STANDING TO RAISE CONSTITUTIONAL ISSUES IN VENEZUELA*

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INTRODUCTION

In order to analyze the legal capacity to litigate before the "Constitutional Jurisdiction" or to litigate constitutional issues regarding statutes in judicial proceedings, it is essential to identify the system of judicial review of constitutionality that exists in a country.

For that purpose, it is always useful to follow the classical distinction of judicial review systems in comparative constitutional law proposed a few decades ago by Mauro Cappelletti[1], who distinguished between the diffuse (North American model) and the concentrated (European model) method of judicial review. Based on that dichotomy, the matter of standing to raise constitutional questions has to be determined according to the particular characteristics of the judicial review systems[2].

Those standing rules turn out to be more complicated and varied when the system of judicial review does not respond to just one of those two classical methods, but to a mixture, combination or overlapping of the same. It is the case of many Latin American countries, which have developed a mixed or comprehensive system

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1 See Mauro Cappelletti, *Judicial Review in the Contemporary World*, Indianapolis, 1971; "El control de la constitucionalidad de las leyes en el derecho comparado", *Revista de la Facultad de Derecho de Mexico*, UNAM, Nº 61, Mexico 1966.

2 See Allan R. Brewer-Carías, *Judicial Review in Comparative Law*, Cambridge University Press, Cambridge 1989.

of judicial review[3], as is the case of Venezuela, where the two methods of judicial review have been combined since the nineteenth century.

On one hand, there is the diffuse method of judicial review of constitutionality. According to this model all judges have the power to decide not to apply a statute when it is considered to be against the Constitution. They thus apply the Constitution in preference to the statute to decide the specific case subjected to their judgment. This is a power that they are entitled to exercise *ex officio*.

On the other hand, since 1858, Venezuela has developed the concentrated method of judicial review of constitutionality of statutes and other normative acts. The Supreme Tribunal of Justice (since 2000, its Constitutional Chamber), possesses the power to declare null and void statutes and normative acts of similar status contrary to the Constitution. This power is exercised by the Supreme Tribunal when a constitutional issue regarding statutes is raised through popular actions of unconstitutionality[4].

Moreover, other methods of judicial review have been developed in Venezuela. For example, there are specific actions for the protection of human rights and constitutional guaranties, (*amparo, habeas corpus* and *habeas data)*. In addition judges in charge of judicial review of administrative action may decide upon the unconstitutionality of administrative acts, including executive by-laws.

Therefore, in Venezuela it can be said that the rules related to standing in cases of judicial review of the constitutionality of

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[3] See Allan R. Brewer-Carías, "La jurisdicción constitucional en América Latina", in Domingo García Belaúnde and Francisco Fernández Segado, *La jurisdicción constitucional en Iberoamérica*, Ed. Dikinson, Madrid 1997, pp. 117-161.

[4] See Allan R. Brewer-Carías, *El sistema mixto o integral de control de la constitucionalidad en Colombia y Venezuela, Universidad Externado de Colombia,* Bogota 1995; Manuel Gaona Cruz, "El control de la constitucionalidad de los actos jurídicos en Colombia ante el Derecho Comparado", en *Archivo de Derecho Publico y Ciencias de la Administración*, Vol. VII 1984-1985, *Derecho Publico en Venezuela y Colombia*, Instituto de Derecho Publico, Universidad Central de Venezuela, Caracas 1986, pp. 39-114.

statutes and other normative state acts are not uniform, and they vary according to the different methods of judicial review[5].

I. GENERAL PRINCIPLES OF THE VENEZUELAN SYSTEM OF JUDICIAL REVIEW

Article 7 of the Constitution of 1999[6] declares, *expressis verbis,* that its text is "the supreme rule and the ground of the entire body of laws." Therefore, in order to guarantee that supremacy and the full effectiveness of the Constitution, it has established a thorough system of judicial review of statutes and other state acts, by giving all judges the obligation "of guaranteeing the integrity of the Constitution." (Art. 334)[7]. Consequently, in Venezuela, judicial review, as the judicial power to safeguard the integrity and supremacy of the Constitution, is exercised by *all judges,* not only by the Supreme Tribunal of Justice[8].

All of the chambers of the Supreme Tribunal of Justice, also have express power to guarantee "the supremacy and effectiveness of the constitutional rules and principles". Each of them is "the maximum and final interpreter of the Constitution" and each has to have regard for "its uniform interpretation and application" (art. 335). The forgoing powers are also granted to the Constitutional Chamber of the Supreme Tribunal of Justice in order to exercise the concentrated method of judicial review (Arts. 266, par. 1º y 336). In this latter case, the Constitutional Chamber is entitled, in an

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5 See in general Allan R. Brewer-Carías, *El sistema de justicia constitucional en la Constitución de 1999,* Editorial Jurídica Venezolana, Caracas 2000.

6 The text of the Constitution of 30 December 1999 was initially published in *Gaceta Oficial* Nº 36.860, dated 12-30-99. Subsequently, it was published, with corrections, in *Gaceta Oficial* Nº 5.453 Extraordinary dated 03-24-00. See the comments we have made in Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional Venezolano,* Editorial Juríidica Venezolana, Caracas 2004.

7 See the draft we proposed for this article in Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente),* Vol. II, *(9 September – 17 October 1999)*, Fundación de Derecho Público- Editorial Jurídica Venezolana, Caracas 1999, pags. 24 y 34.

8 See Allan R. Brewer-Carías, *La Justicia Contencioso-Administrativa*, Vol. VII of *Instituciones Políticas y Constitucionales*, Editorial Jurídica Venezolana, Caracas-San Cristóbal 1997, pp. 26 ff.

exclusive way, to declare null and void *certain state acts* on the grounds of unconstitutionality - - in particular, statutes and other acts with the same status or issued in direct and immediate execution of the Constitution[9].

Regarding this concentrated method of judicial review, it must be noted that the Constitutional Chamber does not have a monopoly of the concentrated judicial review of the constitutionality of all state acts, but only reviews *certain state acts* (statutes, and state acts with the same rank or issued in direct and immediate execution of the Constitution[10].) That is why, for instance, the organs of the "Administrative Jurisdiction" (judicial review of administrative action) are entitled, pursuant to article 259 of the Constitution, to control the constitutionality of administrative acts, both normative (by-laws) and non-normative, which acts are always submitted to legislation.

