LEGAL ASPECTS CONCERNING THE TECHNOLOGY TRANSFER PROCESS IN MEXICO

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I. Background and Purposes of the Law

The Mexican Law of Technology Transfer[1] has as its direct background the research accomplished by international organizations like UNCTAD and UNIDO, as well as the work done by national and foreign experts. Among the earliest were Miguel Wionczeck, Gerardo Bueno and Mauricio de Maria y Campos, who took an economic approach to the problems. A very adequate diffusion study was done by two financial institutions, Comercio Exterio and Nacional Financiera through their publications.

On the legal side, the Mexican Law seems inspired fundamentally by Decision 24 of the Cartagena Agreement of December 31, 1970,[2] regarding the treatment of foreign capitals, trademarks, patents and licenses; by the measures taken by the countries that are members of the Andean Group in compliance with such resolution; and by the Argentine Law on technology transfer.[3] The origin of the Mexican Law has been criticized by some lawyers who describe the Law as the result of a simple process of imitation of the aforementioned laws. Several examples of such a process exist in our legislative history. In this regard, it is worth pointing out that even though the Mexican Legislature was inspired by the aforementioned laws, it did not adopt a simple copy, but rather undertook the task of adapting the text to the circumstances of our national reality.

In order to place the Mexican legislation in a framework of solid scientific and technological policies, it is convenient to redefine the main problems existing in this field. The full and authentic development of a determined society can only be acquired through its technological progress. Unfortunately, account should also be taken of

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[1] Law for the Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks, Diario Oficial, Dec. 30, 1972 [hereinafter cited as Law on the Transfer of Technology].

[2] Decision 24 of the Andean Commission, Standard Regime for Treatment of Foreign Capitals and for Treatment of Marks, Patents, Licenses and Royalties, Dec. 31, 1970, *reprinted in* 10 Int'l Legal Mat'ls 152 (1971). For the text of the Cartagena Agreement see Agreement on Andean Subregional Integration, *signed* May 26, 1969, *reprinted in* 8 Int'l Legal Mat'ls 910 (1969).

[3] Argentine Law No. 19231, Official Bulletin, Sept. 13, 1970.

the fact that developing countries, among them Mexico, have arrived at the industrial revolution with considerable delay, and with limited possibilities of reaching an autochthonous technology. Nevertheless, it is imperative to undertake a serious and devoted effort to overcome the "technological gap" which separates Mexico from the developed countries for both economic and social reasons. The imperative mentioned should not be considered as indicative of a purpose of hindering technology import. We know that it is necessary for the country to continue importing technology, but we consider that such an importation must take place under the best conditions that we can achieve.

Thus, foreign technology might play an important role in our development, to the extent to which we can guide its contribution to the achievement of our national aims. In such circumstances, the control system on technology transfer established by the Law has as one of its most important aims "to strengthen the bargaining power of the national buyers and to make possible for local enterprises the access to the best available technology in the best conditions of opportunity, quality and prices."[4] So, we may say that on the one hand the Law intends to increase the ability of Mexican industrialists to negotiate technical agreements, which on the other hand, the purpose of the Law is to prevent abuses which occurred due to the weak bargaining power of the buyer of foreign technology. Therefore, it is interpreted that the Law is an instrument of protection for our national industry. The intervention of the National Registry for Transfer of Technology (hereinafter referred to as the Registry) has already given excellent results. Between February 1973 and January 1976, we saved for our country more than $350,000,000 in royalty payments, and the conditions of many agreements have been improved.

