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**Constitutional. Sentence that declares the unconstitutionality of Article 1 of Law 236-05, which modifies Law 28-01 that dismounts the tax benefits awarded by the tax exemption to the Companies of Frontier Development, and violation of Article 110 of the Constitution of the Republic. By Y. Martínez Oller**

A conglomerate of companies, composed by Asociación Dominicana de Empresas Fronterizas, Inc., Cementos Andino Dominicanos, S. A., Yellow Day Corporation, Industrias San Miguel del Caribe, S. A., Megaplax, S. A., Itacam Corp., S. A., Serrana Agroindustrial, C. por A., Agroforestal Macapá, S. A., Electricosa del Mundo, S. A., Punta Mangle, S. A., Calor del Sol, S. A., Mirador El Morro, C. por A., Southern Filler, S. A., Everlast Industries, S. A., Inversiones Los Zares, S. A., Tecni Itali, S. A., Inversiones Margie, S. A., Casabe Guaraguano, C. por A., Unigold Resort, submitted a direct action in declaration of unconstitutionality against Article 1 of Law 236-05, dated May 19, 2005, which modifies Article 2 of Law 28-01 dated February 1, 2001 and of Article 45 of the Regulation of Law Enforcement 28-01 and its modification insert in Decree 539-05.

Said instance, subscribed by the lawyers José Luis Taveras, Eduardo Jorge Prats and Angelica Noboa Pagán, alleged mainly that "the application of the referred dispositions to the classified companies or in operation constitutes a clear violation to the right judicial security, the principle of the irrevocability of the laws, the right of the reasonability of public power decisions, the right to free enterprise and fair competition, the principle of proportionality of fiscal burdens and a violation of the dispositions of Article 110 of the Constitution which prohibits the raising of tax exemptions awarded pursuant to the own Constitution of the Republic."

In this sense, the Supreme Court of Justice (SCJ), because of its significance and impact pronounced itself affirming the plaintiffs' arguments, being supported mainly in two of its summing-ups: the violation of the right to Judicial Security, and to the dispositions of Article 110 of the Constitution which prohibits the raising of tax exemptions.

In the first case, the SCJ agreed with the arguments presented by the plaintiffs, as for that judicial security, a constitutionally consecrated right by Article 47 of the Constitution, considers purpose that any citizen can acknowledge and calculate with prudent time the influence of the Law in its personal or corporate conduct. Understanding that the suppression, dismantle or variation of the fiscal benefits

granted by Law 28-01 to the companies that were established in the special zone of frontier development, violates the principle that prohibits the law to govern the validity and the effects of situations legally born before its promulgation, and the right to judicial security or legitimate trust. The SCJ supported its decision in the European definition, which states that "[judicial security] consists in the confidence, in a democracy; the citizen has in the legal system, that is to say, the group of laws that guarantee security and legal order."

In that sense, the SCJ also refers to the violation of the principle of irrevocability of the laws, in the understanding that said Article 47 acknowledges the theory of acquired rights when it refers to "situations established according to a previous legislation" from what is inferred, that it would be considered retroactive every law that alters or will alter acquired rights, established according to a previous legislation, therefore, violating the judicial security that this same principle (of the irrevocability of the laws) provides the citizens.

As for the violation of Article 110 of the Constitution, the SCJ esteemed that it is the same law that has established a period of twenty (20) years for the enjoyment of the exemptions in benefit of the companies permitted by the Dominican laws installed within the limits of the provinces of the frontier line already identified by Law 28-01; therefore, there is an evident transgression to the irrevocable right to benefit from the twenty year concession which pertains to the

acting companies and the ones which have been installed until the promulgation of Law 28-01.

Finally, the SCJ concludes declaring non-compliant with the Constitution Article 1 of Law 236-05, dated May 19, 2005, which modifies Article 2 of Law 28-01 dated February 1, 2001, that added the paragraphs II, III and IV to said Article 2, that creates a special zone of frontier development, and of Article 45 of the Regulation of Law Enforcement 28-01 and its modification insert in Decree 539-05.

**Constitutional. Law No.437-06 that establishes the Protection of Human Rights Recourse (Recurso de Amparo). By Y. Martínez Oller**

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Recently, on November 1<sup>st</sup>, 2006, President Leonel Fernández passed a Law No. 437-06, establishing the Protection of Human Rights Recourse (Recurso de Amparo).

The Dominican Republic has integrated into its legal system the norms of general international and American law in the measure in which its public powers have adopted them, by means of Article 3 of the Constitution. By signing and ratifying the American Convention on Human Rights, it has incorporated a recourse by means of which any person affected by the limitation or violation of one of its fundamental rights, whether this violation be committed by a public authority or by an individual, will be able to request the protection of its rights. This fast, effective, and simple recourse is destined to return to the complainant the full enjoyment of the essential

prerogative which was violated; that is the protection of human rights recourse.

Article 1 of said Law establishes that "the protection of human rights action will be admissible against every act or omission of a public authority, or of any individual, that in present or imminent form and with arbitrariness or illegality declares, injures, restricts, alters or threatens the rights or guarantees explicit or implicitly recognized by the Constitution, of the individual liberty protected by the Hábeas Corpus."

The protection of human rights action will not be admissible in the following cases:

- a) When it is a matter of jurisdictional acts emanated from any court of the Judicial Power;
- b) When the claim has not been presented within the thirty (30) days after the date in which the complainant had knowledge of the violation of its rights;
- c) When the petition of protection of human rights action is notoriously improper, in the opinion of the authorized judge;
- d) When it is a matter of the suspension of Civic guarantees stipulated in Article 37, Clause 7, or in Article 55, Clause 7, of the Constitution of the Republic.

The protection of human rights action is initiated with an imminent violation that requires a speediness, therefore it will not be able to be

suspended or to be dismissed to await the decision of another process, neither will it be subordinated to the fulfilment of prior formalities, or to the exhaustion of other ways of recourse or impeachment established in the law to counteract the act or omission that pretentiously has violated a fundamental right, neither will it be able to suspend or cause the dismissal of another judicial process. The competent judge to know the protection of human rights action is the judge of first instance, with jurisdiction of the location where the act or omission was manifested. This recourse is characterized for minimum time limits, and will be always oral, public and contradictory, admitting any means of proof permitted in our legislation, to defend its rights.

The request of protection of human rights should be directed by the complainant to the authorized judge and deposited with the secretary of the court; it does not involve greater rigorousness of form.

If the violation is admitted, it will be decided through a sentence that grants the protection of the violated right and will be limited to prescribe the necessary measures for the quick and complete restoration of the constitutional right damaged to the complainant, or to cause to cease the threat to its full enjoyment and exercise. This sentence will be not susceptible of impeachment by means of no ordinary or extraordinary recourse, except for third-part interventions (*tercería*) or annulment (*casación*).

## News.

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- Dissertation by Angelica Noboa "Proposition of constitutional judicial position for Consumer Rights" within the context of the First Seminary on Judicial Protection of Consumer Rights: towards a Constitutional Proposal, held on the past March 23<sup>rd</sup>, 2007, in the Pedro Mir Library, Manuel del Cabral Auditorium, of the *Universidad Autónoma de Santo Domingo (UASD)*.
- Dissertation by Angelica Noboa "Evolution of Antitrust Law in the regulations of the Public Telecommunications Sector", within the context of the Intellectual Property Course, organized by FINJUS, on April 12<sup>th</sup> 2007, at the *Universidad Iberoamericana (UNIBE)*.

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