Abstract

The Plaintiff was a legitimate candidate to occupy the office of Mexican Ombudsman. He presented thinking he was participating, as the Mexican Constitution states, in a reelection of the Ombudsman. The Ombudsman, based in a Secondary Law, was ratified. The legitimate Candidate pleaded through "Juicio de Amparo" (a Mexican resource similar to the "Injunction") that both the Federal Law and the ratification were unconstitutional. The Mexican Supreme Court denied the petition based in an inexistent exception to the "Juicio de Amparo." The Inter-American Commission on Human Rights is about to emit or not to emit a recommendation. The Inter-American Court of Human Rights could accept jurisdiction.

The Mexican Supreme Court V. Chief Justice John Marshall

The academia is the last chance, but not necessarily the worst or the least chance to present defence of a position when we have the relativistic consciousness of our self's yelling at us that there was an injustice.

It results mandatory for the *advocatus* to defend a case with passion and interest. There is no other option. We have to fight in all possible scenarios or *spiritus loci*. We have to combine determination with the expression of our ideas.

Our intention is to exteriorize our historic responsibility by publishing this essay, which is inspired in the size of what we consider a *magnum injustitia* i.e. it represents the legitimate right we have to express our arguments.

Nobody is perfect, and we do not consider the Mexican Supreme Court or the Senate in all cases act this way i.e. against the Constitution. We are solely defending the fact that we think they acted incorrectly, imprecisely, and against their constitutional duty within the Mexican State in this case i.e. against the constitutional right of the people who live inside the Mexican borders.

The responsibility of the Supreme Court is for not following the spirit of the Mexican Constitution, which establishes that the people (according to article 39 of the Mexican Constitution, the sovereignty) should govern in the State, and will do it through representative powers that must act according their interests.

If the Mexican Supreme Court decided to use any possible excuse to omit to take position in the case, they acted against their constitutional duty of interpreting the Constitution; against their duty to make a Judicial Review, institutionalized by Chief Justice John Marshall in the important case Marbury v. Madison. If they used any possible excuse to omit analyze the language, they acted against the Spanish Language and their obligation to use it correctly and precisely. If they used excuses to finally not study the case, based in a rare exception that contemplates not being heard by a Court, they acted against justice.

The facts of the case are these:

I. The plaintiff, a Mexican citizen, was proposed to the Senate by several Bars of different states in order to have the right to become the Mexican Ombudsman. He was a legitimate candidate who not just reunite the requisites needed to become Ombudsman, but followed the necessary steps to manifest and make official his candidature. The Mexican Constitution establishes that the Ombudsman could be "reelected;" the secondary law establishes that he could be "ratified." The Ombudsman was ratified.

II. The Plaintiff presented a legal action similar to the Injunction arguing violations to his rights expressed in the Constitution, in Mexico known as "Juicio de Amparo contra Leyes," manifesting that the act of ratifying the Ombudsman and the Law that stated the world "ratification" were both against the Mexican Constitution that states "reelected," and, therefore, they violate his Constitutional, Human and Fundamental Rights. Notwithstanding that he pleaded that both the act of ratifying and the Federal Law that established the word "ratified" were unconstitutional, his right to present the "Juicio de Amparo" was denied by the first instance, alleging that there was an exception for this constitutional legal action when the Senate was executing a discretional and sovereign faculty in the "…election, suspension or removal…" of public officials.

III. The Plaintiff demanded the revision in the Court of Appeals, arguing he was not just presenting his "Juicio de Amparo" against the act of the Senate, but also against the Federal Law that stated the word "ratified" and the possibility for the Ombudsman to be ratified. Because of the importance of the case and because the Plaintiff was also confronting a Federal Law, the Court of Appeals decided to ask the Supreme Court to emit a decision.

