proceed or not to proceed, issued or executed by any public officer, which violates rights and guarantees enshrined in the Constitution.

Only the person against whom the order is issued or executed can file it through an attorney.

The process goes through a summary proceeding.

This subjective constitutional control is exercised **vaguely** by the judicial courts dealing with civil issues, depending on the competence and territorial jurisdiction of the officer who issued the contested order.

The competence to know about these claims is the responsibility of the **Plenary Session of the Supreme Court of Justice** for acts coming from authorities or officers with power and jurisdiction throughout the Republic or in two or more provinces: the **Superior Courts of the Judicial District**, when they are acts coming from public servants with jurisdiction in one province; and the **Circuit Courts**, when they are public servants with jurisdiction in one district or part thereof.

The protection of constitutional guarantees as regulated in Panama has the following features:

1. It protects not only the fundamental rights established in the Constitution but those set forth in the laws and the Conventions as well.
2. It should be duly formulated to be admitted and it should not be manifestly inadmissible. **Duly formulated**, complying with the **form** requirements: name of the civil servant, attacked order, violated constitutional provisions and concept of violation (false interpretation, inappropriate application or direct violation for commission). It is **manifestly inadmissible** when it is presented against not applicable acts.
3. It is not applicable against rules with programmatic content, i.e., those setting principles but do not enshrine any right. It also cannot be applied against acts of individuals. Only against acts issued or executed by public officers. It also cannot be applied against resolutions ordered by the inquest; which set release bonds; against the summary expansion; against the order to proceed; against official letters within a proceeding; against laws and regulatory acts; against orders not in force; against arbitration awards; it is not applicable against rules or acts of general content.

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4. It is not applicable against the decisions of the Electoral Court in election matters and criminal-election matters.
5. It can be applied against jurisdictional acts, but it does not suspend the corresponding judicial proceedings; said suspension is left at the discretion of the authority.
6. As a result of the claim admissibility, the defendant authority should be notified so the order is not executed or is suspended to prevent an imminent serious damage. If the entity suspends the act, the court should do so as well.

Also, within the Subjective Constitutional Jurisdiction, the **Habeas Corpus** is contemplated in article 23 of the Constitution and regulated from article 2574 to 2614 of the Judicial Code.

This action has a special guarantee to individual freedom.

After the Amendments introduced in 2004, the Political Constitution of the Republic contemplates the **Habeas Corpus** in three forms:

- ✓ **the classic or repairing Habeas Corpus**, which can be filed immediately after the detention, without considering the applicable sentence, so the person under arrest outside the cases and form established in the Constitution and the Law is set free, upon his/her request or upon the request of another person. In this case, the right has already been damaged, the intention is to recover or repair it.
- ✓ **the preventive Habeas Corpus**, which shall be filed in the light of a real threat or certain threat against body freedom. This form intends to avoid or prevent the damage.
- ✓ **The corrective Habeas Corpus**, when the detention form or conditions or the place where the person is jeopardizes its physical, mental or moral integrity or violates its defense right.

This action should be processed with priority to other pending cases by a summary proceeding and the proceeding cannot be suspended during hours or business days.

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The authorities competent to know about the Habeas Corpus complaint: the **Plenary Session of the Supreme Court of Justice** for acts coming from authorities or officers with power and jurisdiction throughout the Republic or in two or more provinces: the **Superior Courts of the Judicial District**, when they are acts coming from public officers with power and jurisdiction in one province; the **Circuit Judges**, in criminal matters, for acts coming from the authority or officer with power and jurisdiction in a district of its circumscription and **municipal judges**, in criminal matters, for acts coming from the authority or officer with power and jurisdiction in a district of its circumscription and **municipal judges**, in criminal matters, for acts coming from the authority or officer with power and jurisdiction in a judicial district.

Also, the Superior Courts of Appeal shall be competent in the light of detentions ordered in criminal proceedings filed under the Accusatory Criminal System.

Finally, in the Subjective Constitutional Jurisdiction, we have to mention the Habeas Data action legally regulated through law 6 of January 22, 2002 "**WHICH DICTATES RULES FOR GOVERNANCE TRANSPARENCY, ESTABLISHES THE HABEAS DATA ACTION AND DICTATES OTHER PROVISIONS**", introduced to the Political Constitution of 1972, through the constitutional amendments of 2004.

Article 44 of our Constitution contemplates this procedural mechanism in two forms: **traditional or self habeas data** (when looking for the protection and assurance of the intimacy right and, particularly, the privacy right, with respect to the personal data or information) and the **non-traditional or non-self habeas data** (when it is intended that the guardianship of the freedom of information of public nature, not catalogued as information of restricted access, which public officers handle due to their positions).

Also, the following are competent to hear about the Habeas Data action: Superior Courts that hear about the action of Protection of Constitutional Guarantees, i.e., **those who hear about civil issues**, when the holder officer or responsible of the registry, file or data bank, have power and jurisdiction at municipal or provincial level, and the Plenary Session of the Supreme Court of Justice when the holder or responsible person of the registry, file or data bank has power or jurisdiction in two or more provinces or throughout the Republic.

This action is processed by means of a summary process, with no formalities and with no need of an attorney; however, there is a minimum number of details or requirements that should be complied with so it is admitted:

- 1- Certifying that it has actually requested the information, for which it is necessary to submit the authenticated copies or collated with the original.
- 2- That the requested information can be accessed to.
- 3- That the requested authorities have refused to provide the information or have done so inexactly.

Regarding the trial proceedings, hindrances, notices and appeals of the **Habeas Data** action, the rules regulating these matters in the exercise of the Protection of Constitutional Guarantees shall be applied.

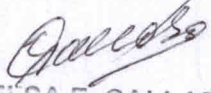
### III. Summary

The constitutional control mechanisms are: objective and subjective. The objectives are: previous and subsequent. Previous: Unenforceability objection. Subsequent: Through popular action (unconstitutionality complaint) and through ancillary proceedings (unconstitutionality consultations and notices). Subjective mechanisms: Protection, Habeas Corpus (classic or repairing, preventive and corrective) and Habeas Data.

In Panama there is no Constitutional Court or Constitutional Court inside the Supreme Court of Justice. All constitutional issues are the responsibility of the Plenary Session of the Supreme Court of Justice.

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THE FOREGOING IS A TRANSLATION INTO ENGLISH OF THE DOCUMENT IN SPANISH WHICH WAS PRESENTED TO ME.  
PANAMA, APRIL 25th, 2017.

*The translator is not responsible for the source or legality of the contents of the document.*

  
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