URISPRUDENTIAL VISION
THE PRINCIPLE OF SEPARATION OF POWERS IN NICARAGUA

LEGAL FRAMEWORK.

In the scope of the Law of Amparo is any act or omission of government that consider individuals that violate their constitutional rights. Originally this was limited to protecting individual rights but now encompasses collective rights, economic, social, cultural, environmental. In sum, in Nicaragua given the generic nature that has the wording of Article 188 Cn, establishing the writ of Amparo, "The Writ of Amparo against any provision, act or resolution and in general against any action or omission of any officer, authority or agent thereof who violates or attempts to violate the rights enshrined in the Constitution. "amparo is unlimited.

Likewise, the Constitution expressly provides the remedy for unconstitutionality of the law, both from the standpoint of Cn Article 187 abstract: "The Writ of unconstitutionality against any law, ordinance or regulation that is opposed to the requirements of the Constitution, which may be filed by any citizen. " From the particular point of view, Article 22 of the Amparo Act, states: "The appellant of an appeal or of Amparo may invoke the unconstitutionality of the law, decree law, ordinance or regulation that it has been applied. If proves to be true the alleged unconstitutionality, the Supreme Court, as well as the decision to marry or protect the plaintiff, declared unconstitutional the law, decree law, ordinance or regulation, in accordance with Article 20 of this law .

Moreover, within the powers of the Judges, in accordance with the Organic Law of Judicial Power is contemplated that they may raise the issue of unconstitutionality of any law, decree, statute, ordinance or regulation, or rule that can immediately mediate influence the decision of the case under its knowledge. Article 5 of the Organic Law states: "Constitutional Control case. When a case submitted to it, the Judicial Authority considers in its decision that a rule, whose validity depends on the decision is contrary to the Constitution, declare its inapplicability to the case. Where a party, has alleged the unconstitutionality of a rule, the judicial authority must necessarily decide the point, accepting or rejecting the claim. When there is no appeal and final decision had been resolved an issue with the explicit declaration of unconstitutionality of any statute, ordinance or regulation, the judicial authorities as appropriate, shall submit its decision to the Supreme Court. If the Supreme Court affirms the decision of unconstitutionality of the statute, ordinance or regulation, shall declare its inapplicability to all similar cases, in accordance with the Law of Amparo. "

In the same way include the Writ of Habeas Corpus, that our Constitution provides in Article 189, which reads: The Writ of Habeas Corpus in favor of those whose liberty, physical integrity and security are violated or are in danger of to be. "

Finally, the Competition Appeal and Constitutional Conflict between branches of government, in accordance with the second paragraph of Articles 163, 164 Cn paragraph 12, Articles 5 and 80 to 84 of the Amparo Act. The arto. 5 states: "The representatives of

all branches of government promote the Competition or Conflict of unconstitutionality, if they consider that a law, ordinance, regulation, act, resolution or disposition of another branch invades their constitutional custodial powers. In the executive branch, the decision by the President of the Republic, in the case of the legislature is for this decision to the Board, in the case of the judiciary up to the Full Court in the case of the electoral authority, the Council CSE. If the President for the past three powers, it is unnecessary as befits a deadline of five days, you can do any other member of the Board of the National Assembly and Judges of the Supreme Court and the Supreme Electoral Council .

In conclusion, these are the means of control that the Constituent Ancient Constitutionality of 1987 and 7 partial reforms undertaken by the Constituent National Assembly and Spin have been established. All this framed by the principle of constitutional supremacy, established in Article 182 Cn, which reads: "The Constitution is the fundamental law of the Republic, the other laws are subordinate to it. No value laws, treaties, orders or regulations which conflict with or alter its provisions. "Principle of Legality, Article 183:" No branch of government, government agency or official shall have other authority, power or jurisdiction which conferred by the Constitution and laws of the Republic. "Cn Article 160:" The administration of justice guarantees the principle of legality, protection and human rights protection by law enforcement affairs or processes of competition. "Article 130 of the Constitution, paragraph 1:" The Nicaraguan nation is in a state of law. No charge given to whom, more features than those conferred by the Constitution and laws. "

JURISPRUDENCE

At first, the scope of Amparo was limited to disputes between individuals and the executive branch, eventually expanded to the entire public administration, see the four branches of government. Then, by way of exception to the conflict arose within a single branch of government, as well as conflicts between branches of government and conflicts between the Central Government and municipalities, regional governments and between them and the municipalities, in such a way that that was exceptional has become routine and normal.