IV. The Mexican Supreme Court Chief of Justice and the rest of the Justices, unanimously, accepted their jurisdiction. Based in the fact that the Supreme Court could emit a decision in "Pleno" (all the justices and the Chief of Justice) or in "Salas" (five Justices), and because of their vote and the fact the Plaintiff alleged a Federal Law to be unconstitutional, they were supposed to emit a decision in "Pleno." They did not emit a decision in "Pleno" i.e. even though they were compelled to resolve in "Pleno" one "Sala" decided that the first instance resolution was correct and that, therefore, the Plaintiff did not have the right to a "Juicio de Amparo" because (even though he also argued the Federal Law to be unconstitutional) the "ratification" of the Ombudsman by the Senate was included in the exception to the right to "Juicio de Amapro" when the Senate was exercising a discretional and sovereign decision in "…election, suspension or removal…" of public officials.

V. The plaintiff presented a petition into the Inter-American Commission on Human Rights (and the Law Firm GBS-ADVOCATI, presented, *pro bono*, an *Amicus Curiae* which analyzes all the details of the case), arguing and asking for a recommendation to the Mexican State in these terms:

FIRST, that it is a very serious case, based in the fact that the violations of Human Rights were in the "ratification" of the Ombudsman i.e. the official meant to protect the Human Rights of the Mexican people;

SECOND, that the "*dolus*" or "intention" with which the Human Rights Commission of the Senate called the Sovereignty, the People, to witness how they present to the Senate of the Republic the "ratification" of the Ombudsman is not small thing, but an absurd case in which they did not respect the Constitution and treat it as Secondary Law. And this little or null knowledge of the Constitution get worst in the present case, because they were not just Senators, but Senators who formed the Human Rights Commission of the Senate, that were applying the Constitution that states "reelected;"

THIRD, that the Inter-American Commission on Human Rights most take into consideration that if the Mexican Constitution states in article 102-B, that the Ombudsman "…could be reelected …" and is "ratified," then there is as violation to the points 1) and 3), fraction 1, of Article 23 of the American Convention on Human Rights, being the case where they state:

> *"Article 23. Right to Participate in Government*
>
> *1.Every citizen shall enjoy the following rights and opportunities:*
>
> *1.to take part in the conduct of public affairs, directly or through freely chosen representatives;*
>
> *(…)*
>
> *3.to have access, under general conditions of equality, to the public service of his country."*

In case of point "1)," the citizens did no have the right to take part in the conduct of public affairs, directly or through freely chosen representatives, being the case where the sovereignty, that according to article 39 of the Mexican Constitution resides on the people, omitted to have a semantic, constitutional or logic connection with the Senate decision of "ratifying" and not "reelecting" the Ombudsman. This is especially relevant because the Mexican Constitution in various articles gives different meanings to the concepts "reelection" and "ratification." Therefore, the Plaintiff argued that this is a violation to the Sovereignty and to the people's dignity and Human Rights.

In the case of point "3)," the rights of persons who reunite the constitutional and legal requirements (i.e. the legitimate candidates) in order to become the Mexican Ombudsman, a public service position, were violated. They were deprived of the right to participate in a "reelection" of the Ombudsman, and were used as observers of a "ratification" of the Ombudsman; as observers of a *Juridicus Theatrum* where the Human Rights Commission of the Senate acted as a "Great Elector," as a dictator who simulated a "reelection," but solely presented the Ombudsman to the Senate to be "ratified," which is disrespectful to the candidates' and the people's dignity, and violates Constitutional and Human Rights. This placed the people and the candidates in a position of vulnerability in front of the power of an institution of constitutional hierarchy; and placed them, thus, not just in an "unequal," but also in a "different" condition to access to a public service function in their own country.

The Constitution gives the legitimate candidates, through the right for the Ombudsman to be reelected, the right to have access to a public office to be elected or reelected by the whole Senate, and, through an auxiliary organ of the Senate (i.e. the Human Rights Commission of the Senate), which presented the Ombudsman as a solitary candidate to "ratification," their possibility to this access was not solely suppressed, but their constitutional right was, notwithstanding the number of senators who voted for the "ratification," void;

FORTH: that article 25 of the American Convention on Human Rights was violated, because the rights conferred to the well being of the people in the Constitution were violated, being an important one the legitimate right that citizens in modern world have for the State Organs to respect and made respect the Constitution; and being a more drastic one the fact that the plaintiff ´s right to access to a an effective and fast judicial action in this case did not exist.

