English Version.

THE CONCEPT OF THE RULE OF LAW IN TURKEY

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I. ROLE OF THE CONCEPT IN TURKEY.

Because of the affinity existing between the Turkish legal system and those of continental Europe, the European concept of the Rule of Law which originated in Germany is also used in Turkey in the field of law, as well as in the field of politics.

The concept was adopted into Turkish doctrine directly from German doctrine. It was introduced first into the doctrine of administrative law and afterwards extended into the doctrines of other branches of public law.

But it is in administrative law that the concept has played an important role. In fact, in this field, the majority of Turkish doctrine, like German doctrine, attributes to the concept the two fundamental ideas which are basic to the development of administrative law, namely the idea of legality of public administration and the idea of its judicial control.

The concept, however, is not limited to the doctrine of administrative law alone. Under the influence of this doctrine the concept has also been accepted by the Turkish "Conseil d'Etat", where it is sometimes used to support its decisions. In a case in which a

legal provision excluded juridical control on the subject-matter, the "Conseil d'Etat" deciding on the admissibility of an appeal for annulment of a decision because of irregularity of form, interpreted the legal provision in a restricted way by calling upon the concept of Rule of Law. The "Conseil d'Etat" expressed the opinion that juridical control of every administrative action is the most characteristic element of the principle of Rule of Law — it actually used the term "a State bound by law" — and this element is implicit in Article 51 of the Turkish Constitution, which provides for the creation of a "Conseil d'Etat" to deal with administrative justice. The conclusion of the "Conseil d'Etat" was that the legal provision in question should be interpreted as to be compatible with this principle. Therefore, it has to be understood as referring only to the discretionary element of administrative action and should not exclude judicial control over its other aspects, such as the irregularity of form[1].

There are other circumstances in which the Turkish "Conseil d'Etat" uses the concept of Rule of Law. Considered incompatible with this principle and consequently a serious default in upholding the State's responsiblity are all cases in which the administration does not execute, within a reasonable period of time, judgments annuling an administrative act[2].

Recently, the concept was also introduced in the field of politics. The President of the Republic once underlined, in his inaugural speech to the first legislature after the 1950 elections,

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1) Official Record of Decision of the Turkish "Conseil d'Etat" (Kararlar Dergisi), Vol. 50-53, p. 112 (1950).

In 1948, a law made it possible, for a limited period, to purge incompetent officials from a ministry. The dismissal had to be decided by a ministerial council and was subject to approval by the minister. In a case in which a member of such a council had had personal conflict with the person making the appeal, the "Conseil d'Etat" considered this fact to be incompatible with impartiality, in spite of the law's silence in this respect and since this was believed to be essential in such a commission, it annulated the decision to remove the person in question.

2) Official Record of Decisions, Vol. 59, p. 227 (1953); Vol. 66, p. 106 (1954).

that these elections, which brought about a change of power, had firmly established the Rule of Law[3].

Today, the concept has become a key-note in opposition centers. From the floor of the Parliament to newspaper columns and political rallies, the members of the opposition proclaim it on every occasion. The concept is even included in the programs of some of the political parties. The program of one of them says that "the principle of Rule of Law requires the independence of the courts" and "this depends in a large measure on the statutory security granted to judges". The same program makes use of the concept to condamn the use of legislative power by the majority party according to its own unilateral views and opinions, as well as the laws prohibiting judicial appeal from administrative actions. In the program of another party, it is stated that the guarantee given by the Constitution regarding the status of judges and upholding the concept of Rule of Law, should be reinforced by constitutional institutions. The same program established, furthermore, a relationship between the concept of Rule of Law and the impartiality of public administration with regard to political parties.

II. THE ELEMENTS OF THE CONCEPT.

The concept of Rule of Law is in itself a vague formula, possessing only a conventional meaning, i.e. one which is attributed to it; the concept therefore lends itself to different interpretations; this is proved by the existence of differences of opinion on the concept, such as the difference between the continental and anglo-american concepts of Rule of Law or the difference of opinion within one country, such as Germany. But as the "ideas inherent in the concept" will be dealt with in the general report, here we shall report only on what is understood in Turkey by Rule of Law and the degree of its implementation.