As a result, the judicial review system in Venezuela allows the exercise of judicial review of the constitutionality of state acts through the following methods: 1) the diffuse method of judicial review of constitutionality of statutes and other normative acts; 2) the protection of constitutional rights through actions for protection (*amparo*); 3) the judicial review of administrative acts on the grounds of unconstitutionality through administrative actions of annulment; and 4) the concentrated method of judicial review of the constitutionality of certain state acts that is reserved to the Constitutional Chamber of the Supreme Tribunal of Justice.[11]

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[9] Even though in Europe and in some Latin American countries, these powers are reserved to a Constitutional Tribunal or Court (many of them even organized outside the Judicial Power), in Venezuela, they have always been lodged in the Supreme Tribunal of Justice, now through the Constitutional Chamber. See Allan R. Brewer-Carías, *La Justicia Constitucional,* Vol. VII of *Instituciones Políticas y Constitucionales,* Caracas 1996, pp. 131 ff.

[10] See in general, Allan R. Brewer-Carías, *Judicial Review in Comparative Law, op. cit.* p. 190; and Allan R. Brewer-Carías, *El control concentrado de la constitucionalidad de las leyes (Estudio de Derecho Comparado),* Editorial Jurídica Venezolana, Caracas 1994, p. 19.

[11] This has been summarized by the Constitutional Chamber of the Supreme Court of Justice in decision Nº 194 dated 02-15-2001.

Accordingly, in the Constitution of 1999, all the principles of the mixed or comprehensive system of judicial review are gathered, which is a feature of the Venezuelan tradition[12]. The standing rules, of course, are different in each case.

II. THE DIFFUSE METHOD OF JUDICIAL REVIEW

1. *Constitutional Provisions*

One specific way of exercising judicial review is within the authority every judge has to decide upon the constitutionality of statutes, through the so called diffuse method of judicial review that has existed since the nineteenth century[13]. It has been provided for since 1897 in article 20 of the Civil Procedure Code, which states that:

> In case a statute in force, whose application is requested, conflicts with any constitutional provision, judges shall apply the latter with preference[14].

Based on our proposal[15], the 1999 Constitution consolidated the diffuse method of judicial review of the constitutionality of statutes, following, for example, countries like Colombia, in 1910 (art. 4); Guatemala, in 1965 (art. 204); Bolivia, in 1994 (art. 228); Honduras, in 1982 (art. 315) and Peru, in 1993 (art. 138)[16]. It was placed in article 334, with the following wording:

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12 See Allan R. Brewer-Carías, "La justicia constitucional en la nueva Constitución" in *Revista de Derecho Constitucional* Nº 1, Caracas Sep.-Dic. 1999, pp. 35-44; Allan R. Brewer-Carías, *El Sistema de justicia constitucional en la Constitución de 1999,* Editorial Jurídica Venezolana, Caracas 2000.

13 It was expressly established in the Civil Procedure Code of 1897. See Allan R. Brewer-Carías, *Judicial Review in Comparative Law*, op. cit. pp. 127 ff..; Allan R. Brewer-Carías, *La Justicia Constitucional,* Vol. VI of *Instituciones Políticas y Constitucionales*, , op. cit., Caracas 1996, pp. 86 and ff.

14 The principle has also been established in a similar way in the Criminal Procedure Organic Code (Art. 19).

15 See the draft we proposed for article 7 in Allan R. Brewer-Carías, *Debate Constituyente, (Aportes a la Asamblea Nacional Constituyente)*, Vol. II, op. cit., pp. 24-34.

16 See Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente), Vol. III* Editorial Jurídica Venezolana, Caracas 1999, pp. 94-105.

> In case of incompatibility between this Constitution and a statute or other legal provision, constitutional provisions shall be applied, in all courts in any case whatsoever, even at the Court's own initiative, in the pertinent decision.

In this way, the diffuse method of judicial review in Venezuela acquired constitutional ranking, and can even be exercised *ex officio* by all courts[17], including, of course, the different Chambers of the Supreme Tribunal.

2. *General Principles and Standing*

According to this constitutional provision, all judges at any level are entrusted with the power-duty to control the constitutionality of normative acts of the State by not applying to the specific case a provision they consider unconstitutional[18]. This power is based on the principle of constitutional supremacy, according to which unconstitutional acts are void and of no value. Therefore, all judges, when a specific case is brought before them, even at their own initiative, are entitled to decide upon the unconstitutionality of the statute they shall apply for the resolution of the case, as an incidental issue. The decision of the judge has only i*nter partes* effects, in the specific case. The decision taken, therefore, has no declarative effects.[19]

Standing to raise a constitutional issue in a proceeding, belongs, in the first place, to the parties, based on the concrete interest they hold in the trial.

This procedural interest is, in general, the one set forth in the Civil Procedure Code, which requires that the plaintiff plead his own existing personal right or interest against a defendant (art. 340 CPC). Therefore, the plaintiff and the defendant are the parties

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[17] This has been a feature of the Venezuelan system. See Allan R. Brewer-Carías, *La Justicia Constitucional,* Vol V of, *Instituciones Políticas y Constitucionales, Editorial Jurídica Venezolana,Ccaracas 1996*, p. 101.

[18] See the Supreme Court of Justice in Political-Administrative Chamber decision Nº 1213 dated 05-30-2000 (Case *Carlos P. García P. vs. Cuerpo Técnico de la Policía Judicial)*.

[19] See Allan R. Brewer-Carías, *Judicial Review in Comparative Law, op. cit.*, p. 127 and ff.

entitled to raise constitutional issues in the proceeding. Third-parties are entitled to raise these issues as well, as long as they have an actual interest in supporting the reasons of one party, or, in other cases, are authorized by the Civil Procedure Code (art. 370).

3. *Standing in the Case of Collective or Diffuse Interests*

The Constitution of 1999 established the right to access judicial organs not only to enforce specific personal rights and interests, but also to enforce "collective or diffuse interests" (art. 26); the permissibility of actions raised on behalf of such interests was set forth in the Constitution.