The Plaintiff's "Garantías individuales" were not just violated, but after a long, very long process that brought his case to the last possible instance, the Mexican Supreme Court of Justice not just argued but emit a decision arguing an exception to this right protected by the institution of "Juicio de Amparo" that omit to exist in the Mexican Legal System, hence in the Mexican State;

FIFTH, that with it they did not solely violate the Mexican Legal System and fundamental rights, in Mexico called "Garantías Individuales," but violated the right to a fair trail content in article XVIII of the American Declaration of the Rights and Duties of Man, that states:

> *"Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional right;"*

SIXTH, that the Mexican State must be aware of the persons selected for this or that responsibility, because it is not a small topic, but cause for alarm, that not just the organs that were applying the Law, in this case the Senate, but the organs that emit judicial decisions, in this case the Mexican Supreme Court and the rest of the Courts, omit to respect and act according the text and spirit of the Constitution.

The foregoing get worst if the Mexican Supreme Court and the rest of the Courts, which hypothetically are in charge to let people access the right to justice stated in article XVIII of the American Declaration of the Rights and Duties of Man and article 25 of the American Convention on Human Rights, because of unknown and inexplicable reasons, are capable to make valid an exception to the right to access to the "Juicio de Amparo," to the right to access to justice, that is not just of less hierarchy than the Constitution, but that omit to exist.

This is the case because Article 73, fraction VIII, of the law that regulates the articles 103 and 107 of the Mexican Constitution or "Ley de Amparo," where the Mexican "Juicio de Amparo" is regulated, establishes that it does not proceed when the Senate was exercising a discretional and sovereign decision in"…election, suspension or removal…" of public officials.

Therefore, if it just states "…election, suspension or removal…" of public officials, it cannot state, in the same case the hypothesis of "ratification," plus that, as above stated, the Plaintiff did not solely argued the act of the ratification of the Ombudsman to be unconstitutional, but also the Federal Law that incorrectly stated the word "ratification" and, hence, the possibility for the Ombudsman to be ratified;

SEVENTH, plus that, as we will see, it results more important to interpret the Constitution, rather than omit to do it because of obscure and improper exceptions, specially when the presumption of obscure interests and corruption arises i.e. amongst some other irregularities manifested in this case, the president of the Human Rights Commission in the Mexican Senate, who presented the ratification of the Ombudsman to the Senate, worked as advisor in the National Commission on Human Rights (CNDH) in the administration he proposed to be "ratified."

VI. The Inter-American Commission on Human Rights notified the Mexican State of the Plaintiff's petition, and the Plaintiff and the State presented all their arguments correctly and in time.

VII. The Inter-American Commission on Human Rights is capable to emit a decision and recommend the Mexican State to repair the Human Rights violated, and, if it is possible and needed, present the case to the Inter-American Court of Human Rights.

In the last document presented by the Plaintiff into the Inter-American Commission on Human Rights, he resumes the importance of the case, the facts, and the reasons for which he thinks the Inter-American Commission must emit a recommendation to the Mexican State, and the arguments for which he thinks the Inter-American Court of Human Rights must condemn the Mexican State, all these based in the arguments declared by Chief Justice John Marshall in the case Marbury V. Madison.

He manifest that the arguments of the Mexican State in regard that being attended by Mexican Courts is sufficient reason to access to the right to justice stated in article 25 of the American Convention on Human Rights, is a fallacy because we have several examples of courts who do not respect Human Rights, notwithstanding the persons had the right to present their arguments to Court; he uses as example the Nazis Courts or the precedent of the Case of the former Mexican Foreign Affairs Minister, Jorge Castañeda, where the Inter-American Court of Human Rights condemn the Mexican State for violating his rights.

These precedents clarify the fact that the right to access to justice is not complete by having the possibility to access to the "Supreme Court," in virtue that the access to courts does not signify; it is not a synonym of access to justice and the respect of Human Rights. In such a case, there will be no need for neither International Law, nor International Courts or Commissions.

The Plaintiff manifest that the first act of violation is perpetrated by the Human Rights Commission of the Mexican Senate, because although it received proposals from civil organization, professional bars, universities, etc., applying

an unconstitutional Law, arbitrary decided, as a government of men, not of laws, to present to the Senate solely the candidature of the Ombudsman, consuming, as the Mexican State admits it in his response to the Inter-American Commission on Human Rights, the "ratification" of the Ombudsman, and not as is established in the Constitution, the possibility, just the possibility that the Ombudsman was "reelected" by two thirds parts of Senate from the universe of the existent possibilities i.e. legitimate candidates.