On the subject of the elements of the Rule of Law, a comprehensive study has not yet been undertaken in Turkey, in spite of the fact that the concept plays, as we have already indicated, an important part in the juridical and political life of the country.

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3) Official Gazette (Resmî Gazete), November 2, 1950.

However, from the discussions on this subject, it is possible to distinguish three postulates as ideas inherent in the concept of the Rule of Law, namely. the legality of administration, its judicial control, and the independence of judges. In addition, one observes, in recent years, the establishment of a close relationship between the concept of Rule of Law and the constitutionality of laws, as well as the general principles of law and democracy.

However, these three postulates are not enough to define the concept. In light of the observations in continental doctrine, especially in Germany, the country where the concept was born, these postulates should be supplemented by two other principles: first, the guarantee of fundamental rights, and second, the separation of legislative and executive powers.

In fact, as long as fundamental rights are not guaranteed and legislative power remains in the hands of the executive, legality of the administration will have only a limited meaning. The concept of Rule of Law is, therefore closely related to these two postulates, which should be considered as its essential conditions. If the Turkish doctrine does not underline these as such, this is because, until now, it has limited itself to use of the concept for the solution of problems having practical value, without proceeding to a general study of the concept.

As underlined in the report of the Paris meeting of January 5, 1957, the guarantee of fundamental rights is especially important in a regime of Rule of Law. But this guarantee requires that legislator alone should have the power to limit these rights or to intervene with them, and that these limitations and interventions should not touch the substance of the rights; requirements that can be fulfilled only by a rigid constitution and by judicial control over the constitutionality of laws. As to the degree of this substantive gurantee, Turkish doctrine is silent on this problem. But in a country like Turkey, whose economy is dominated by moderate interventionism coupled with a regime of private initiative and whose social life is under the influence of "Welfare State" tendencies, one could not expect the acceptance of a liberal concept of Rule of Law; what is generally accepted is a concept of Rule of Law which guarantees, in addition to fundamental liberties and

equality, a regime of private property and enterprise compatible with the idea of a Welfare State.

The principle of equality requires that the laws governing relationships between the State and citizens should be general for all and should respect human dignity; this is generally admitted in Turkey, but not practiced without exceptions.

The essential elements of the Rule of Law are, therefore, the guarantee of fundamental rights, separation of powers, the general character of laws, judicial control of the constitutionality of laws, legality of the administration, its judicial control, and the independence of judges. Let us see now to what extent these principles have been applied in Turkey.

III APPLICATION OF THE PRINCIPLE (3a)

1. Guarantee of Fundamental Rights.

The Turkish Constitution, — rigid because a qualified majority is required for its revision — contains guarantees of fundamental rights, such as liberty, equality and propetry. Such guarantees are not new in Turkey. They were first seen in the Charter of Gülhane (Tanzimat) in 1839. These guarantees formed one of the most essential parts in the 1876 Constitution of the Ottoman Empire. The present Constitution has adopted the same guarantees and even widened their scope in some respects.

However, these guarantees of the Turkish Constitution do not explicitly cover the substance of all the fundamental rights; only freedom of conscience and freedom from compulsory labor are covered by a substantial guarantee. In fact, the Constitution stipulates that nobody can be prosecuted because of his or her religion or belife. It also prohibits compulsory labor except under special circumstances. But according to the prevailing concept, the constitutional guarantees for any other manifestation of liberty, such as civil liberties, liberty of domicile, freedom of travel, freedom of the press, of reunion, of commerce and of contract, do not cover their

3a) In should be noted that the political and juridical institutions created in Turkey for the application of the concept of Rule of Law originated mostly from the French system.

substance and leave to the legislator the right to determine their limits. In Turkey the legislator has used this right by passing acts that are definitely restrictive in the field of freedom of association, public meetings and press.