The Constitutional Chamber has indicated that "with collective or diffuse rights or interests, the intention is not protecting social classes, but a number of individuals who can be considered as representing the entire or an important part of a society, who are affected in constitutional rights and guarantees meant to protect the public welfare by an attack on their quality of life". In particular, the Chamber has said, *diffuse* interests represent injuries to the environment or to consumers, that "have expansive effects that harm large sectors of the country and even the world." "Granting standing based on such interests responds to the undetermined obligation of protecting the environment or consumers". That kind of damage affects everyone to a greater or lesser degree. It is different from damage suffered by various groups that can be determined as such, even if this damage is not quantifiable or individualized, as would be the case of the inhabitants of an area of the country affected by an illegal construction that creates problems with the public services in the area. These latter, more focused specific interests are the *collective* ones. They refer to a determined and identified sector of the population (even though not quantified), and there exists or might exist a legal bond uniting the members of the group. This is the case with damages to professional groups, to groups of neighbors, to labor unions, to the inhabitants of a determined area, etc. These focused interests differ from those that affect everyone without distinction, or wide categories of the population, even though the majority is not aware of the damage,

since the *collective* culture is the one in charge of realizing it, and it might fail in doing so. The *diffuse* interests are the wider ones, where the damaged good is the most general good, since it concerns the entire population and, contrary to collective interests or rights - - they arise from an obligation of undetermined scope; while in the collective ones, the obligation may be concrete, yet owing to individual persons"[20].

Consequently, if there is a trial to enforce collective or diffuse interests, whoever acts on behalf of those interests at the beginning or is a party, may also raise the constitutional issue, so the judge may exercise diffuse judicial review. In these cases, as indicated by the Constitutional Chamber: "the plaintiff sues based not only on his personal right or interest, but also on a common or collective right or interest", and the basis of the claim is "the general damage to the quality of life of all the inhabitants of the country or parts of it, since the legal situation of all the members of the society or its groups has been damaged when their common quality of life was unprotected"[21].

4. The Ex Officio Power of the Judges

As we have also said, in the Venezuelan system, pursuant to the Constitution (art. 334), the judge himself, *ex officio* may raise the issue of the constitutionality of a statute determinative of the case. From this, it can be inferred that the judges have standing to raise constitutional issues in cases they are to decide. However, in those cases, the judge shall hear the parties on any issue of constitutionality they have raised before deciding, in order to guarantee the right to due process and to defense of the parties (art. 49,c).

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[20] See decision of the Constitutional Chamber Nº 656 of 06-05-01 (Case: *Defensor del Pueblo vs. Comisión Legislativa Nacional)*.

[21] Decision Nº 1.048 of the Constitutional Chamber dated 02-17-00 (Case: *William Ojeda vs. Consejo Nacional Electora)l*.

5. The Standing of the Public Prosecutor and the Defender of the People

The Public Prosecutor, when it intervenes, in both civil (art.129 and ff. CCP) and criminal (art. 285, art. 105 Penal Procedural Organic Code) procedures, is entitled as well to raise constitutional issues to the ordinary judge so it will be decided in the specific case.

Additionally, the Constitution of 1999 has created a new organ of the State: the Defender of the People, with wide capacity to enforce respect for and guarantee of human rights and to protect the legitimate, collective and diffuse rights and interests of persons against illegal actions, power deviations and mistakes made in the managing of public services. It is entitled to sue and file for remedies. In those procedures, of course, the Defender of the People and the other parties are entitled to raise constitutional issues.

6. The Extraordinary Power of Revision of the Constitutional Chamber

With regard to the diffuse method of judicial review, it must be pointed out that until the 1999 Constitution became effective, it was a power exclusively exercised before the ordinary courts. The issue generally terminated in the two levels of adjudication that ruled the judicial procedure. However, it was also possible to bring cases before the Cassation Chambers of the Supreme Tribunal. In that case the prior judicial resolution of the issue of constitutionality might be reviewed by those Chambers (art. 312 and ff., Civil Procedure Code, CCP).

In the Constitution of 1999 a corrective was introduced to deal with the possible multiplicity of judicial decisions following from the diffuse method of judicial review. The Constitutional Chamber of the Supreme Tribunal of Justice was granted power to:

> review final decisions issued by the courts of the Republic on constitutional protection (*amparo*) and on judicial review of statutes or legal rules, in the terms established by the respective organic law." (art. 336,10 Constitution)

It must be said that, of course, this review is neither an appeal nor a general second or third procedural instance. It is an exceptional faculty of the Constitutional Chamber to exercise, upon its judgment and discretion. It provides an extraordinary remedy that may be applied to decisions of *last instance* in which constitutional issues are decided by judicial review or declared in *amparo* trials. In any case, it is a reviewing faculty which is not obligatory, and it may be exercised at the option of the Chamber[22].

III. THE JUDICIAL REVIEW OF CONSTITUTIONALITY THROUGH THE ACTION OF *AMPARO* (ACTION FOR PROTECTION) OF CONSTITUTIONAL RIGHTS AND GUARANTEES

1. Amparo as a Constitutional Right

As with the previous Constitution of 1961, the Constitution of 1999, sets forth as the action for protection (*amparo*) as a *constitutional right*[23]. Consequently, it is an obligation of all courts to protect, within the scope of their jurisdictions, persons in the exercise of their constitutional rights and guarantees.

To that end article 27 of the Constitution of 1999 provided:

> Every individual *is entitled* to be protected by the courts in the enjoyment and exercise of rights, even those which derive from the nature of man and are not expressly set forth in this Constitution or in international treaties on human rights.

2. Judicial Attributions and the Simplified Procedure

Now, in the case of the action of *amparo*, the Constitution additionally expressly establishes that the procedure shall be oral, public, brief, and free and without any formality. The judge is

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[22] In a certain way, the remedy is similar to the *writ of certiorari* of the North American system. See Allan R. Brewer-Carías, *Judicial Review in Comparative Law*, *op.cit*. p.141; See the comments of Jesús María Casal, *Constitución y Justicia Constitucional*, Caracas 2000, p.92

[23] See Allan R. Brewer-Carías, *El Derecho y la Acción de Amparo,* Vol.V of *Instituciones Políticas y Constitucionales*, Editorial Jurídica Venezolana, Caracas-San Cristóbal, 1998, pp. 19 ff.

entitled immediately to restore the former legal situation or a similar situation. Therefore, every single day, will be a working day, and the court will issue such decisions in preference to others.