In the case that there were not other candidates, it should have been manifest, or the number of candidates reduced or the requisites needed made more difficult to obtain, but in the case that other candidates exist, as did happen, they shall have been presented to the Senate, in a government of Laws, to participate in the "election" of a new Ombudsman or the "reelection" of the Ombudsman, as stated in article 102-B of the Mexican Constitution, and not just "ratified," as unconstitutionally stated in article 10 of the Mexican Human Rights Commission Law.

It is incorrect the position of the Mexican State in his response to the Inter-American Commission on Human Rights, in the sense that the Plaintiff manifest solely not being heard by the Human Rights Commission of the Senate, because what the Plaintiff argued is that the Mexican State, acting against the Constitution and International Treaties i.e. as a government of persons, not of laws, private him from the right to be elected Ombudsman; as well as the right to a legal action that protected him from clear violations to his fundamental rights, established in the Mexican Constitution and in articles 23 and 25 of the American Convention on Human Rights.

In that sense, the Mexican State violated the Plaintiff's Political and Human Right to occupy a public position, and the people's right to govern through freely chosen representatives, established in article 23, fraction 1), points 1) and 3) of the American Convention on Human Rights and article 25, fractions a) and c) of the International Covenant on Civil and Political Rights.

The second violation arises with the acts of the Mexican Supreme Court who first, by unanimity, decided to solve the case in "Pleno" (The Chief Justice and the other Justices), but, violating their own decision, finally decided to solve the case in a "Sala" (five Justices). Since a Federal Law was being confronted as unconstitutional, based in article 10 of the Organic Judicial System Law, they decided to solve the case in "Pleno;" but incorrectly, versus their own decision, finally solve the case in "Sala," arguing they were applying article 21 of the Organic Judicial System Law, which only refers to regulations emitted by the Executive i.e. not Federal Laws.

Not solely they acted against their own decision to solve the case in "Pleno" but the "Sala" applied an exception to the "Juicio de Amparo" inexistent in the Mexican Legal System. As above stated, is the case where Article 73, fraction VIII of the law that regulates articles 103 and 107 of the Mexican Constitution or "Ley de Amparo," where the "Juicio de Amparo" is regulated, establishes that the "Juicio de Amparo" does not proceed when the Senate was exercising a discretional and sovereign decision in "…election, suspension or removal…" of

public officials i.e. is the case where Article 73, fraction VIII, does not contemplate the hypothesis of "ratification," plus that is the case where we plead for the unconstitutionality of a Federal Law that establish the word "ratified" and not just the act of "ratifying" the Ombudsman by the Senate.

Through the foregoing, the Mexican Supreme Court disrespected their own decision, the importance of the case, and the Plaintiff's rights.

The Mexican State acted against the Human Right of access to justice, established in articles 17 of the Mexican Constitution and 25 of the American Convention on Human Rights, because the judicial system did not admit our case, thus denied our right to an effective resource, violating their own regulations and decisions, and the plaintiff's rights, all these based in an exception to the "Juicio de Amparo" that omit to exist in the Mexican Legal System.

In order to portray with clarity the incompetence, the lack of vision, and the attitude contrary to the universal principles of the law, as well as the violations to the Plaintiff's Human Rights, perpetrated by the Mexican Supreme Court, we will quote and refer to the famous case Marbury V. Madison, that represents the judicial fundament for the Judicial Review. The alluded case states in one side the supremacy of the Constitution over secondary laws (general theory of the Constitution) and manifest the roll Justices play in the Constitutional Courts of the States when they face unconstitutional Laws (theory of constitutional proceedings).

The Marbury V. Madison case is extremely important, because it states the place we ought to give to the Constitutions within the Legal System; and, *contrario sensu*, it portrays the place the Mexican Supreme Court omitted to give to the Mexican Constitution within the Mexican Legal System, acting not just against the Mexican Legal System, but against the universal values of the Law that any lawyer must learn in his voyage trough the theory and application of the Law. This is relevant because any Justice of the Supreme Court must contain as a "*sin qua non"* requirement the basic knowledge of the law.