II. REGISTRATION OF AGREEMENTS

Since in Article 2 of the Law an exhaustive enumeration of the agreements that should be registered is set out, there can be no analogous interpretation of the Law whereby individuals could present for registration in the Registry other similar agreements, or whereby the authority would demand that such documents should be submitted for registration. The Law requires the registration of

[4] See the statement of purpose of the exposition introducing the Law on the Transfer of Technology, in EL MERCADO DE VALORES, Nov. 1972, at 1233.

those documents indicative of agreements having legal effects in the territory of the Mexican Republic, and whose object is the transfer of technology in any form.[5] Decision 24 of the Andean Group only refers to the import of technology and to the use of patents and trademarks.[6] The Argentine Law basically refers to the same cases as the Mexican Law, with the difference that the latter also includes management services.[7]

For the purpose of determining the law to be applied to this kind of business, the place where the agreement is celebrated is not important. However, the fact of the granting of the contract in itself does have relevance without being necessary for the application of the Law, as the fact of the mere execution of such agreement is an additional requisite for the registration.

The technology export accomplished by national companies does not necessarily have to be registered with the Registry. However, the obligation to register exists independent of the onerous or gratis character of the agreement when the subject matter of the agreement is liable to registration.

Another important issue involves determining whether oral agreements are susceptible to registration. Regarding this, we consider that the expression, "juridical act," employed in the Law should be given the widest interpretation and consequently include "de facto" situations which produce legal effects. Thus, oral acts also fall under legal regulation and must be recorded by the Registry. Of course, to make registration possible, it is necessary that such agreements

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[5] Article 2 of the Law on the Transfer of Technology, *supra* note 1, provides:

> The registration in the Register . . . is obligatory for all documents containing acts, contracts or agreements of every nature which are effective in the National Territory and which have been entered into for the following purposes:
>
> (a) The licensing of the use or exploitation of trademarks.
>
> (b) The licensing of the use or exploitation of patents for inventions, improvements, industrial models and drawings.
>
> (c) The furnishing of technical information by plans, diagrams, models, instruction sheets, instructions, formulas, specifications, formation and training of personnel or otherwise.
>
> (d) The supplying of basic or detailed engineering plans for the building of facilities or manufacture of products.
>
> (e) Technical assistance in whatever form it may be furnished.
>
> (f) Services for the administration and operation of business enterprises.

[6] Decision 24 of the Andean Commission, Standard Regime for Treatment of Foreign Capitals and for Treatment of Marks, Patents, Licenses and Royalties, Dec. 31, 1970, art. 18, *reprinted in* 10 INT'L LEGAL MAT'LS 152, 158 (1971).

[7] For the text of the Argentinian Law see H. MASNATA, LOS CONTRATOS DE LA TRANSMISION DE TECNOLOGIA (KNOW-HOW Y ASISTENCIA TECNICA) 97-106.

take the form established by the Law; *i.e.*, they must be put in writing.

The individuals or corporations that have the right or the duty to demand the registration of documents in the National Registry for the Transfer of Technology are listed in article 3: individuals or corporations of Mexican nationality; the foreigners who live in Mexico and the foreign corporations established in the country; and the agencies or branch offices of foreign companies established in Mexico. The obligation of registration is only in force when some of those individuals or corporations are parties to the agreements referred to by the Law. The Law does not exclude from the obligation of registration those agreements exclusively celebrated by individuals or corporations of Mexican nationality.

Certainly most of the patent or trademark license agreements, or most of the technical assistance agreements, are celebrated among national companies and foreign suppliers. For this reason the Law establishes a protectionist regime on behalf of the buyers or licensees. Still, the Legislature tried to regulate all the cases that could possibly arise. The purpose of including those acts celebrated solely among nationals was to bar certain foreign suppliers from avoiding compliance with the Law by presenting themselves openly as national companies without really being such. In the Mexican legal system, when a company is founded according to the country's laws and has its legal address in the country, it may be granted Mexican nationality independent of the structure of its capital or other circumstances. On the other hand, according to the final paragraph of the same third article, the registration of the act is only facultative and thus not obligatory for the suppliers of technology who live in a foreign country. This means that the Mexican Law, being limited to the physical or geographical space of the national territory, cannot impose obligations on aliens who live outside of the country.