1. INTERNAL CONFLICT TO THE STATE AUTHORITIES.

Legislative branch:

The SUPREME COURT of Judgement No. 161 of 1996 resolved the internal conflict of the legislative branch, which at one time becomes a conflict between the branches: the executive and legislative branches. Conflict that had arisen from the fact that a minority of deputies of the National Assembly, had taken possession of the Board and with the participation of a majority of 54 deputies in the plenary on 92 had altered the Agenda and Agenda, passing laws and reforming the Statute of the National Assembly and its Regulations, and proceeded to make a series of legislative and administrative acts. In the

case sub judice was an Appeal against the approval of Bills Nos. 245 called 'REFORM ACT OF ORGANIC LAW OF THE CENTRAL BANK OF NICARAGUA and 246 called LAW OF THE ATTORNEY GENERAL OF JUSTICE: "... The plaintiffs invoked the absence of an action to resolve the internal conflicts of power, and among branches of government. The SUPREME COURT, believes there is no impediment to resolve this question because there is no special regulation for this. Considers that the mere existence of arto. 164 Cn., Inc. 12 is a right and also a constitutional obligation for the SUPREME COURT solve, apply the provisions in article 443 Pr, which he commanded not to refrain from resolving an issue brought to its attention by the fact there is no law to do so. "And states with the Remedy Unnamed solving:" Having been the President of the Republic, in impossibility of sanction, promulgate, publish or veto bills Nos. 245 and 246, called "Law Reform the Central Bank Law and the Organic Law of the Attorney General, declared absolutely void and without legal effect of such publications bills. The constitutional deadline referred to in Article 141 cn begin to run from the day after the legal and physical delivery of the autographs of these draft laws, the President, which of cars roll over in order to return to President of the National Assembly. "

Electoral Power

a) The Constitutional Chamber of the Remedy met submitted by Judge Supreme Electoral Council Vice President, against his fellow judges of the Supreme Electoral Council, a liberal, who, having been convened seventeen times by the Chief Justice of Supreme Electoral Council, persisted in refusing to attend meetings and integrating the legal quorum in the Supreme Electoral Council, whose refusal violates the Constitution, the Electoral Act and the Rules of Procedure of the Council, even more so considering that the judges in reference , to attend or not attend regular sessions of the Supreme Electoral Council, prevented the applications be discussed as it was: to approve the applications, approve or reject the name change of the political parties to approve all matters relating to the location of polling stations, their location, as well as the verification procedures of the electoral roll and the resulting changes of address, which is an insult to the mandate of the Constitution of the Republic, the Electoral Law and Internal Rules of Operation Supreme Electoral Council, so that the judges in question, have violated their Constitutional rights.

The Constitutional Chamber declared the Remedy, basing that decision on the Constitutional standard of Art. 188 amparo guarantees for "... failure of any officer, authority or agent thereof, who violates or attempts to violate the rights and guarantees enshrined in the Constitution."

The Board also believes that Law No. 331 "Election Law", in Article 6 states: "The Supreme Electoral Council is composed of seven Justices and three alternate judges, elected by the National Art ..."; . 12 states: "The quorum of the Electoral Council will be formed surpreme five of its members and decisions are taken by the affirmative vote of at least four of them, would require the affirmative vote of five members to the following decisions. .. "Art 14 states that:" The president is the Supreme Electoral Council,

paragraph 1): "Chairing the Supreme Electoral Council and summon their own initiative or at the request of three of its members." From the foregoing it is observed that the President of the Supreme Electoral Council, convened seventeen times to the said Council, not the judges serving the subpoena ..., which shows a systematic obstruction of the free operation of the Supreme Electoral Council, which makes an act illegal against the Constitution by violating the principle of legality enshrined in the Artos. 32, 130, 160 and 183 Cn.

b. In this same vein, the internal conflict to the Supreme Electoral Council, the Constitutional Chamber of the Supreme Court by Judgement No. 14 of February 17, 2006, decided an Defaults Amparo filed by the legal representative of the Party deputy ALN against four judges of the Supreme Electoral Council for refusing to avoid legal quorum to discuss the applications of this party to that branch of government.