Such restrictions also existed in the field of political liberties before 1945, the date of the beginning of the multiparty system. Since then, however, they have been substantially eliminated, with the exception of the ban on the activities of the religious, monarchist and racist extreme right and the communist extreme left.

Yet, recently, since 1954, there has been a restrictive movement, and penal provisions on libellious speeches and publication have been substantially extended and reinforced. Political gatherings outside the electoral period have been put under the discretionary authorization of administrative authorities, except for statutory meetings of political parties and associations. To prevent evasion of this prohibiton, any amendment in the statutes of parties and associations has been subject to the control of the "Conseil d'Etat". There is a strong demand in public opinion for abolition of these restrictions and for inclusion of substantial and effective guarantees in the Constitution to safeguard political liberties.

The right of property is under the protection of substantial guarantees in the Constitution. In fact, according to the Constitution, nobody can be deprived of his or her property, except by means of expropriation that must be authorized by law for the public interest, including compensation in advance. But this constitutional guarantee on compensation in advance has been discarded during the urbanization endeavours recently engaged in. The Constitution goes as far as prohibiting the forcing of any material sacrifice, except in special circumstances specied by law. But this constitutional guarantee of property does not prohibit any measure for the social welfare. The Constitution itself provides exceptions to the rigid principle of expropriation in case of agrarian reforms transfering to farmers the ownership of their land and in case of nationalization of the forests.

2. Judicial Control of Constitutionaly

As in other countries, Turkish experience shows that the text

of the Constitution is not effective by itself and that the legislator may sometimes be guided by practical aims rather than by constitutional considerations. This is why an important segment of the Turkish doctrine[4] advocates an indirect judicial control by the courts that could prevent the application of unconstitutional laws in cases that come before them. We cannot but share this view. However, until now, the courts have not followed this line of reasoning, except in a few isolated cases. The main — but unavowed — reason for this is the authority of the Grand National Assembly, the legislative body, that has been the basic institution of the Turkish Republic since its origin. It should also be noted that general control over the legality of administrative regulations comes under the authority of the same Assembly.

In recent years, this legal doctrine has been reinforced by a strong current of political opinion in favor of the creation of a constitutional court, following, the example of the systems in some other countries, such as Western Germany and Italy. This current is even reflected in the programs of some political parties and is progressing every day.

3. Separation of Legislative Power from the Executive Power.

This separation was introduced in Turkey by the establishment of a constitutional monarchy in 1876, that ended, to a certain extent, the confusion between these powers by creating, for the first time, a partly elected body. After this first unsuccessful attempt, the separation was definitely established by the parliamentary regime adopted after the second constitutional monarchy in 1908.

On the other hand, the current republican Constitution of 1924, following the example of the revolutionary Constitution of 1921, has adopted the principle of unity of executive and legislative powers but recognized, however, that the executive power should

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4) See **Turhan Feyzioğlu**, Judicial Control of the Constitutionality of Laws (Kanunların Anayasaya Uygunluğunun Kazaî Murakabesi), A comparative and substantial study, Ankara, 1951.

be exercised by the government. The Constitution thus establishes a functional separation between these two powers and compromises between the regime of assembly government and parliamentary regime, but puts the emphasis, however, on the latter. In reality, the executive appears to be the dominant element of this compromise.

As opposed to the imperial regime in which the executive was given exceptional legislative powers in urgent cases, when parliament was not in session, the present Constitution does not confer such power upon the government. It reserves all legislative powers to the Grand National Assembly elected by universal suffrage and by majority system. The executive, under the Republic, has only a power of edicting réglements over details that it can exercise with previous consultation of the "Conseil d'Etat".

This strict limitation of the legislative power to the Assembly could not, however, resist the pressure of exceptional circumstances. The Parliament was obliged to authorize the government to issue decrees for control of currency and for the protection of the national economy. The government makes extensive use of this general power of decree to solve the severe difficulties in the economic life of Turkey.