At least it is manifested in that way in Article 95, fraction III, of the Mexican Constitution, that states:

> *"(…)*
>
> *III. To have held on the day of the appointment, a professional Law degree, for a minimum of ten years, issued by an authority or institution legally empowered theretofor;*
>
> *(…)"*

The interest of Marbury V. Madison is universal; therefore it must be applicable to the present case. From it emerge, from it start, from it arise some basic principles, that, through the analogy, will be applicable to our interests, in order to demonstrate the violations made by the Mexican Supreme Court in the case we are exposing. Its teachings are a great example of the way in which the constitutional supremacy must be exteriorized. Plus, it must be a lection of the

value that judicial resolutions represent in order to set the constitutional rights necessaries inside any State where the government of laws rule.

As Justice Marshall sustains in his historic opinion: "*The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury*." And being the Mexican Government a government of laws, not of men, "*It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right*;" for the present case, the right to form part of the reelection of the Ombudsman (as established in Article 102-B of the Mexican Constitution i.e. "…may be reelected…"), and not the injury perpetrated when the Ombudsman was "ratified" (as the Mexican State admits in his response to the Inter-American Commission on Human Rights and as it is unconstitutionally established in Article 10, second paragraph, of the Law of the Mexican National Commission of Human Rights, which regulates Article 102 of the Mexican Constitution, when it establish "…the ratification" of the Ombudsman and not hypothetically "…the reelection of the Ombudsman").

We consider important to reiterate what we have been sustaining in this document, in the sense that the Mexican State perpetrated a *Juridicus Theatrum* which was against the logic and the Constitution, where, objectively, notwithstanding the procedure established by the Human Rights Commission of the Senate or how many Senators voted for it, they presented to the "Pleno" (i.e. all the Senators) the "ratification" of the Ombudsman, thus depriving the rest of the cotenants from their constitutional right to participate in the reelection.

In this order of ideas the injury is manifest and it must have exist what Marshall called "*The very essence of civil liberty*" which consists in "*the right of every individual to claim the protection of the laws*." In the opposite case we will be in the government of men and not in a government of the laws, and, furthermore, we will be in the case of a government of men who were on top of the Mexican Constitution (i.e. the dictatorship of those who proposed the "ratification," of those who voted for it and of those who defended and defend it). In such a case we will not have the protection of the Law.

The foregoing arguments must solidify if we understand that it is clear that the Mexican Constitution (and, alas, the Spanish Language!) omit to use indiscriminately the words "ratified" and "reelected;" it establishes, for example, that the Attorney General, the Supreme Court Justices, the diplomats, etc., shall be "ratified" (Article 76); and establishes the possibilities that the members of the Lower Chambers of the states could be "reelected" after letting pass a period (Article 116, fraction II) or the possibility that the Ombudsman could be "reelected" (Article 102-B), amongst other examples.

Marshall opens a door that completely changed the meaning of the Constitutions in the contemporary States: "*The question whether an act repugnant to the Constitution can become the law of the land…"* the question respect that the governments of any modern State are limited by the mandate and the text of the Constitution.

"*To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained?*" (Marshall asks and responds), "*the distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act*."

That is precisely the dilemma we are confronted to in this case: a Federal Law and the successive acts of application and judgment that violated the Mexican Constitution and Human Rights, and the possibility for the Inter-American Commission on Human Rights to recognize and require to be restituted.

The Inter-American Commission on Human Rights must confront the fact that:

> *"Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.*
>
> *"If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable"*

In consequence:

> *"Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void.*
>
> *"This theory is essentially attached to a written Constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society…"*

The Dilemma is:

> *"If an act of the Legislature repugnant to the Constitution is void, does it, notwithstanding its invalidity, bind the Courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law?"*

Therefore:

> *"…If a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must*

determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."

In resume: "*If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply*."