Article 4 of the Law provides a timetable for registration in the Registry. Within 60 days after the date of celebration of the agreements, the documents containing the agreements must be presented to the Ministry of Industry and Commerce for their registration. Modifications to those acts, agreements, or contracts negotiated after registration should be registered in the same manner. The termination of the acts, agreements or contracts prior to the stipulated termination date must also be communicated to the Registry within 60 days of termination.

III. OBSTACLES TO REGISTRATION

Listed in article 7 of the Law are cases in which the Ministry of Patrimony and Industrial Development should reject the registration.[8] The list refers essentially to acts, agreements and contracts which are unfavorable either to the national economy or to the contracting party receiving the technology concerned. This article contains two classes of obstacles which, when contained in acts, agreements or contracts submitted to the Registry for consideration, have the juridical consequence of causing Registry to deny the registration of those agreements. There are obstacles which, in the opinion of the Registry, may be disregarded, and others which cannot be overlooked.[9] Those regarding which the Registry may be flexible

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[8] Article 7 of the Law on the Transfer of Technology, *supra* note 1, provides:

The Ministry of Industry and Commerce shall not register the acts, agreements or contracts mentioned in Article 2 in the following cases:

I. When their purpose is the transfer of Technology freely available in the country, provided this is the same Technology.

II. When the price or consideration does not represent the Technology acquired or constitutes an unjustified or excessive burden on National Economy.

III. When provisions are included which permit the supplier to regulate or intervene, directly or indirectly, in the administration of the transferee of the Technology.

IV. When there is an obligation to assign onerously or gratuitously to the supplier of the Technology, the patents, trade-marks, innovations or improvements obtained by the transferee.

V. When limitations are imposed on technological research or development by the transferee.

VI. When there is an obligation to acquire equipment, tools, parts or raw materials exclusively from any given source.

VII. When the exportation of the transferee's products or services is prohibited, against the best interests of the country.

VIII. When the use of complementary technologies is prohibited.

IX. When there is an obligation to sell the products manufactured by the transferee exclusively to the supplier of the Technology.

X. When the transferee is required to use permanently personnel designated by the supplier of the Technology.

XI. When the volume of production is limited or sale and resale prices are imposed for domestic consumption or for exportation.

XII. When the transferee is required to appoint the supplier of Technology as the exclusive sales agent or representative in Mexico.

XIII. When an unreasonable term of duration is established. Such term shall in no case exceed 10 years, obligatory for the transferee.

XIV. When the parties submit to foreign Courts for decision in any controversy in the interpretation or enforcement of the foregoing acts, agreements or contracts.

The acts, agreements or contracts referred to in Article 2, which are effective in Mexico shall be governed by the laws of Mexico.

[9] Article 8 of the Law on the Transfer of Technology, *supra* note 1, provides:

assume the use of a technology by the private party which is deemed of particular interest for the country. This may occur, for instance, when a certain know-how being negotiated could lead to a reduction in the cost of products considered of prime need, or when the technological process contributes significantly to the substitution of imports.

A. *Impediments which May be Disregarded by the Registry*

Certain of the obstacles set forth in article 7 may be at times disregarded by the Registry.[10] Section II of article 7 of the Law says that any contract in which the price or the conditions are not in proportion to the technology acquired or constitute an unjustified and excessive burden for the national economy shall not be admitted for registration in the Registry. The provision allows the authority to judge the fairness and justification of payments to be made for the acquisition of technology, or under patent and trademark license agreements. The provision is of an attributive character, since it empowers the authority to make a technical and economic appraisal of the benefits contained in the license agreement in order to arrive at a determination regarding the justice of the payments being promised for the items covered by the agreement.