4. Legality of Administration

a) *Limits*. Previous authorization by law is reguired for any administrative intervention, and this requirement is a result of certain constitutional provisions. In addition, the civil servants and the basic organization of the administration are also subject to legislation according to the Constitution, the first as a result of its explicit terms, the latter as an implication of its various provosions.

However, the legislative practice went further: not only the basic organization, but also its details are sometimes regulated by law. Organic laws indicate the internal organizations of a number of ministries. This certainly constitute an excessive legalism that is incompatible with the flexibility required for good administration One has already seen numerous inconveniences created by this situation. For instance, every time the reorganization of a ministry

was needed, it was necessaryto resort to the legislative process. The laws are full of various examples of this. Even the Turkish "Conseil d'Etat" seems to attribute excessive significance to such legislation. In a case in which a document was signed by the head of the financial section of a provincial administration instead of his the chief of tax services of the section, his subordinate as required by law, the "Conseil d'Etat" denied the validity of the document because the organic law of the Ministry of Finance had designated the subordinate officer — not the section head — as competent to sign such a document[5].

It should be noted that this legislative practice is not a result of parliamentary jealousy, but of the initiative of the government departments themselves where stability takes precedence over any other consideration.

b) *Discretionary power.* Turkish legislation grants discretionary powers to the administration in matters regulated by the government, and the extent of these powers vary for each case. There is no doubt, — and there should be no doubt — that this situation is compatible with the principle of Rule of Law, provided that the discretionary power does not exceed the reasonable limit dictated by the need for security on the part of the administered. The present legislation in Turkey, especially the legislation on police powers, generally does not exceed this limit, except at certain points such as political meetings that depend, outside the electoral period, on the discretionary authorization of the administration as mentioned above.

5. Judicial Control of the Administration.

In Turkey, this control is exercised through a system of administrative jurisdiction patterned on the French system. The highest organ on this system is the "Conseil d'Etat", whose members are elected by Parliament and whose operation is completely independent of the administration.

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5) Official Record of the Decisions of the "Conseil d'Etat", Vol. 67, p. 18 (1954).

According to the law and its judicial interpretation, judicial control of the administration covers any administrative act or fact that violates a right or, being contrary to a legal rule, proves injurious to a person's interest. The legal rule whose violation requires judicial control as interpreted by the "Conseil d'Etat" in a very general way as meaning any rule that follows from a legislative or administrative text. In addition, the postulates of law and equity are considered as actual legal rules.

Even discretionary acts of the administration are subject to judicial control from the point of view of their conformity to previous legislative authorization.

The principle has, however, some exceptions introduced by "ad hoc" legislative texts that exclude judicial control over certain matters. The suspension or compulsory retirement of civil servants is one of these matters in which judicial appeal is not permitted.

Apart from this, the Turkish "Conseil d'Etat" has not yet established judicial exceptions such as the French theory of an act of government. In some old decisions involving cases related to foreign relations[6] or higher domestic policy[7], it refused to exercise judicial control. But, for more than ten years, no similar case has been observed in its published decisions, so one cannot speak yet of an established judicial exception.

6. The Independence of Judges.

According to the Turkish Constitution, judicial power is exercised, as is legislative power, in the name of the nation and by independent courts (art. 8). Also, according to the Constitution, judges are independent and except from any intervention in the exercise of their judicial functions (art. 54). Their rulings cannot be altered and the execution of their sentences cannot be prevented by any authority, including the Grand National Assembly.

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6) Official Record of the "Conseil d'Etat", Vol. 6. pp. 122-125 (measures of international retaliation.).

7) Official Record of the "Conseil d'Etat", Vol. 6, p. 123, Vol. 8, p. 85, Vol. 9, p. 70 (Compulsory immigration).