The Mexican State through the Supreme Court should have admitted that a Secondary Law was unconstitutional. The Ombudsman should have been "reelected." The Plaintiff's Fundamental Rights or "Garantías Individuales" should have been respected and his "Juicio de Amparo" solved in "Pleno" (i.e. The Chief Justice and the rest of the Justices, all together). And the Inter-American Commission on Human Rights shall recognizance it, and, thus, emit a recommendation, or the Inter-American Court of Human Rights shall condemn the Mexican State.

The Plaintiff also refers to the opinion of Justice Marshall in the case McCulloch V. Maryland, when he stated that the Constitutions just manifest the general directresses, and design the great objects, and that the minor components of this objects are deduced from the nature of their objects, because from this reasoning we can deduce that the voice of the Constitution was that the Ombudsman must be "reelected" and that any subsequent act (from the legislative when was regulated, from the Senate when was applied, or from the Supreme Court when was judged), shall be harmonized with that mandate i.e. not the pretention of the Mexican State to harmonize the Constitution to a secondary law through a "government of men."

The expression of these facts, which come from several violations to universal values of the Law and Human Rights, determine the necessity to take position confronting the reality of a Court that appeals to justice through the existent right to make history (i.e. the case of John Marshall's Supreme Court), with the reality of a Court that in this case determines not solely to disobey several universal and international law principles, Human Rights, the Mexican Constitution and their own decisions, but to apply inexistent right (i.e. the Mexican Supreme Court that denied our right to justice based in an inexistent exception).

It is dramatic how the Mexican Supreme Court acted against so many fundamentals of the law, basic to everyone who has justice as his industry.

We cannot let pass the possibility of portraying some of the reasons for which the Mexican State does not work properly. It is the differentiation between people who pursues progress, with people who act according their own interests on top of justice.

The Mexican sovereignty is stated in article 39 of the Mexican Constitution, and it refers to it as the expression of people needs, and the right to govern over the political institutions, through a democratic system and those hypotheses present in the Constitution.

In this order of ideas, we find legitimate and mandatory the right people had to have a legitimate Ombudsman, especially since this figure represents the State defendant of Human Rights and the president of a constitutional institution who is autonomous from the executive, legislative and jurisdictional powers.

Therefore it is defined in the Constitution, elected by the people through the constitutional control of the acts of any of the formal expressions of power, and is open to those who are viable to be elected.

Since the plaintiff was viable to be elected, and thus represented a possible and legitimate candidate, he had the right to be presented to the whole Senate for an election, and not just the Ombudsman for ratification.

The Mexican Constitution states, for the Ombudsman election, that he can be "reelected." Therefore, if the constitution states "reelected" it cannot in the same case state "ratified."

If the Constitution states that the Ombudsman shall be "reelected" and the secondary law states he "could be ratified," and is ratified, we have a case where a Secondary Law states something different from and against to the Constitution.

The Constitution states the Ombudsman could be "reelected" and the word "reelected" is there to be harmonized with the secondary law, and this process, because of obvious reasons, shall not confront the Constitution.

If it does confront the Constitution, like in the present case, it is in the judicial branch interest to interpret and manifest it. And the correct interpretation of the laws should tend to be harmonized with the correct interpretation of the Constitution itself.

The constitutional text is the maxim authority in the State, it shall be clear and it shall state the directresses that secondary laws must obey. In the present case, as we have seen, it is clear that the mandate of the Constitution is that the Ombudsman may possible be "reelected" and not that he could possible be "ratified." Thus, the secondary Law shall permit the Ombudsman to be "reelected," but not give him the possibility to be "ratified."

If it does, then there is a contradiction between two words that does not content the same meaning. If one is in the Constitution and the other in a Secondary Law, the interpretation of the Constitution must prevail. It is that simple the solution; it is that big the mistake of the Mexican State; and therefore, it is that big the recommendation the Inter American Commission on Human Rights must emit, or the eventual condemn to the Mexican State by the Inter-American Court of Human Rights.

We have based the present essay in the arguments presented by the Plaintiff to the Inter American Commission on Human Rights, in his "dúplica," in his response, in his petition and in the *Amicus Curiae* presented, *pro bono*, by the Law Firm GBS-ADVOCATI.