Undoubtedly the technical and economic evaluation of agreements implies great difficulties in view of the varied gamut of existing technologies, due to the fact that actually there are no regulations setting the price of a certain technology. As stated to us by some licensors who have been quite frank about it, the price of a technology is set pursuant to what the market is willing to pay for it. It should be added that the nature and scope of the technological effort being made in the world substantially changes from one economic sector to another, from one company to another, and even from one product to another. For these reasons, it is not possible to establish a general criterion as to what would be adequate consideration. Nor is it possible to set a maximum acceptable limit (for instance, three percent, which is what other government agencies

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The Ministry of Industry and Commerce may register in the National Register for the Transfer of Technology the acts, agreements or contracts which do not satisfy one or more of the requirements mentioned in the preceding article, when the Technology transferred is of special interest to the country. This exception shall not apply to the requirement cited in Section I, IV, V, VII, XIII, and XIV of the preceding Article.

[10] *Id.*

were accepting while applying the Law for the Development of New and Necessary Industries), since the setting of a maximum acceptable limit could mean that in many instances the supplier of technology upon learning that his contract will be accepted will ask the highest price for his technology. What was a maximum limit or maximum percentage then becomes a minimum, and it might well happen that the technology involved is not worth that price.

Notwithstanding this problem, our Registry has already established certain criteria of a general character on this subject. First of all, it is essential that the basis for estimating the considerations for the account of the licensor during the life of the agreement be clearly and concisely specified in the contract. The Registry, in order to determine whether the conditions are adequate, takes into account the total flow of payments involved in the contract. A second aspect of a practical character is that taxes to be paid for income received by licensors from payments of royalties set forth in agreements should never be borne by the company receiving the technology. It should be noted that American firms supplying technology may deduct in their own country the taxes paid by them in Mexico, although it is not so with European companies.

In order to appraise the conditions set forth in agreements, the Registry both examines the extent to which payments to be made are comparable to conditions agreed to by other firms in Mexico in similar contracts, and, in addition, secures related information from sources abroad. In this connection the assistance given to the Registry by the National Board of Science and Technology has been most valuable. From the foregoing, it is evident that the analysis is made by comparison, although we also use other means, such as the bearing of royalties on profits, the complexity of the technology, etc.

It is quite difficult to conclude which is the best formula for the payment of royalties. The most common one is the payment covering total net sales of the products covered by the agreement. Although this formula may be advisable in some cases, in other instances there is the disadvantage that the licensor may increase his profits as a result of the rise in the selling price of the products covered by the agreement. When an increase in the price of the products covered by the contract is foreseeable, we suggest resort to a formula of paying royalties by units produced.

Another important case is that in which the licensor demands a minimum payment of royalties. As a general rule, the Registry does not accept minimum payment of royalties since, particularly in the

initial phase of operations of a company, such a requirement may represent an unjustified burden. On the other hand, when a licensee, in addition to acquiring technology from a foreign supplier purchases from the latter certain raw materials, parts or components of the product, care should be exercised in order that at the time of computing the payment of royalties, the cost of such components is deducted from the payment. Otherwise there would be multiple payment of royalties since the cost of the technology is already included in the components being acquired from the licensor.

According to section III of article 7 those contracts containing clauses permitting the supplier to regulate or to intervene directly or indirectly in the management of the enterprise acquiring the technology will not be admitted. We consider that the management of enterprises should not be yielded to foreigners, not only because such a practice would lead to an increase in the degree of dependency of our country upon foreign countries, but also because we think that the domestic entrepreneur has enough technical and operating competence to continue handling his own business in an effective, productive and socially useful manner.

Section VI of article 7 refers to the inclusion in a technology agreement of a clause whereby the acquiring party agrees to purchase equipment, tools, parts or raw materials from a specific source. Under such a provision, known as a "Tie-in Clause," the licensee remains tied to the supplier who may overprice the goods sold to the licensee, thus increasing his profits. Obviously, this practice harms the receiving enterprise and therefore harms the country, since the over-billing of components which are obligatorily imported, among other negative effects, reduces the competitive position of the final product in the international market where that product is exportable. However, we consider that the authority may ignore those cases in which the raw materials may not be obtained in Mexico or those agreements under which the supplier obligates himself to supply the goods or raw materials at the best prices of the international market.