This functional guarantee is reinforced by the organic guarantee that the Constitution provides for judges. According to the Constitution, judges cannot be removed from their posts, except in some determined cases and in conformity with procedure fixed by law. Their status also is recognized to be regulated by a legislative act. As already indicated, the members of the "Conseil d'Etat" enjoy statutory guarantees. The law also provides important guarantees for judges of the non-administrative courts. Their nomination and promotion are made on the proposal of a committee on which the judges of the Court of Cassation are in a majority. Judges at the middle and higher ranks of the career cannot be transferred without their consent. The discipline of judges is subject to a strict procedure and to the judgment of a committee also composed of the members of the Court of Cassation.

However, the power of compulsory retirement given to the administration in case of civil servants having completed twenty-five years of service, is also applicable to judges, including members of the "Conseil d'Etat". But there is a strong current of opinion favoring the elimination of this power in the case of judges, which has been frequently used during these last years. There is also a strong demand for effective constitutional guarantees for judges, and this demand is even incorporated in the programs of some political parties.

VI. THE CONCEPT OF THE RULE OF LAW AND THE PUBLIC SERVICE.

The concept of the Rule of Law acquired, because of conditions prevailing at the time of its origin, i.e. in the Nineteenth Century, an interpretation that implies the protection of citizens from intervention by the State. But, since then, citizens have become, in their lives and activities. More and more dependent on the actions of public enterprises that keep increasing as a result of changes in political concepts and progress in technology; therefore, the concept of the Rule of Law cannot ignore the legal problems that arise as consequences of this transformation. In fact, the essential purpose of the concept being the protection of citizens against

the State, there should be no basic differences between a case of State intervention and that of distribution of public services. The same need is felt in both cases. New restrictions on individual liberties arose as the field of State intervention widened, with the purpose of ameliorating the social and economic conditions of the country.

The two postulates of the concept of the Rule of Law, i.e. the legality of the administration and its judicial control, should also be considered in such cases. The Turkish "Conseil d'Etat" did not hesitate to adopt this view. We would like to cite two cases:

1. A municipality that ran an electric power plant had to switch off current to some of its consumers because of the insufficiency of its equipment. The "Conseil d'Etat" decided that the service of electricity, being a public service, required equality of distribution. This requirement had to be respected even in the case of insufficiency and, instead of cutting off the current of some consumers, the municipality had to proceed to an equal reduction for all the consumers[8].

2. In another case, a municipality, also running an electric power plant, had established a uniform rate for all consumers without distinction between industrial use and illumination. On appeal of an industrialist, the "Conseil d'Etat" decided, despite the absence of any text, that a differential rate should be established according to economic considerations that necessitated a distinction between the two kinds of consumption, such distinction already being made by big municipalities and by tax legislation on electricity consumption[9].

CONCLUSION

We think that these general remarks will be sufficient to give some idea of the role played by the concept of the Rule of Law in Turkey and the degree of its application. Although the situation is

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8) Official Records of the "Conseil d'Etat", vol. 34, p. 193 (1946).
9) Official Records of the "Conseil d'Etat", vol. 54-57, p. 433.

not yet perfect, we have reached a stage that is rather advanced. The results of the Chicago colloquium, for which we wish great success, will certainly attract the attention of Turkish jurists in their efforts to carry out the postulates of the concept.

THE RULE OF LAW IN MEXICO

by

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1 — The Constitution in force in Mexico was enacted in 1917 but can not be considered a new Constitution. Although there are important differences between both documents, it represents basically a revision of the Constitution adopted in 1857 whose hundredth anniversary we have been celebrating this year.

In the Constitution of 1857 two influences are visible: the chief one is that of the American Constitution of 1787; the minor one is that of prior European Constitutions, in the first place the Spanish Constitution of 1812 and the French Constitutions of the Revolutionary Period - and of 1848.