At the end of Recital cited above, it stated: "In the absence unexcused and inertia of titular judges, the President of the Supreme Electoral Council has the right and obligation to call to integrate the available alternates to ensure the rights, guarantees and constitutional principles. " The sentence also refers to a previous suspension for twelve days on the Board caused by lack of quorum, when three judges refused to attend meetings and did not show his deputy, the established in the last part of Article 6 of the Electoral Act.

No concept can be interpreted broadly. Absence not only do not attend the council because the judge was granted permission to relax or to travel on official business or illness, pointing to his deputy. Absence is also a deliberate refusal to join the Council and not deliberately point a deputy, to break the quorum or any other purpose. Given this situation should be called to substitute directly for the owner to do so the judge lost or tacitly waived its right to do so. Only then can save the electoral process and prevent the end did not integrate the Electoral Council after the election and not be declared elected President, Vice President and Deputies or any other popular choice function, and mocking the popular will. " These judges failed, arto. 131 of the Constitution by failing to properly perform their duties, and committed the crime of disobedience to the law in accordance with art.377 of the Penal Code, which is why they can be removed in accordance with art. 138 inc. 11 of the Constitution. "

c. Also, the Supreme Court, in Judgement No. 196, three in the afternoon of December 10, two thousand one, from the existence of an agreement signed by all members of the Supreme Electoral Council, left established that Third: "... Please also included Judges and Alternates in case of missing a Magistrate Owner, all in accordance with Article 6 of the Electoral Act "agreement that allowed the sentence number one hundred ninety-six, of 10 December, two thousand one, opening then the possibility of taking possession of the Electricity Authority in November of that year, and the letter reads as follows: ".... the appellants have recognized the validity of the proclamation of the elected positions of President and Vice President contained in that resolution tacitly accepted the validity of the proclamation of Deputies and Deputy, National, Departmental and Regional to the

National Assembly of Deputies and Deputy, to the Central American Parliament and the Members appointed under Article 133 Cn. Dr. Arnoldo Alemán Lacayo, Mr. Daniel Ortega Saavedra and engineer Agustin Jarquin Anaya. "

2. CONFLICT BETWEEN STATE POWERS

Executive vs. Legislative Conflict

Reaffirming the view expressed in Judgement No. 161 of 1996, the Supreme Court e1 January 7, 1997, referring to the remedy of amparo filed by the Deputy President of the Justice Commission of the National Assembly and others, against Directive which had taken the National Assembly. And recitals V and VI, the Supreme Court, said: "that on several occasions has stated that" the case law of the Supreme Court, in the sense that the National Assembly is sovereign to make their own decisions under procedures established by the Constitution, and Sovereign also the whole National Assembly to make any decisions, even against what they might say members of the Board. " The National Assembly is the sovereign to make their own decisions is undeniable, provided that they fall within the procedures that the Constitution says, but can take any decision against the ruling of the Board is unacceptable, because the Board Directors is the governing body and director of the National Assembly elected by it and responsible for ensuring its smooth operation. What would be the purpose then to elect a Board of Directors if the National Assembly, ie the whole is not subject to their decisions? "

"To be left once again established that the Statute and the Rules of Procedure, are mandatory for all agencies comprising the National Assembly is the plenary, the Board, the Standing and Special Committees, and the benches, which together make up the State Power and if, as has been expressed behind the Statute and Rules of Procedure, are mandatory domestic laws to the National Assembly, the rape is a violation of Article 183 Cn., which establishes the principle of legality, because any branch of government, government agencies or other officer shall have authority, that authority or jurisdiction conferred by the Constitution and the laws of the Republic, which is reinforced by the provisions of Article 130 of the Constitution., which sets the principle in the absence of special privileges in the exercise of office, and that no charges attached to it exerts more functions than those conferred by the Constitution and laws. "