Section VIII states that those contracts containing any prohibition of the use of complementary technologies will not be accepted by the Registry. The purpose of this rule was to protect the free choice of the licensee and to make possible the diversification of production.

Section X has the purpose of strengthening the national scientific and technological structure by promoting the use of Mexican tech-

nicians when available. It is also a legal precaution meant to prevent suppliers of technology from violating the provisions of labor laws and immigration laws, especially with respect to the obligation of preparing Mexican technicians to replace the foreign ones. As stated above, we feel that only in cases in which the authority deems the presence of foreign personnel indispensable specifically for the development of technology would such employment be acceptable.

Section XI prohibits the registration of any contract containing clauses in which production volumes are limited, or selling prices are imposed, or resale prices are required on items manufactured by the purchaser of technology, whether such items are destined for domestic consumption or for export. In addition to the problems of pricing, this section covers cases in which minimum volumes of production are set or maximum volumes of production are established. We feel that the contract should be rejected in both cases. Contracts requiring minimum volumes usually entail the licensee's obligation to reach a certain production capacity. During the initial stages of operation, such a requirement may inhibit the development of the enterprise, especially when it is agreed that if a specific volume is not reached, the contract shall be terminated.

Section XII refers to the inclusion of a binding clause by which the receiving party commits itself to celebrate sales contracts or exclusive representation contracts with the supplier. It is again worthwhile to note the protective character of the Law. Such a clause would permit the supplier to acquire direct participation in the decisionmaking process of domestic firms and perhaps to limit later their possibilities of exporting their products.

B. *Absolute Obstacles to Registration*

Certain of the clauses in technology transfer contracts mentioned in article 7 are absolutely forbidden.[11] Section I provides that there will be no registration for those contracts that refer to the transfer of technology that is freely available in the country, provided it is the same technology. This section empowers the authority to make a technical analysis of the type of technology that is being transferred under contract. An example of technology freely available in the country is the case in which the agreement grants the exclusive use of a patent, but the patent has already lapsed. The technology

[11] Note 8 *supra*.

formerly protected by the patent is therefore freely available in Mexico.

Regarding section IV, where there is an obligation to transfer to the supplier, for money or freely, the patents, trademarks, innovations or improvements that are developed by the purchaser, the contract will not be admitted. We consider the restraint contained in this rule fair. Under United States antitrust regulation, such a "grant-back" provision is a per se violation of the Sherman Act.[12] In special cases, approval might be received for agreements granting the licensor the right to use improvements made during the life of the contract, so long as the licensee retains the ownership of such improvements.

The prohibition contained in section V of article 7 refers to clauses through which limitations on technological development are imposed on the purchaser. Such clauses may not appear in contracts liable to registration. The prohibition extends to all cases in which the party receiving the technology agrees not to carry out research activities. Certainly, the justification for this legal provision is obvious. The purpose is gradually to break the technological dependency which ties us to foreign countries. We know that to the extent that a country makes advances in the development process, it needs to import more technology. However, it remains important that we strengthen our national scientific-technological structure, so that it can efficiently absorb foreign technology.[13]

Section VII states that contracts which prohibit or restrict the export of goods or services produced by the receiving party in a manner contrary to the interests of the country are not susceptible of recording in the Registry. This provision, although among those for which article 8 of the Law expressly requires adherence, allows the authority to evaluate the contracts including such restrictions in light of the public interest. Regarding its interpretation, we start from the principle that complete restrictions on exports are not justified. It may well happen that the supplier or licensor has executed several deals with different enterprises located in various countries, under which he has granted the exclusive use of the patent, the trademark, or the know-how concerned. Therefore, the sup-

[12] 15 U.S.C. §§ 1-7 (1970).