Consequently, as per the Organic Law on A*mparo* of Constitutional Rights and Guarantees of 1988[24], courts of common appeals, which are the competent courts for these actions, act as constitutional judges.

3. Standing in the Action of Amparo: the Personal Character.

In any case, an outstanding feature of the Venezuelan constitutional system, is the breadth of the action of *amparo.* A liberal interpretation was thought necessary to assure legal means whereby any individual, affected in his constitutional rights, could claim immediate legal protection.

Standing to raise the action of *amparo* belongs to every individual whose constitutional rights and guarantees are affected.[25] Such rights include even those not listed expressly in the Constitution or in international treaties on human rights ratified by the Republic but believed to be inherent in human beings. In Venezuela, human rights treaties rank at the same level as the Constitution, and they even prevail in the internal order as long as they establish rules on the enjoyment and exercise rights more favorable than those established in the Constitution and laws (art. 23, Constitution).

Court decisions have been constant in granting the action of *amparo* a personal character. Therefore, standing belongs firstly to

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[24] See *Gaceta Oficial* No.33.891 dated 01-22-88. See in general Allan R. Brewer-Carías and Carlos M. Ayala Corao, *La Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales*, Caracas 1988.

[25] Individual, political, social, cultural, educative, economic, Indian and environmental rights and their guarantees are listed in arts. 19-129, Constitution. In Venezuela, there exists no limitation established in other countries (e.g. Germany, and Spain, which reduces the action of amparo to protect just "fundamental rights". See Allan R. Brewer-Carías, *El Amparo a los derechos y garantías constitucionales (una aproximación comparativa)*, Editorial Jurídica Venezolana, Caracas 1993.

"the individual directly affected by the infringement of constitutional rights and guarantees."[26]

In Venezuela, actions of *amparo* are instituted against state organs, against corporations and even against individuals, because of the infringement or threat of violation of the constitutional rights and guarantees.

4. *Standing in Cases of Diffuse or Collective Constitutional Rights*

Moreover, by virtue of the constitutional acknowledgment of the legal protection of diffuse or collective interests, the Constitutional Chamber of the Supreme Tribunal has also admitted the possibility of employing the action of *amparo* to assure collective interests. These include, for example, that of voters in their political rights. The Chamber has also allowed precautionary measures with *erga omnes* effects "for both individuals and corporations who have instituted an action for constitutional protection, and to all voters as a group." [27]

The Constitutional Chamber, similarly, has decided that "any individual, is entitled to bring suit based on diffuse or collective interests" and has extended "standing to companies, corporations, foundations, chambers, unions and other collective entities, whose object is the defense of society, as long as they act within the boundaries of their corporate objects, aimed at protecting the interests of their members regarding those objects" [28].

5. *Standing of the Defender of the People*

In addition, the Defender of the People has the authority to promote, defend and guard constitutional rights and guarantees "as well as the legitimate, collective or diffuse interests of the citizens."

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[26] See for example, decision of the Constitutional Chamber dated 03-15-2000, *Revista de Derecho Público*, Editorial Jurídica Venezolana, Nº 81, 2000, pp. 322-323.

[27] Decision of the Constitutional Chamber Nº 483 of 05-29-2000 (Case: *"Queremos Elegir" y otros*), *Revista de Derecho Público*, Editorial Jurídica Venezolana, Nº 82, 2000, EJV, pp 489-491. In the same sense, decision of the same Chamber Nº 714 of 13-07-2000 (Case: *APRUM*).

[28] See decision of the Constitutional Chamber N° 656 of 06-05-2001 (Case: *Defensor del Pueblo vs. Comisión Legislativa Nacional)*.

(art. 280 and 281,2C). The Constitutional Chamber has admitted the standing of the Defender of the People to bring to suit in an action of *amparo* on behalf of the citizens as a whole. In one case he acted against a threat by the National Legislative Commission to appoint Electoral National Council members without fulfilling constitutional requirements.

In that case, the Constitutional Chamber, decided that "the Defender has standing to bring actions aimed at enforcing diffuse and collective rights or interests" without requiring the acquiescence of the society on whose behalf he acts, but this provision does not exclude or prevent citizens' access to the judicial system in defense of diffuse and collective rights and interests, since article 26 of the Constitution in force provides access to the judicial system to every person, whereby individuals are entitled to bring suit as well, unless a law denies them that action."[29]

6. Extraordinary Power of Review: The Constitutional Chambers

In order to secure uniformity of application and interpretation of the Constitution, article 336 of the Constitution also grants the Constitutional Chamber, the right, by way of *amparo*, to review definitive and final decisions issued by the courts.. The same principles that can be raised against decisions of ordinary courts in which the diffuse method of judicial review of a law had been exercised, are applicable to this extraordinary remedy. The exercise of this review is at the discretion of the Chamber.

7. The Action of Habeas Data

Note, finally, that the Constitution of 1999, expressly incorporated the action of *habeas data*, originated in Brazil and followed by Colombia and many other Latin American countries. It is set forth in article 28, as follows:

> Every person has the right of access to information and data about himself or his goods filed in official or private records, with exceptions established

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[29] Decision of the Constitutional Chamber N°656 of 06-05-2001, (Case: *Defensor del Pueblo vs. Comisión Legislativa Nacional)*.

by law, as well as to know the use of them and their purpose, and to request a competent court to make them up-to-date, to rectify them or destroy them, if they were erroneous or they affect in an illegitimate way his rights. In the same way, he may have access to documents of any kind containing information whose knowledge is interesting to communities or groups of individuals. The secrets of journalistic sources of information and other professions are excepted as determined by law.

As to this constitutional action, the Constitutional Chamber pointed out that it is not properly an action of *amparo*, indicating, however, that "the individual, personally or in his goods, involved" is entitled to bring the action of *habeas data*.[30]

IV. JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF BY-LAWS AND ADMINISTRATIVE ACTS CARRIED OUT BY THE "ADMINISTRATIVE JURISDICTION"

1. The "Administrative Jurisdiction" as Constitutional Judge

Article 259 of the Constitution sets forth the "Administrative Jurisdiction" (special judges for judicial review of administrative action), with powers to annul general or individual administrative acts contrary to law, or in excess of authority; to order the payment of money and compensation for damages caused by the Administration, to decide claims for fulfillment of public services and to arrange what is necessary to restore the legal situation impaired by the activity of the Administration.