Like the United States of America, Mexico is a federal, democratic, representative Republic; the Federal Government is divided into a Legislative, an Executive and a Judicial Power; the Legislative Power is vested in a Congress consisting of a House of Representatives and a Senate; the Executive Power is vested in the President of the United States of Mexico; and the Judicial Power is entrusted to a Supreme Court and to Circuit and District Courts; all powers not delegated to the Federal Government are reserved to the States; every inhabitant of Mexico is entitled to the rights enumerated in the first Section of the Constitution, that is to the equal protection of the laws, to freedom to work, freedom of speech and of the press, freedom of assembly and of movement, to security from arbitrary — searches, seizures and imprisonment, to a fair trial in criminal matters, to due process of law, to religious freedom. to the enjoymen of property, etc.; finally, the Judicial Power, besides deciding controversies arising under treaties and federal laws,

is charged with annulling all laws and acts, both executive and judicial, which violate the rights secured to individuals by the Constitution or which alter the distribution of powers between the Federal and the State Governments.

2 — As may be seen from the foregoing summary, the political organization of Mexico is fundamentally similar to that of the United States. But except for Constitutional Law, the rest of our law is derived from Europe and our legal terminology is that in use on the Continent. Therefore, the expression "rule of law" is not employed in my country. We speak instead of the "Estado de Derecho," like the Germans and the French, and of the "principio de legalidad" as they do.

As far as I am able to judge, there is not only a terminological but also a conceptual difference. What I want to say is that neither one of the two concepts which we employ corresponds exactly to that of the rule of law. I believe that "Estado de Derecho" is a wider, "principio de legalidad" a narrower concept than that of the rule of law. And since it would be presumptuous of me to refer to this Anglo-Saxon institution and since "Estado de Derecho" is mostly used in theoretical discussions, I shall try to explain what we understand by the other expression, that is by the "principio de legalidad"

3 — The "principio de legalidad" or principle of legality, as I shall henceforth translate this expression, means that all action on the part of the courts and the administration must conform to a law, that is, to a general, preexisting rule. This rule is in the first place a statute, that is, a law enacted by the Federal Congress or by the State Legislatures. However, if authorities hierarchically superior to the author of the act, in the case of administrative action have enacted regulations or other general rules, then a concrete administrative act must also conform to them, besides complying with statute law.

As may be seen, the principle of legality binds — both judicial and administrative authorities. However, it is mostly with reference to the latter that it has been developed and that its protection is invoked. In the case of the courts it is taken as a matter

of course that all their acts must adjust to the law (in the sense of general laws). A court may interpret a law erroneously or apply it to facts which do not fall within its scope, but it would never dare not to base its decisions on a law, especially as they would be revoked on appeal or annulled through our federal constitutional writ called "amparo." The best known instance of the principle in matters entrusted to the courts is found in the maxim "*Nullum delictum, nulla poena sine lege,*" recognized in Article 14 of the Constitution. However, not only in criminal matters but in general, this precept guarantees to every man that he shall not be deprived of his life, liberty, property, possessions or rights, except according to a procedure in which essential formalities are observed and to a law enacted previously to the facts which determine its application in the case.

Going back to the principle of legality with reference to the administration, I must add that it is not sufficient that administrative authorities possess competence, that is, legal power, in the case of acts which affect the interests of private persons. Their action must also observe the formalities prescribed by the applicable law and, in any case, the essential formalities which constitute due process of law. Besides, administrative action must be taken on the basis of the facts contemplated by the law which authorizes or prescribes it. Finally, such action, that is, the order, the prohibition, the permit, etc., must in itself and in its contents be the one to which the law refers. Statute law may also require, as the Federal Fiscal Code does, that the purpose or end of administrative acts should be the one indicated by the law and our writers and teachers of administrative law hold that this element is also necessary for their validity. But our constitutional law is silent on this point, with the result that I shall indicate farther on.