[13] In order to solve the problem of the absorption and adaptation of technology, a decisive action in the field of scientific and technological research is needed. Valuable suggestions may be found in Sabato & Bontana, *La Ciencia y la Tecnologìa en el Desarrollo Futuro de America Latina*, 3 REVISTA DE LA INTEGRACION 15 (1968).

plier may be legally prevented from granting the Mexican licensee an unrestricted authorization to export. In such a case, the authority would probably evaluate the situation according to the circumstances and might well authorize the contract.

Section XIII of article 7 points out the impossibility of granting registration to agreements establishing excessive terms of duration, emphasizing that in no case may the terms exceed 10 obligatory years for the acquiring party. This section prohibits contracts of extremely long duration, since there are technologies whose period of obsolescence is very short and since know-how procedures exist that can be learned by the local companies in a relatively short period of time. Although the wording of this section grants the Registry the authority to determine what the length of the agreements should be, this authority must be exercised by taking into account the specific characteristics of each contract, the type of technology being transferred, and the industrial field to which the technology applies. As a general rule, it is necessary that a specific term be established in the agreements. However, if the agreement provides for an indefinite term but admits the possibility of termination on prior notice by any of the parties thereto, the agreement may then be admitted for registration in the Registry.

Section XIV provides that the authority shall not accept agreements which provide for submission to foreign courts for purposes in interpretation or litigation. Similar provisions are found in other legal systems.[14] It is a principle common in private international law that the law governing an act is that of the nation where the legal effects of the act are produced. We consider that if technical assistance is to be given to our country and if we are to pay for it, our laws must rule the legal effects of the agreements. The application of this section raises certain problems of interpretation: (a) whether the inclusion of a clause containing an arbitral commitment may be accepted in agreements governed by the Law; (b) whether the General Bureau of the National Registry of Transfer of Technology may analyze the arbitral decision; and (c) whether an agreement which does not contain a specific submission to the courts of Mexico may be accepted for registration in the Registry.

Agreements containing an arbitral commitment should be accepted, since Mexico has ratified the Convention on the Recognition

[14] The Argentine Law, *supra* note 3, contains a similar provision.

and Enforcement of Foreign Arbitral Awards.[15] However, the Registry may reject contracts containing the arbitral commitment in terms that violate the provisions of that Convention and the provisions of the Mexican Commerce Code. Where an agreement omits reference to the body which shall resolve controversies arising from the interpretation of or compliance with the agreement, the rules of jurisdiction set forth in the Commerce Code and in the Civil Code for the Federal District and Territories may be applied. Agreements incorporating these conditions should be accepted for registration in the Registry. Notwithstanding this, we must view arbitration as acceptable only under conditions which warrant the impartiality of the arbitral agency, especially with regard to its constitution. The permanent arbitral agencies, such as the Interamerican Commission of Commercial Arbitration, seem commendable to us.

IV. FINAL REMARKS

Another important matter that worries entrepreneurs is industrial secrecy and the need for keeping confidential the information regarding technological procedures that is given to the Registry. Article 13 of the Law imposes on the personnel of the Registry a duty of absolute secrecy regarding the technical data included in agreements which are registered.

The most important penalty of the Law arises from the fact that agreements which are not presented to the Registry and those which have been denied registration or have been cancelled are thereby null and void. Such agreements cannot claim validity in the presence of any national authority and do not produce legal effects between contracting parties or before third parties. As a consequence of that nullity, other penalties arise. The Treasury and Public Credit Department will not authorize deductions relative to royalty payments which are derived from void contracts, since such payments must be legally identified as "payments of the illegal." Finally, if a registration is not granted, it is not possible to enjoy the benefits, incentives or fiscal privileges derived either from the Law to Promote the New and Necessary Industries or from the Industrial Decentralization Decree.[16] Further, neither importation control nor

[15] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *done* June 10, 1958, [1970] 3 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3. *See* Diario Oficial, June 22, 1971.

