

# The Amparo: Key Factor in the Arbitration Scene of Central America and Mexico

**Kluwer Arbitration Blog**

August 28, 2019

David Hoyos, Ana Catalina Mancilla (Hogan Lovells)

*Please refer to this post as: David Hoyos, Ana Catalina Mancilla, 'The Amparo: Key Factor in the Arbitration Scene of Central America and Mexico', Kluwer Arbitration Blog, August 28 2019, <http://arbitrationblog.kluwerarbitration.com/2019/08/28/the-amparo-key-factor-in-the-arbitration-scene-of-central-america-and-mexico/>*

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In July, San Jose, Costa Rica and Monterrey, Mexico hosted the latest Young ITA Talks forum, which was also carried via videoconference. Panelists from all over Central America and Mexico gathered to discuss and share current trends in their respective countries regarding the recognition, enforcement and annulment of arbitral awards.

The in-person panels were held at the headquarters of the Costa Rican - American Chamber of Commerce's International Center for Conciliation and Arbitration (CICA-AmCham) in San Jose and the Hogan Lovells office in Monterrey; speakers from El Salvador, Guatemala, Nicaragua and Honduras also participated in the event through the webinar.

A common topic during both sessions was the relevance of the *amparo* action available in certain jurisdictions that may interfere with procedures related to the recognition, enforcement or annulment of arbitral awards. The speakers discussed how, according to their own experience, this constitutional remedy has become a relevant point to reflect upon when applying for the recognition and enforcement of an award, but most importantly when litigating an annulment request.

As a brief background, in Latin America, the commonly called *amparo* is a mean of

protection against any violation of a person's (natural or legal) constitutional rights, regardless of whether the entity causing such violation is a public authority or a private party. In essence, the *amparo*'s purpose is the direct protection of human rights.

This constitutional remedy was first established in Mexico at the end of the nineteenth century and since then, it has been adopted by several Latin American countries, including those located in Central America (as reviewed by [Flores](#) on a Kluwer blog post about the New *Amparo* Law in Mexico). The reason behind the adoption and similarity of the *amparo* in these countries is based on their constitutions; all of them having a federal instrument that provide an extensive and detailed declaration of human rights. The *amparo* is there to guarantee the protection of those rights.

In the majority of the participants' countries, after obtaining an unfavorable arbitral award or to request the enforcement and recognition of it, the interested party has to go before the competent judicial authorities. After said processes, many Central American countries' –and Mexico's– legislations provide the *amparo* as a means to challenge the judicial resolutions rendered therein, by which the parties may allege a violation of a constitutional right. Some of those allegations may be based on a lack of legal grounds by the ruling court or any other violation to their judicial due process, as these rights are also protected by their countries' constitutions.

These available constitutional remedies may cause certain consequences that obstacles the purpose of the arbitration proceeding; forcing it to go through two additional instances. That is, for the award to be reviewed or enforced, it must go through a judicial process and later be reviewed in a constitutional proceeding (through an *amparo* action brought against the judicial resolution). These two instances have a direct impact on the proceeding's timeframe and imply a further review by judicial authorities that may not be experts on arbitration matters and therefore, may cause an undesirable modification to the substance of the award.

Notwithstanding these considerations, all speakers agreed that the arbitration scene is substantially improving in Central America and Mexico, noting that the scope of the *amparo* action is being limited or even declared inadmissible in many jurisdictions.

For example, Guatemalan Constitutional Courts' recent criteria tend to narrow

the *amparo*'s scope. According to this Kluwer post by [Sosa](#), these tendencies need to continue in order for Guatemala to become a competitive regional arbitral seat.

Mexico's and Honduras recent reforms are also an example, which will be thoroughly discussed below, basically making their constitutional remedies not much of a hazard. For Mexico, the viable remedy against the annulment's resolution is now an *amparo directo*. As for Honduras, the annulment process may be solved before another Arbitral Tribunal, therefore, its resolution isn't subject to this remedy.

Although the *amparo* may never be completely eliminated from these countries, recent efforts made by the courts and legislators regarding its proceeding, aim for a faster and more efficient mean of protection.

At the Young ITA Talks, among other matters, the speakers from Mexico, Honduras, Costa Rica and El Salvador had interesting insights regarding the *amparo* procedures in their countries, as explained below.