Therefore, pursuant to this rule and to the Constitution of 1999, judicial review of constitutionality is also vested in the courts of the "Administrative Jurisdiction", when exercising their power of annulment of administrative acts, including by laws contrary to law on the grounds of unconstitutionality [31].

2. Standing Rules: Simple or Legitimate Interest

The standing to challenge administrative acts in judicial administrative review proceedings on the grounds of

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[30] Decision N° 332 of the Constitutional Chamber dated 03-14-2001 (Case: *Insaca vs. Director de Drogas y Cosméticos del Ministerio de Sanidad y Asistencia Social)*.

[31] See Allan R. Brewer-Carías, *La Justicia Contencioso-Administrativa,* Vol VII of *Instituciones Políticas y Constitucionales*, *Vol. VII*, *op. cit*., pp. 26 ff.

unconstitutionality and its illegality varies depending on whether the case is about by-laws (or, more generally, about normative administrative acts) or administrative acts with particular effects.

Since the nineteenth century an action to invalidate by laws and other normative administrative acts in the Venezuelan administrative judicial review system, has been understood as having the character of a popular action. It may be brought by any citizen. Consequently, it is enough for any citizen with a simple interest in legality or constitutionality, to raise the nullity action[32]. A simple interest, is defined "as the general right granted by law to every citizen to access the competent courts to raise this nullity of an unconstitutional or illegal administrative general act"[33].

However, as to the administrative acts with particular effects, standing to challenge them before the courts of the Administrative Jurisdiction legally belongs only to those who have a "personal, legitimate and direct interest" in the annulment of the act; that is to say, to those personally and directly damaged in their legitimate rights and interests. Even though the Supreme Tribunal of Justice, interpreting the 1999 Constitution (Art. 26, Access to Justice), decided that "it is enough to allege a legitimate interest, but not that it be personal or direct"[34]; the recent 2004 Organic Law on the Supreme Tribunal of Justice has insisted on a standing rule of "personal, legitimate and direct interest" (Art 20)[35].

On the other hand, in administrative matters, even before the new Constitution became effective in 1999, the possibility of

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32 Idem, pp. 74 ff. See, for example, decision of the Supreme Court of Justice in Political-Administrative Chamber, dated 11-24-99 (Case: *Comité Interproffesionel du vin de Champagne)*..

33 See decision of the First Administrative Court dated 03-22-00, case: *Banco de Venezolano de Crédito v. Superintendencia de Bancos, Revista de Derecho Público*, Editorial Jurídica Venezolana, Nº 81, Caracas 2000, pp. 452-453

34 See decision of the Supreme Court of Justice in Political-Administrative Chamber of 04-13-00 (Case: *Banco Fivenez vs. Junta de Emergencia Financiera), Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 82, Caracas, 2000, pp.582-583.

35 See Allan R. Brewer-Carías, *Ley Orgánica del Tribunal Supremo de Justicia*, Editorial Jurídica Venezolana, Caracas 2004.

protecting collective interests was recognized, in particular against city-planning acts.[36] In any case with the same features discussed on the protection of collective or diffuse interests, the standing of citizens to claim annulment of administrative action, appears admissible even against administrative acts of particular effects if, besides harming the plaintiff, they also harm a collective or diffuse right.[37]

Moreover, decisions annulling administrative acts, both normative and of particular effects, have *erga omnes* effects[38]. Any difference depends on whether the action has been raised on behalf a particular right or a collective or diffuse right.

V. THE CONCENTRATED METHOD OF JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF STATUTES

1. The Constitutional Jurisdiction of the Constitutional Chamber of the Supreme Tribunal

The Constitutional Chamber of the Supreme Tribunal of Justice has been established as the Constitutional Jurisdiction, with power to exercise judicial review of statutes, and to invalidate them on the grounds of unconstitutionality[39]. Pursuant to articles 266,1; 334 and 336 of the Constitution, the Constitutional Chamber has competence in the following matters:

In the *first place,* in keeping with a tradition that dates from 1858[40], the Constitution of 1999 specified the concentrated method of judicial review of statutes, vesting that power in the Supreme Tribunal of Justice. Pursuant to article 334 of the Constitution, the Constitutional Chamber has the authority to:

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36 See Allan R. Brewer-Carías, *La Justicia Contencioso-Administrativa,* Vol. VII of *Instituciones Políticas y Constitucionales, op. cit.* pp. 130 ff.

37 *idem*

38 *idem*

39 Arts. 266,1 ; 334 and 336 of the Constitution.

40 See Allan R. Brewer-Carías, *La Justicia Constitucional,* Vol VI of *Instituciones Políticas y Constitucionales, op. cit*., pp. 131 ff.

declare the nullity of statutes and other acts of organs exercising public power issued in direct and immediate execution of the Constitution or being ranked equal to a law. [This power belongs] exclusively to the Constitutional Chamber of the Supreme Tribunal of Justice.

Precisely, as per this rule, and under article 336, the Constitutional Chamber of the Supreme Tribunal, as a Constitutional Jurisdiction, when called on in a *popular action*, (according to Venezuelan tradition[41],) has the following powers of concentrated judicial review:

1. Declaring the total or partial nullity of national statutes and other acts of rank equal to laws.

2. Declaring the total or partial nullity of *state Constitutions and statutes*, of *municipal ordinances,* and other acts of the deliberative bodies of States and Municipalities issued in *direct and immediate execution* of the Constitution and in conflict with it.

3. Declaring the total or partial nullity of *acts with rank equal to statutes* issued by the National Executive in conflict with this Constitution.

4. Declaring the total or partial nullity of *acts adopted in direct and immediate execution* of the Constitution, issued by any other state organ exercising Public Power.