[16] Law on Transfer of Technology, *supra* note 1, art. 5.

the control of the facilities derived from manufacturing programs may be passed.

As a conclusion we may point out our conviction that the Law constitutes a useful and adequate measure to overcome, even though gradually, the problems which derive from the technology transfer process.

ANNEX

Means for Challenging the Determinations Issued by the National Registry for the Transfer of Technology

The determinations issued by the Department of Patrimony and Industrial Development on the basis of the Law for the Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks may be challenged by those who consider themselves affected.

The mechanism for review of the determinations is established in article 14 of the Law. In this article one finds the regulation of the adminstrative procedure of "reconsideration," by virtue of which the individual has the right to appear before the responsible national authority (in this case, the National Registry for the Transfer of Technology) to request it to "reconsider" its decision. For this purpose the individual must offer proof that the Registry would consider pertinent. The proof may be of any type accepted by the Law, which would not be *contra bones mores* or against public policy, with the exception of proof by testimony or confession. Under article 14, the adminstrative authority has a deadline of 45 days, commencing once the proof to be received has been given, in order to decide on the appeal. If the time limit for the reconsideration has passed and the authority has still not made its determination, the appeal will be deemed to have been favourable to the applicant.

This mechanism responds to the necessity that exists for individuals to have legal means to defend themselves against arbitrary actions by the administrative authority. In a system of law such as ours, the administrative authority can only do what the law authorizes, and when the express mandate of the law is exceeded, individuals can defend their legitimate interests by means of the proceeding of "reconsideration" *(reconsideración)*.

The reconsideration determination can fall into one of the following three categories:

(1) *Confirmatory,* in which the administrative authority maintains the decision stated in the original determination;

(2) *Modifying,* through which the original decision is modified; or
(3) *Revocatory,* whereby the Registry, recognizing that the individual is correct, amends its decision and permits the registration.

In the operative experience of the Registry, in a number of cases, the arguments and evidence submitted by individuals in the proceedings for "reconsideration" have modified the decision of the authority, with the result that the Registry itself has revoked or modified its decision.

On the other hand, in cases where the Registry maintains its decision, notwithstanding its examination in the proceeding of "reconsideration," and confirms the decision that the individual considered to be prejudicial to his interests, the latter has at his disposal one further mechanism that may be used to obtain a decision that could be favorable to him. This other mechanism is known in the Mexican legal system as the "judicial proceeding of *amparo*" or "the judicial proceeding of constitutional guarantees," by virtue of which the person injured by the decision has recourse to the competent judicial authority (and not to an administrative one) for a definitive determination as to whether the administrative decision in question is justly founded and sets forth reasons that are in conformity with the law.

The competent judicial authority is a District Judge, who hears the parties and decides whether the decision that has been challenged fulfilled all the requisites established by law. Where the legal requirements have not been met the Federal Courts protect the aggrieved party against the actions of the particular administrative authority. This means that in such cases there will be a revocation or modification of the decision of the authority in question.

It may happen that the District Judge will consider that the complainant does not have cause for his complaint, and that the administrative authority's decision is well founded in law and must be confirmed. It is also possible that the judgment of the District Judge may be considered by one of the parties (the authority or the individual) as not founded in law. In such a case the party in question is granted the possibility of requesting that the judicial authority that is hierarchically superior to the District Judge review that judgment. This mechanism is called "proceeding for review," and is a proceeding that is regulated by the Law on *Amparo,* which implements articles 103 and 107 of the Political Constitution of the United Mexican States. The competent court to which appeals from the District Judge may be brought is the *Tribunal Colegiado de*

Circuito en Materia Administrativa. The decision of the *Tribunal* is final in that no other appeal is possible.

This brief description of the appeal mechanisms is meant to emphasize that in Mexico the judicial system effectively protects the legitimate interests of nationals and foreigners.