In its operative part unconstitutional Legislative Decree No. 1598 entitled "Reform of the General Statutes and Internal Regulations of the National Assembly", published in the newspaper Barricada on 28 November 1996. Therefore declared unconstitutional the provisions of no value and are therefore inapplicable. And based on the requirements of Arts. Cn 182 and 183., Declaring the nullity of all acts, legislative actions, elections, appointments, laws, decrees and resolutions adopted by the National Assembly, from the sequence number 1437 of seven-thirty and four minutes of the night of November 22 of 1996, beginning with the motion annulments Deputy Omar Cabezas Lacayo, in order to change the Agenda and Order of the Day In short, it annulled 47 administrative acts.

EXECUTIVE VS. JUDICIARY

Through Decree Law 11-90 of May 11, 1990, the President of the Republic gives power to the National Review Committee of Appropriations to decide on yours and mine, and thus the repayment of the recognizing property or rights, requiring compliance immediately with the help of the police force, if necessary, as in the case of judgments. It also provides that such resolutions serve as sufficient return entitlements to full duty on the goods claimed and to be entered in the corresponding Public Registry if necessary.

The Supreme Court of Justice in its Judgement No. 27 of May 17, 1991, found that these powers are of a jurisdictional area that exceed the powers the Constitution gives the executive branch and invade our own exclusive Power judiciary, which alone can administer justice, as set out with clarity the Articles 158, 159, 160, 164 and 167 Cn. If the resolutions ordering the return of goods that are not under the direct control and administration of the State and its inscription in the Public Registry, would be jurisdictional in nature and in many cases, would hurt third-party rights that have not had the opportunity to defend and although the Commission had not said that to decide on conflicts of interests, yours and mine, but the Courts of Justice.

LEGISLATIVE-EXECUTIVE VS. JUDICIARY

On July 24, 1990, the President of the Republic passed and published by Act No. 106 of July 18 of that year, a law that seeks to expand the number of judges of the Supreme Court and appeals courts, law it also contains provisions that are opposed to the Constitution and violates the arto. Cn 129, which contains the principle of Separation of Powers and the harmonious coordination required between them. That arto. 110 of the Organic Law on Courts of the Republic of Nicaragua is violated by arto. 1 of the Act to establish the number of judges of the Supreme Court and Court of Appeals, which shall be by law enacted by the National Assembly at the initiative of representatives, the President of the Republic or the Supreme Court Justice. Upon approval of the relevant law by National Assembly Office for President of the Republic, asking it to forward short lists for the election of judges, when the case of the Supreme Court. That the Organization in chambers corresponds to the judges of the Supreme Court and that the management and organization of the judiciary is a matter for the Supreme Court and therefore violates both the constitutional rule arto. 164 inc. 1 as secondary legislation, the Organic Law of the Judiciary and therefore request that explicitly declare unconstitutional. The respondents, the President through the Attorney's Office and the National Assembly asked to declare the appeal inadmissible on the grounds that the plaintiffs are ordinary citizens and not causing any harm and therefore can not claim rights to Amparo . The Court rejected the arguments of the respondents on the basis that the Constitution sets no requirement for filing the Appeal as unconstitutional, only requires the status of citizen and under the principle of constitutional supremacy may be filed by any individual holding the citizenship, without express no wrong. Likewise, the National Assembly and the Attorney argues that this is the establishment of a new

Tribunal, "that if a court is constituted by 5 judges and increase the number to 15 judges, the Court of 15 judges is different from that of 5 judges. This is not the simple organization of the Tribunal has the power to the Supreme Court by arto. 164 Cn. The Supreme Court held that is not itself or is constituted by the concurrence of the National Assembly elects the judges and the President of the Republic to submitted three candidates for that election but is created by the Constituent Power ... as governing body of the Judiciary in the Constitution stating its functions, powers and total independence from other branches of government. Justice emanates from the people in whose name and delegation is provided by the Judiciary (Art. 158 Constitution), that the exercise of jurisdiction lies exclusively with the courts which form a unit whose upper body is the Supreme Court ... the organization and management that all of that body and unitary system that integrates and provides the administration of justice are exclusive powers of the Superior Court 164 Cn and partly outline and define its independence in relation to other branches of government, arto. 129 Cn. And therefore declared the unconstitutionality of Law No. 106 .-