As can be deduced from these attributes, the Constitutional Chamber is not granted concentrated control of the constitutionality *of all state acts*, but just as to *certain specific state acts*: those issued by the organs of the State called statutes, or ranked equally to a statute or issued in direct and immediate execution of the Constitution. Article 35 states:

> The interpretations made by the Constitutional Chamber on the content or the scope of the constitutional rules are binding on the other chambers of the Supreme Tribunal and other courts of the Republic.

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41 *Idem,* pp.137 ff.

2. *The Popular Action*

The most important feature of the Venezuelan system of concentrated judicial review of statutes and other state acts equal to statutes or issued in direct execution of the Constitution, exercised by the Constitutional Chamber as Constitutional Jurisdiction, is that the standing to raise the actions belongs to any individual. It is an *actio popularis*.

In that sense, according to the 2004 Organic Law of the Supreme Tribunal of Justice[42] every individual or corporation, having legal capacity, "affected in their rights or interests" by a statute issued by any of the national, state or municipal deliberating bodies or with the same rank and effects by the National Executive, is entitled to raise the nullity of same before the Tribunal, on the grounds of unconstitutionality or illegality…" The Organic Law accepted the doctrine of the popular action regarding standing to raise the remedy which is given not only to citizens, but to every individual or corporation with legal capacity."[43]

However, regarding the popular character of the action, the Organic Law establishes a slight restriction, requiring that the contested statute affects, in some way, the "rights or interests" of the plaintiff.[44] For instance, in a challenge to a municipal ordinance, it can be required, at least, that the plaintiff be resident of the relevant municipality, or, for example, has property in it, so his rights or simple interest may be harmed. However, if it is about a national law, any inhabitant of the country with legal capacity might contest the law, since his simple interest in constitutionality would be harmed by the unconstitutional law.

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[42] See Allan R. Brewer-Carías, *Ley Orgánica del Tribunal Supremo de Justicia*, Editorial Jurídica Venezolana, Caracas 2004.

[43] See Allan R. Brewer-Carías, *La justicia constitucional,* Vol VI of *Instituciones Políticas y Constitucionales, op. cit.*, pp. 144 ff.

[44] *Cfr*. Allan R.Brewer-Carías, *Las Garantías constitucionales de los derechos del hombre*, Editorial Jurídica Venezolana, Caracas 1976, p. 53.

Any doubts about the scope of this restriction[45] were cleared up by the former Supreme Court of Justice itself. The requirement of the Organic Law that the challenged law affects the plaintiff's rights and interests, does not mean that the popular action has been eliminated or that a special requirement of standing exists to invoke the Supreme Court's exercise of judicial review. The objective of the popular action, the Court asserted, is the "objective defense of the Constitution's majesty and supremacy". If it is true that the Organic Law of the Supreme Tribunal requires that the plaintiff be affected in his "rights and interests", this expression shall be interpreted in a "rigorously restrictive" way[46].

More recently, the Constitutional Chamber of the Supreme Tribunal, in decision N° 1077 dated 08-22-01, specified the following regarding the standing to bring a popular action:

> On the other hand, in our legal order, the popular action of unconstitutionality exists, whereby any individual having capacity to sue has a procedural and legal interest to raise it, without requiring a concrete historical fact that harms the plaintiff's private legal sphere. The claimant is a guardian of constitutionality and that guardianship entitles him to act, whether or not he suffered a harm coming from the unconstitutionality of a law. This kind of popular actions is exceptional[47].

In any case, the same standing is allowed to any individual that might be harmed in his rights and interests. Such a person may participate in the trial, as a party, contesting or defending the challenged act.

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45 See L.H. Faría Mata, "¿Eliminada la Acción Popular del Derecho Positivo Venezolano?", in *Revista de Derecho Público*, Editorial Jurídica Venezolana, N°11, Caracas 1982, pp. 5-18.

46 Decision of the Plenary Session dated 06-30-82, in *Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 11, Caracas 1982, p.138. According to this criterion, therefore, as the Supreme Court in Plenary Session has said, the popular action "may be exercised by any and all citizens with legal capacity." Decision dated 11-19-85, in *Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 25, Caracas 1986, p.131.

47 Decision N° 1077 dated 09-22-01, Constitutional Chamber (Case: *Servio Tulio León Briceño)*, in *Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 83, Caracas 2000, pp. 247 ff .

VI. PREVENTIVE JUDICIAL REVIEW OF THE CONSTITUTIONALITY OF SOME STATE ACTS

In the traditional system of judicial review in Venezuela, the sole mechanism of preventive judicial review of statutes or acts issued in direct and immediate execution of the Constitution was the Supreme Tribunal of Justice deciding the unconstitutionality of an approved law not yet promulgated, on the occasion of the presidential veto of the same.[48]

The Constitution of 1999 provided expressly for preventive control of constitutionality regarding international treaties and organic laws. It also separated the control of constitutionality by the President's initiative from the presidential veto of laws.

1. Preventive Judicial Review of International Treaties

In the *first place,* article 336, paragraph 5° of the Constitution, regarding *international treaties*, grants the Constitutional Chamber authority to:

> verify, at the President of the Republic's or the National Assembly's request the conformity with the Constitution of international treaties subscribed by the Republic before their ratification.

This kind of provision, originated in European constitutional systems, like the French and the Spanish, and also existed in Colombia[49]. It was incorporated in the Venezuelan system of judicial review, permitting preventive judicial review of an international treaty subscribed by the Republic. It is important to note that it precludes, in these cases, subsequent challenge of the law approving the treaty before the Supreme Tribunal.[50]

Standing to initiate this preventive control by the Supreme Tribunal, belongs to the President of the Republic or to the National

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[48] See Allan R. Brewer-Carías, *La justicia constitucional,* Vol VI of *Instituciones Políticas y Constitucionales, , op. cit.*, pp. 134 ff.

[49] I*dem*, p.590.

[50] See Allan R. Brewer-Carías, *Implicaciones constitucionales de los procesos de integración regional*, Editorial Jurídica Venezolana, Caracas 1998, pp. 75 ff.

Assembly. The review shall be made before the ratification of the treaty and after the National Executive signs it. Once the Treaty is approved by statute, a popular action could normally be raised against the statute. But, if the Constitutional Chamber, by means of a preventive judicial review decision, has decided that the international treaty conforms to the Constitution, then, a popular action of unconstitutionality against the approving statute could not be raised.