The principle of legality, as I have expounded it, is the consequence of express provisions in our Constitution, chiefly of Articles 14 and 16. This last precept is the equivalent of Amendment IV of the American Constitution but it is written in more general terms and it has been interpreted by the Mexican Supreme Court to apply not only to unreasonable searches and seizures, but to almost any kind of administrative action. It is important to insist,

however, that not only these two Articles provide for legality in the administration, but that the principle is derived from our Constitution as a whole and is in agreement with all the system it establishes. As I have already pointed out, our fundamental law sets up a government of limited and enumerated powers; it distinguishes the Legislative Power from the Judicial Power and the Executive Power, and assigns to the latter the function of executing the laws passed by the Federal Congress; moreover, it defines the rights of equality, liberty, security and property which all residents of Mexico enjoy, and with reference to several of them, that is not only in the cases of Articles 14 and 16, it expressly provides that a law is necessary to regulate or limit them. Finally, it is interesting to add that only in the case of war, rebellion or other grave emergencies may fundamental rights be abridged or suspended, but a special procedure is required, the suspension must be general in character and for a definite time and it must be limited to those rights which may be an obstacle to a rapid and easy solution of the situation created by the emergency.

4 — What measures does our legal system provide for the effectiveness of the principle of legality as regards the administration?

Although I do not believe that control by the courts (either judicial as in the United States or administrative as in France) constitutes an integral part of the concept of legality in the administration, it must be admitted that it is invested with the utmost importance and that from a practical point of view this is the touchstone which permits us to pudge whether this is merely an aspiration are really subject to the law or whether this is merely an aspiration.

In this regard and referring only to the Federal Government, I must say that in Mexico, we have no special, integrated system of control of the administration by the courts. Only in fiscal matters do we have courts which are considered to be a part of the Executive and which decide regarding the nullity or validity of administrative acts, through a procedure based on the French "recours pour excès de pouvoir." In general, our defense against irregular administrative action is the "amparo," that is, a constitutional

writ before the Federal District Courts, which is decided finally by the Supreme Court.

It is impossible in a report of this kind to go into the details of the "amparo" as a remedy against irregular administrative action. It will suffice to say that it has several advantages but also serious disadvantages. In short, we can not claim that in the matter of control of the administration we have arrived at a satisfactory state of affairs and the solution is greatly complicated by the fact that the "amparo" is also a remedy against judicial decisions, as well as a means of judicial review of all laws and acts which violate the fundamental rights secured by the Constitution or which alter the distribution of powers between the Federal and the State Governments.

5 — In conclusion it is probably pertinent to make some commentaries regarding the present situation as well as the trends which may be discerned in the subject with which this report deals. It is very difficult to pass a judgment on a given situation, especially when one is in the midst of it and thereforelacks the proper perspective. However, it may be said that our problems are very similar to those which confront the rest of the world and that the same favorable and unfavorable forces are in operation. In general, after 18 years of revolution and unrest, from 1911 to 1929, Mexico became very skeptical of radical changes and of the benefits that are to be derived from new social and political institutions. This is probably the cheif explanation of the 28 years of complete peace that we have enjoyed, as well as of the remarkable stability, I would even say conservatism, exhibited by my country. However, as everywhere at the present time, there is a widespread movement against free institutions, chiefly against a market economy, and either through imitation of what is done in the United States and Europe or sometimes in order to cope with real problems, the Federal Government intervenes in many aspects of economic life which formely were left to the decision and regulation of individuals. This has resulted in a widening of administrative action and in several cases in the conferring of extensive powers on the President, on the Heads of Administrative Departments and

even on independent establishments and public corporations. There is no doubt that in many cases these powers are so ample as to verge on arbitrary discretion and to violate the principle of legality. On the other hand, Mexico, at least during the last thirty years, has developed a new respect for its traditional political institutions and there has been a remarkable social and economic progress. But a new generation which did not undergo the hard experiences of our period of revolution and disorder is now coming into control of public and social affairs and both for this reason and because of the various and even contradictory forces and trends at work, it would be very difficult to venture a prediction.