EXECUTIVE, LEGISLATIVE AND JUDICIAL REMEDY Unnamed

The Supreme Court dismissed the Appeal Unnamed introduced by the President of the Republic, Mr. Enrique Bolaños Geyer, 22 December, two thousand four, who opposed the constitutional reform process in the first legislature of 2004 made by the National Assembly. The appellant raises a constitutional conflict of jurisdiction, holding that the National Assembly, made a total and not partial reform of the Constitution, to change the system of government and other fundamental constitutional principles concerning Articles 138 Cn, numerals 4), 9) and 30) and 150 Cn, number 6), referring first to the request and interpellation Report: Ministers and Vice Ministers of State, Attorney and Deputy Attorney General of the Republic, Presidents or directors of autonomous entities and Government, to consider removal of these high officials by the National Assembly to consider unfit and dismiss the staff challenged with 60% of the vote, and give a period of three days President to make effective decision. Unjustified non-appearance of the officials mentioned is grounds for dismissal.

With regard to paragraph 30) of Art. Cn 138, refers to the necessary ratification by the affirmative vote of 60% of the members of the National Assembly of the appointments carried out, the President of the Republic of Ministers, Vice Ministers of State, Attorney and Deputy Attorney General Republic, Heads of Diplomatic Missions and presidents or directors of autonomous entities and Government.

As to paragraph 9), elect with 60% of the votes of all Deputies of the National Assembly on charges of Super Intendant, Vice Super Intendant General of Banks, Attorney General and Solicitor General's Office, Comptroller General of the Republic, Attorney and Deputy Attorney General for Human Rights, Super Intendant Intendant and Public Services Director and Deputy Director of the Institute of Reformed Urban and Rural Property.

With regard to Art. Cn 143 sets the partial veto which must also be accompanied with a memorandum Expression of each of the items banned.

As for arto. Cn 150, paragraph 6) means that the President should dismiss from their posts to staff the National Assembly has decided to use its powers.

The Supreme Court found that there is an extension of the already established in the Constitution of 1987, in relation to reports and interpellation of executive officials. Both the numeral 30) of Art. 138 Cn the numeral 6) of Art. 150 Cn, refer to the ratification of the appointments made by the President of the Republic. Considered that the remit set by our current Constitution the legislative branch, has its origin in the Constituent Assembly of 1987, as the power primal native gave the power derived, in this case read to the legislature, the power of partial reforms or TOTALLY the Constitution, under Articles 191 to 195 Cn., so that is beyond dispute that jurisdiction of the National Assembly.

The Supreme Court held that the Constitution of the Republic of Nicaragua, now in force is a Semi Rigid Constitution, since it only establishes the following requirements to be reformed:

a. - Quorum of the National Assembly and procedures relating to the healing process, promulgation and publication of the partial reforms;
b. - That the proposal for partial reform submitted by the President or one third of National Assembly Deputies, noting items that are seeking to reform with an explanatory statement expressing the reasons for the reform of each their articles;
c. - To be judged by a Special Commission no later than sixty days following the normal procedures for the formation of the law, the only difference that should be discussed and approved in two legislatures, and
d. - The approval of the partial reform is carried by the affirmative vote of sixty percent of the deputies.

There are writers who argue that the constitution of a flexible, must adapt to social changes that justify their reforms and that is the case of Colombia Luis Carlos Sáchica treatise in his book "The Colombian Constitution" when he quotes in his page. 31 to Venezuelan essayist José Guillermo Andueza Acuña, when he says "THE CONSTITUTIONAL CLAIM SHOULD NOT HAVE TO GIVE A CONSTITUTION unchangeable. Instead, it should think that a constitution is an instrument of a political organization subject to the contingencies of social change "and the famous Chilean constitutionalist Bascuñan Alejandro Silva in his" Treatise on Constitutional Law ", Volume I, which states:" a) That in the Latin American constitutions of modern character as those of Venezuela, Colombia and Argentina, the procedure of partial reforms to make them flexible. "Therefore our constitutional system through the constituent power and constituted power, as the highest figure of representative and participatory democracy in a social state of law, have full and absolute authority to modify all or part of the Constitution, which are incorporated a single unitary whole. The Supreme Court detailed examination of the constitutional provisions cited by the appellant and set out in this

paragraph, considers that they only expanded in terms of content without contradicting the authority granted to the President of the Republic ... "

EXECUTIVE VS. CONSTITUTION AND POWERS OF LEGISLATIVE AND JUDICIAL.