A method of judicial review of this kind, is very important in regional economic integration processes, since it would allow approval of the respective treaties only after verification of their constitutionality by the Supreme Tribunal. This happened, for example, in Venezuela in the cases of treaties regarding the Integration Agreement of the Andean Community.[51]

2. *Preventive Judicial Review of the Organic Statutes*

The *second* mechanism of preventive judicial review is that provided in article 203 of the Constitution. Before their promulgation, the Constitutional Chamber may decide whether enactments of the National Assembly designated as Organic Statutes actually have the constitutionally required characteristics of such statutes. According to article 203, there are various types of Organic Statutes, some specified in the constitutional text and others to be certified as such by a two thirds vote of the National Assembly before initiating the discussion of the draft. These statutes are *automatically* sent, before their promulgation, to the Constitutional Chamber of the Tribunal of Justice, for a decision on the constitutionality of their organic character.

There exists, in this case, no standing vested in a specific organ or individual to raise this control, since it is automatic. The Constitutional Chamber must decide the case within 10 days

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[51] See the decision of the former Supreme Court of Justice dated 07-10-90 and the comments in Allan R. Brewer-Carías, "El control de la constitucionalidad de las leyes aprobatorias de Tratados internacionales y la cuestión constitucional de la integración latinoamericana", *Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 44, Caracas 1990, pp. 225-229.

counted as of the date it receives the communication. Should the Chamber declare that the law is not organic, then it loses that character.

3. Judicial Review of Approved Statutes before their Promulgation

The *third* mechanism of preventive control of constitutionality is provided in article 214 of the Constitution. It applies in cases where the President of the Republic raises a constitutional issue during the days he has to promulgate the statute. Pursuant to this rule, the Constitutional Chamber shall decide the constitutionality of the statute or some of its articles. The President of the Republic, therefore, has standing to raise the issue of constitutionality in this case.[52]

Thus, this provision sets forth a control of the constitutionality of statutes that have been approved but not promulgated, which is distinct from the so called "presidential veto" of statutes, which always involves their resubmission to the National Assembly.

VII. THE OBLIGATORY CONCENTRATED METHOD OF JUDICIAL REVIEW OF STATE-OF-EMERGENCY DECREES

Pursuant to articles 336 and 339 of the Constitution, all Executive Decrees declaring a state of emergency shall be raised by the President of the Republic before the Constitutional Chamber of the Supreme Tribunal, so it can decide on their constitutionality.

This instance of obligatory judicial review, is a novelty introduced by the Constitution of 1999, following the precedent of Colombia (art. 241, paragraph 7). In Venezuela, such power of review is the only constitutional case in which the Chamber is entitled to act *ex officio*.

By exercising this constitutional judicial review power, the Constitutional Chamber may decide not only on the constitutionality of decrees declaring states of exception, but also on

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[52] The Constitutional Chamber considered that this standing belongs exclusively to the President of the Republic. See decision N° 194 of 02-15-2001.

the constitutionality of the content of such decrees pursuant to the provisions of articles 337 and following of the Constitution. In particular, the Chamber shall verify, whether the decree contains a sufficient statement of the character of the regulation of the rights the decree restricts. (art. 339).

VIII. JUDICIAL REVIEW OF THE PARLIAMENT'S OMISSIONS

The so called judicial review of legislative acts by omission[53] is another new institution of judicial review established by the Constitution of 1999. In that regard, article 336 grants the Constitutional Chamber the competence to:

> Declar[e] the unconstitutionality of the omission of the municipal, state or national legislative power in failing to issue indispensable rules or measures to guarantee the enforcement of the Constitution, or issuing them in an incomplete way, and establishing the terms, and if necessary, the guidelines for their correction.

This provision grants a wide power to the Constitutional Chamber, which surpasses the initial Portuguese antecedent. Indeed, in the case of the Portuguese Constitution, standing for invoking this power is given to the President of the Republic, the Ombudsman or the Presidents of the Autonomous Regions[54]. In contrast, the Constitution of 1999 does not establish any condition whatsoever for standing; so normative omissions[55], may be challenged as *popular actions.*

IX. JUDGMENT OF CONSTITUTIONAL CONTROVERSIES BETWEEN THE ORGANS OF PUBLIC POWER

The Supreme Tribunal, in Constitutional Chamber, pursuant to article 336, also has the power of "judging constitutional controversies arising between any organs of public power."

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53 This institution has its origins in the Portuguese system, see Allan R. Brewer-Carías, *Judicial Review in Comparative Law*, *op.cit*., p. 269.

54 See Allan R. Brewer-Carías, *Judicial Review in Comparative Law*, *op.cit*., p. 269.

This constitutional judicial review power is intended to resolve conflicts between State organs, both in their vertical or territorial distribution (Republic, states and municipalities), and in their horizontal distribution at the national level (Legislative, Executive, Judicial, Citizens and Electoral Powers), and at state and municipal levels (Legislative and Executive Powers).

In other words, it is about the judgment of controversies concerning *constitutional competencies* between constitutional organs of the State. These cases are different from *administrative* controversies that can arise between the Republic, the States, municipalities or other public entities. The latter are decided by the Political-Administrative Chamber of the Supreme Tribunal (art. 266, paragraph 4°), as an "Administrative Jurisdiction"[56].

In any case, standing to seek a remedy to settle a constitutional controversy belongs to the State constitutional organ involved.

IX. ACTION FOR CONSTITUTIONAL INTERPRETATION

Finally, among the competencies of the Constitutional Chamber as "Constitutional Jurisdiction", mention must be made of the power it has to decide abstract requests for interpretation of the Constitution. The Constitutional Chamber itself created this authority from its interpretation of article 335 of the Constitution. It has recently been formalized in the 2004 Organic Law of the Supreme Tribunal of Justice.

The purpose of an such action of constitutional interpretation is to secure a certain declaration by the Constitutional Chamber on the scope and content of a constitutional provision. It has been regarded as a form of citizen participation, a step prior to an action of unconstitutionality. Providing the constitutional interpretation

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[55] The Constitutional Chamber has called it "legislative silence and functioning." Decision N° 1819 of 08-08-2000 of the Political-Administrative Chamber (Case: *Rene Molina vs. Comisión Legislativa Nacional)*.