**Changes on Mexico's constitutional remedies:** Mexican legislation regulates two different *amparo* proceedings. On one hand, the *amparo directo* -a single instance procedure initiated either before the Supreme Court or the Collegiate Circuit Courts- which is only admissible against the final resolutions that put an end to a trial. On the other hand, the bi-instance *amparo indirecto*, which is a slower proceeding, brought before a District Court Judge to challenge an unconstitutional or unlawful act generally committed by a non-judicial government official.

As part of the 2013 reform to Mexico's *Amparo Law*, an *amparo indirecto* may be filed against private institutions or individuals when they execute acts equivalent to those from an authority. However, Carlos Leal-Isla shared that there have been several dissenting criteria determining that this constitutional remedy cannot be brought against an arbitral award itself. Nevertheless, an *amparo* can be filed against the resolution rendered by the judge in the annulment special procedure. A notable comment concerning this remedy is that the available proceeding against such resolution is now the *amparo directo*.

As mentioned above, this is an important change in the arbitration scene in Mexico, since the *amparo indirecto* is, by essence, a slower proceeding to that of the *amparo directo* because its decision can be appealed to a higher court. This

modification was due to the 2011 reform of the Code of Commerce where the ancillary procedure of annulment was abolished in favor of a new annulment special procedure; making its resolution the end of the trial, thus, making the *amparo directo* the only remedy available.

**No *amparo* against the annulment resolution in Honduras:** Unlike Mexico, the *amparo* action in Honduras can only be filed against resolutions issued by public officials or state authorities. Such proceeding can be initiated before the Supreme Court, in the Appellate Circuit Courts or in the Specialized Courts depending on the alleged violations and their final resolutions do not admit any other remedy. Gómez Bueso explains more about it in [this essay](#) (in Spanish).

Regarding the arbitration scene in his country, especially the annulment process against arbitral awards, Roberto Williams commented that, in order to avoid further obstructions in such proceeding, this process may be brought before another Arbitral Tribunal installed within the same Center where the award was rendered, as long as previously agreed upon by the parties. The benefits of considering this option is that any resolution issued by the aforementioned Arbitral Tribunal –according to the applicable legislation and recent jurisprudence– is immune to the *amparo*'s action since it is not rendered by public officials or state authorities.

**The particularity of the *amparo* in Costa Rica:** The Costa Rican *amparo* is different from other constitutional remedies in the region, in the sense that there's no need to previously exhaust the corresponding judicial channels. This characteristic grants the user the possibility to proceed directly before the Constitutional Court against any unconstitutional act held by an administrative authority or private party. However, this constitutional remedy is not admissible against judicial resolutions.

In the arbitration scene (as explained here by [Vallejo](#)), the Constitutional Court has held that the *amparo* action is inadmissible against the arbitration proceedings and its awards, given that the special laws on the subject contain the necessary remedies against those proceedings or awards. This was also commented by Christian Díaz, stating that, making the *amparo* unavailable, the Court has made its stand to not intervene in the arbitration procedure.

**The effectiveness of the *amparo* in El Salvador against arbitral awards:**

Under Salvadoran legislation, an *amparo* can be filed against acts or omissions of public or private entities that violate or restrict someone's constitutional rights. According to article 81 of El Salvador's Law of Constitutional Proceedings, the resolution rendered in the *amparo* proceeding is final and does not admit any kind of appeal, just like Mexico's *amparo directo*.

In the arbitration scene, there's still a dissenting criterion regarding the faculties of a Judicial Courts to dive in and analyze a constitutional transgression in an arbitral award; especially when it comes to awards issued abroad. Humberto Sáenz commented on the matter, describing the situation as a problem -or rather a challenge- that El Salvador must face. However, as explained [here](#) by Humberto Sáenz himself, his country is adapting in order to become a more arbitration friendly jurisdiction.

Regarding the effectiveness of the *amparo* against the recognition of an award, Humberto Sáenz noted that, even after being granted the alleged constitutional protection in El Salvador and prevented its recognition in this country, the opposing party may still go to a foreign jurisdiction and file a request for recognition and enforcement under their legislation. Where, as he explained, the judicial authority could ignore the *amparo's* protection, since the [New York Convention](#) does not bind the authorities to recognize a foreign resolution issued due to such arbitral award.

The insights shared in this Young ITA Talks suggest that indeed, when applying in this region for the recognition, enforcement or annulment of arbitral awards, it is very important to take into account the *amparo* action available in each jurisdiction. However, as described throughout the present report, the recent changes in the region's legislation regarding the *amparo* proceeding and the latest precedents issued by the judicial authorities on the matter reveal a pro-arbitration tendency, which is undoubtedly a promising sign for the arbitration scene in Central America and Mexico.