The title: "The Mexican Supreme Court V. Chief Justice John Marshall," is based in the "dúplica" (the response to the response of the Mexican State) the Plaintiff

presented, which is based in the reasons and arguments exposed by Chief Justice John Marshall in the case Marbury V. Madison.

It is clear that if we refer to it like "The Mexican Supreme Court V. Chief Justice John Marshall" we do it just for this case. The reason: we do not count with the elements to state that the Mexican Supreme Court or the Mexican Senate always violate the Mexican Constitution and Human Rights, we can only appeal to manifest that we think they did violate them in the present case.

Since we refer to a position meant to defend Human Rights inside the borders of Mexico, autonomous from the formal powers, and of constitutional hierarchy, we think it is from the humanitarian interest to behold our argumentation.

We have arrived to this instance because we cannot permit the Mexican State to treat us disrespectfully; we represent our, yet small, but legitimate, proportion of sovereignty with firmness and dignity. And the sovereignty of the Human Rights resides in our dignity.

In conclusion:

FIRST, the Human Rights Commission of the Mexican Senate by proposing the "ratification" of the Ombudsman and the Senate by voting for it, both acted against the Constitution and the Mexican sovereignty, which resides on the people. This based in the fact that the Constitution makes mandatory that the Ombudsman could be reelected by the Senators, meaning that the totality of the Senators presented must vote for the Ombudsman to be reelected from a universe of legitimate candidates, not elected by the Human Rights Commission of the Senate, and then voted and ratified by the Senate. The Constitution states that the Ombudsman will be voted by the totality of the Senators, and therefore the reelection must be voted by the totality of the Senators, and not just by those Senators who comprise the Human Rights Commission of the Senate.

SECOND, by voting for the "ratification" of the Ombudsman, the Mexican Senate violated the plaintiff's and the rest of the candidates' Political, Fundamental and Human Rights to participate in the "reelection" of the Ombudsman, because trough the ratification they were excluded from the reelection, notwithstanding the number of Senators who voted for the ratification.

THIRD, by voting for the "ratification" of the Ombudsman and not for the constitutional hypothesis of "reelection," the Senate violated the right of the people to participate in the government through the representation of the Senators i.e. they acted against the sovereignty that, as stated in article 39 of the Mexican Constitution, resides on the people.

FORTH, if the Constitution, as it does, differentiates the terms "ratification" from "reelection," then a secondary Law that states "ratification" when the Constitution states "reelection" is against the Constitution and must be void.

FIFTH, if the Constitution, as it does, differentiates the terms "ratification" from "reelection" or "election," then the Mexican Supreme Court must have admitted our petition, based in the fact that the Secondary Law imposed in order to not admit our case just refers to "…election, suspension or removal…" of public

officials i.e. it never mentions “ratification” and, as above stated, the Constitution differentiates it from “election” and “reelection,” hence it appears to be clear that if the constitutional discursive differentiates the words “reelection,” “election,” and “ratification,” the secondary law must do the same; therefore there is no ambiguity in the fact that the alluded hypothesis of exception to the “Juicio de Amparo” applied by the Mexican Supreme Court in order to deny the petition omits to contemplate the “ratification,” thus omit to exist; does not exist.

SIXTH, based in the above stated, the Supreme Court not just omitted to apply the judicial review institutionalized by John Marshall, but did not admit our case based in an inexistent exception, which therefore is a violation to our Human Right of access to justice.

SEVENTH, since they voted to attract the case to the “Pleno” (the Chief Justice and the rest of the Justices), the Mexican Supreme Court must have solved the case in “Pleno,” not as they did it, in a “sala” (five Justices).

EIGHT, since the “Juicio de Amparo” was presented by the Plaintiff alleging violations to his Fundamental, Political and Human Rights because the unconstitutionality of a Federal Law, then the Mexican Supreme Court must have solved the case in “Pleno.”

NINTH, this case represents that the violation to the Human Rights of one person could signify the violation to Human Rights of the people who live inside the borders of a determined State, in those States where the Constitution establishes the sovereignty on the people.

TENTH, therefore is up to the reader well judgment to decide who posses the reason, the Mexican Supreme Court or Chief Justice John Marshall.

Carlos R. Gil, Mexico City, Mexico, 07, September 2010.