[56] Decision of the Political-Administrative Chamber N°1819 of 08-08-2000 of the Political-Administrative Chamber (Case: *Rene Molina vs. Comisión Legislativa Nacional)*.

may clear doubts and ambiguities about the supposed conflict[57]. The Constitutional Chamber, in creating the action, in decision No. 1077 dated 09-22-2000 relied on article 26 of the Constitution, which establishes the right of access to justice. From this, the Chamber deduced that, although this action was not set forth in the legal order, it was not forbidden either, and, therefore:

> whoever having a legal interest may raise the interpretation of a law as per the legal provisions, and also the interpretation of the Constitution, in order to obtain a decision of plain certainty on the scope and content of constitutional rules, this action would be equal in nature to one of interpretation of law[58].

Regarding the standing to bring this action for constitutional interpretation before the Supreme Tribunal, the Constitutional Chamber considered that a particular interest must exist in the plaintiff:

> A public or private person shall have a current, legitimate legal interest, grounded in his own concrete and specific legal situation, which necessarily requires the interpretation of constitutional rules applicable to the situation, in order to end the uncertainty impeding the development and effects of said legal situation[59].

For the action for interpretation to be allowed, the petition must specify the nature of the obscurity, ambiguity or contradiction of the provisions of the constitutional text, or within one of them in particular, or with respect to the nature and scope of applicable principles.

As mentioned, the action has restricted standing, but the effects of the decision are general[60].

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57 Decision N° 1077 dated 09-22-01, Constitutional Chamber (Case: *Servio Tulio León Briceño)*, in *Revista de Derecho Público*, Editorial Jurídica Venezolana, N° 83, Caracas 2000, pp. 247 ff .

58 *Idem*.

59 *Idem*

60 The Constitutional Chamber in decision N° 1347 dated 11-09-2000, outlined the binding character of its interpretations, by pointing out that "The interpretations of this

CONCLUSION

From the above, it is clear that in order to determine the standing rules to raise constitutional issues in a judicial process, the system of judicial review existing in the country must first be determined.

In the Venezuelan case, with its mixed or comprehensive system of judicial review, we have analyzed, the following general rules on standing that can be deduced, depending on which judicial method is used to exercise judicial review:

1. In order to exercise judicial review of statutes through the diffuse method, standing to raise the constitutional issue in the specific case belongs to the parties to the same, even when they act on behalf of diffuse and collective interests. Judges in Venezuela also have the power-duty of raising *ex officio*, by themselves, and in the proceeding, constitutional issues regarding statutes in order to decide the specific case. Additionally, the Public Prosecutor and the Defender of the People, according to their authority, may raise constitutional issues in proceedings in which they intervene.

2. In Venezuela, the right of every individual to be legally protected in the enjoyment and exercise of his constitutional rights and guarantees is established. For that purpose, the action of *amparo* is also a legal method of judicial review. It may be raised by the holder of the infringed constitutional right or guarantee. The action of *amparo* can also be raised on behalf of diffuse or collective constitutional rights, and by the Defender of the People on behalf of the same.

3. Regarding judicial review of constitutionality and illegality of by laws and other general or individual administrative acts, the courts of the Administrative Jurisdiction are entitled to declare their nullity. Any individual has standing to raise the action of nullity against normative administrative acts. A simple interest

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Constitutional Chamber, in general, or those issued in proceedings of interpretative remedy, shall be understood as binding regarding the core of the studied case".

in legality is enough to have standing. Therefore, it is a popular action.

But in cases of administrative acts of particular effect, standing to raise the action of nullity belongs only to those individuals who have a legitimate interest in the annullment of the act. According to the Organic Law of the Supreme Tribunal of Justice, the interest must also be personal and direct. The action of nullity against administrative acts can also be exercised on behalf of diffuse and collective interests.

4. In addition to the diffuse method of judicial review, the concentrated method of judicial review has existed in Venezuela since the nineteenth century. Currently, the Constitutional Chamber of the Supreme Tribunal of Justice, as the Constitutional Jurisdiction, has the exclusive right to declare the nullity of statutes and other acts of a similar level on the grounds of unconstitutionality. Standing to bring a direct action of unconstitutionality before the Constitutional Chamber belongs to any individual with a simple interest in constitutionality. It is also, therefore, an *actio popularis* for judicial review of statutes and other State acts of similar rank and effect.

5. The Constitutional Jurisdiction has other competencies in matters of judicial review, and correspondingly different standing rules. Standing to raise preventive judicial review of international treaties before the Constitutional Chamber belongs to the President of the Republic or to the National Assembly. In the case of organic statutes, preventive review by the Constitutional Chamber is automatic and obligatory. Standing for a decision of preventive review of statutes approved by the National Assembly, but not yet promulgated, belongs to the President of the Republic.

6. Decrees declaring states of exception, must be subjected to judicial review by the Constitutional Chamber. When issuing those decrees, the President of the Republic shall send them to the Chamber. However, in this case, the Constitutional Chamber is also expressly given the power to review said decrees *ex officio*, and it can do so from the moment they are published in Official Gazette.

7. The Constitutional Chamber of the Supreme Tribunal of Justice also has the power to declare the unconstitutionality of omissions of national, state or municipal legislative bodies in failing to issue rules needed for the enforcement of the Constitution. This action of unconstitutionality for omission of the Legislator has the same standing rules as the action of unconstitutionality of statutes, as a popular action. Therefore it belongs to each and every individual, a simple interest in constitutionality being sufficient.

8. The Constitutional Chamber also has the power to decide and judge constitutional controversies arising between different constitutional organs of the State, resulting from the vertical division of power (Republic, States or Municipalities) and from the horizontal separation of power (Legislative, Executive, Judicial, Citizen and Electoral). In these cases, standing to raise the constitutional issue belongs to those holding office in said organs.

9. Finally, regarding the action for constitutional interpretation that can be brought before the Constitutional Chamber, standing belongs to individuals with an actual and legitimate legal interest based on a specific legal situation that requires constitutional interpretation in order to end the uncertainty impeding its development.

The foregoing is, in short, the current situation of standing to raise constitutional issues in judicial proceedings in a mixed or integral system of judicial review such as the Venezuelan system.