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## Guatemalan Constitutional Court

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#### IV. GUATEMALAN CONSTITUTIONAL COURT

*Maria Luisa Beltranena de Padilla\**

The organization and function of the Constitutional Courts in the structure of a new State of Law (Rule of Law) have taken a preeminent place in the modern world, especially since the end of the last World War. That type of Court, as a constitutional judicial system (practiced by a specialized, permanent and independent body, from the other governmental branches) has arisen as a spontaneous juridical and political institution in countries where a totalitarian regime has been the common denominator.

Historically, Germany, Italy, Spain and Portugal established it right after Fascism and Nazism came to an end and the Franco and Salazar dictatorships terminated. It happened again in the Eastern European countries with the end of authoritarian governments; the new form of Jurisdiction has been consolidating the constitutional system of concentrated court in Albania, Bulgaria, Bosnia, Croatia, Estonia, Hungary, Lithuania, Poland, Rumania and Russia, as well as in those countries that have emerged from the geographic redefinition of that region.

In Latin America, the design of this kind of institution has been somewhat limited. On one hand, most of the countries have the influence of the American Constitutionalism; and, on the other, the inspiration of the traditional and nonspecific control of the constitutionalism of the Law. For the most part, the supreme courts of the ordinary jurisdiction have assumed directly, or through some special courts, the monopoly of the final interpretation of the Constitution.

The Constitutional Courts of Colombia, Ecuador, Peru, Chile and Guatemala have adopted the concentrated system of constitutional justice, but their organization differ, due to unique political and social conditions. Some of those countries have been unable to completely develop the pertinent functions associated to the nature of such an institution. Nonetheless, the Guatemalan Constitutional Court is considered today, as a successful case in Latin America.

In the various attempts that Guatemala made to become a Democracy, the idea of a Constitutional Court became one of the goals; consequently, this is not a new idea. The initiative of its creation started back in 1965, when Guatemala voted for a civilian government. Unfortunately, three successive military governments followed it, so the quest continued to be just as an idea. It was not until 1985 when the Constitutional Assembly promulgated the newest and last Political Constitution of Guatemala. Here

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the Constitutional Court has materialized. Academic and legal opinions were obtained from Law Schools and the Association of Lawyers, resulting in the incorporation of two institutions responsible for keeping and preserving the Fundamental Liberty and the Civil Rights. Those institutions are: The Ombudsman and the Constitutional Court.

The primary function of the Constitutional Court is to keep the actions of the government within the boundary established by the Political Constitution. As a conclusion, it can be stated that Guatemala is trying to achieve the full enforcement of the Rule of Law, with no exceptions or privileges to any citizen. That is particularly valid for government officials, members of the groups of power, religious groups and the military sector.

The idea of the Constitution as the Supreme Law emerges from the Constitution of the United States of America, and its projection goes to the present day. Along those years, societies have tried to bring into play some juridical and political mechanisms to guarantee the supremacy of the Constitution. As Mauro Capelletti stated: *"The life, the reality and the future of our Constitutions depends on the Constitutional Justice."*

The promulgation of the Guatemalan Political Constitution of 1986 and the setting up of the first Constitutional Court, promoted a better political and juridical order, and it meant a new constitutional experience aiming for a better quality of life. All of them: the new Political Constitution, the new constitutional laws and the newly created institutions initiated a new era. In turn, this improvement collided with the old traditions and practices, especially the resistance of the Supreme Court to accept a higher Authority in Constitutional matters.

The models taken for the Guatemalan Constitutional Court are, in part, the Constitutional Courts of Spain, Germany and Italy; but it also takes into account the specific mandates of the Political Constitution and the Organic Law of the Constitutional Court, where its explicit powers are determined. The Guatemalan Constitutional Court, like the European Courts, expand its jurisdictional venue basically in three areas:

- a) The jurisdiction of the Law;
- b) The conflicts of jurisdiction; and,
- c) The jurisdiction of the fundamental rights.

The first one refers to the power or venue to exert, exclusively, the analysis of the constitutionality of the laws promulgated thereafter. The second venue is the resolution of conflicts of jurisdiction or competence of the different constitutional branches of the State. The last one has to do with the security and defense of the fundamental rights (civil rights) of the person through the constitutional guarantee of protection of the civil rights (Acción de Amparo). An important differential feature of the Guatemalan Constitutional Court is its capability to release, *a priori*, judgments and opinions on affairs of its areas of responsibility.

## A. Organization of the Constitutional Court

### 1. Integration

- a. Five Holder Judges (Magistrates)
- b. Five Alternate Judges (Alternate Magistrates)
- c. Important rule: To acknowledge appeals of writ of relief, resolved by the Supreme Court in first instance, or to acknowledge pledges of unconstitutionality; the Court adds two alternate judges, totaling seven.

### 2. Designation

a. The Judges and its alternate are appointed as follows:

- (1) One by the Supreme Court
- (2) One by the Congress (Legislative Branch)
- (3) One by the President and the Ministers
- (4) One by the State University (San Carlos Superior Council)
- (5) One by the General Assembly of the Association of Lawyers

b. Qualifications to be appointed as Constitutional Judge:

- (1) Guatemalan Nationality
- (2) Practicing Guatemalan Lawyer
- (3) Honorability (social, juridical, professional)
- (4) A minimum of 15 years of law practice or a judicial career

## CLOSING REMARKS

The Constitutional Court in Guatemala has the minimum powers needed to accomplish an independent role, that is to say:

- 1) It has supreme decision (no appeal),
- 2) It is the final and sole interpreter of the Constitution, and
- 3) It is an impartial and unquestionable arbitrator in matters of conflict arising from the interpretation of the Constitutional Laws.

After more than a decade since the installation of the Guatemalan Constitutional Court, it has been effective and efficient in its role, proving the importance of its existence for the protection of the civil rights of society.

Finally, it is important to recognize that the road to democracy and the accomplishment of a legitimate State of Law is only beginning in Guatemala. As of today, this new institution has achieved its purpose, solving many conflicts in a juridical and peaceful manner. Although it is just the first step; and there is a lot more to do to attain cultural respect to the Rule of Law.