In response to the Judgement, the Lord President in exercise of its constitutional powers declared a state of emergency (state of emergency that he himself had to be repealed because it was unconstitutional) and issued twenty-four hours of the Emergency Decrees Numbers 43-2005 executives "Decree on Implementation and Compliance of the Judgement delivered by the Central American Court of Justice" and 44-2005 "Order the First Commissioner Edwin Cordero Ardila, Director General of the National Police, to ensure the implementation and immediate compliance the ruling of the Central American Court of Justice ", published in La Gaceta, Diario Oficial No. 122 of 24 June, two thousand five, decrees were challenged as unconstitutional.

Unconstitutionality was hosted by the Supreme Court right in its reasoning as follows:
The Principle of Legal Certainty, according to the Doctrine is defined as the regularity or conformity to law and the predictability of the actions of public authorities and especially, of the interpretation and application of law by public authorities and judges and courts. So the authorities can not modify pre-existing legal situations arbitrarily. Any unpredictable behavior creates legal uncertainty.
The Supreme Court believes has been violated the Principle of Legal Certainty, when through Decree 43-2005, the Chief Executive intends to set aside the Judgement of the Supreme Court of this country, the ruling that ordered him to refrain from any act, passing over the resolution, it creates a situation of fact ... what it purports itself, is to disregard the authority granted by the Constitution in Art. Cn 159, which states: "The Courts of Justice formed a unit whose upper body is the Supreme Court ... The judicial power to judge and execute judgments belong exclusively to the judiciary ..." It also violates Art. Cn 158, which states: "Justice emanates from the people and will be delivered on his behalf by the judiciary, composed of the courts established by law." Arto also flagrantly violent. 167Cn, which mandates: "The rulings and decisions of courts and judges are binding, compliance to state authorities, organizations and individuals and legal persons concerned." The head of the Executive with simulated acts of violence to the principle of unity of jurisdiction to constitute it, by Decree 43-2005 in a court of exception, and makes us think of a behavior that borders on criminal.
The Supreme Court of Justice ruled in this case that the Decree No. 43-2005 and No. 44-2005 Decree appealed lack of endorsement by the respective State Minister, Minister of the Interior, under Article 151 Cn., Which literally says: "The Decrees and Orders of the President of the Republic must be countersigned by the Ministers of State for the respective branches, except those agreements relating to appointment or removal of its ministers or deputy ministers," so that the present Decree No . 43-2005 and 44-2005, engage in unconstitutional way to ignore a constitutional requirement ... Reason enough to declare unconstitutional place Decrees Nos. 43-2005 and 44-2005 .- In principle the Supreme Court, notes that the Decree No. 43-2005 makes the following considerations: "That article 18 of the Amparo Act provides that the declaration of unconstitutionality, in

whole or in part, to take effect "from the verdict that set", ie towards the future, having no retroactive effect, so the process is fully valid brought against the National Assembly and the ruling of the Supreme Court, at twelve meridian March 29, two thousand five, through partial declared unconstitutional in the particular case of subparagraph f) of Article 22 Statute referred to the Central American Court of Justice in the part that says: "f) To consider and decide upon the request of the victim of jurisdictional disputes that may arise between the branches or organs Fundamental States" has no retroactive effect and not cancels the trial brought against the National Assembly, or the ruling of the Central American Court of Justice "(Recital III) and" What therefore are inapplicable not only the alleged constitutional reforms, but also acts flowing from them, as is the case of Law No. 511, Law of the Superintendence of Public Services, and Law No. 512, law creating the Nicaraguan Institute of Reformed Urban and Rural Property. "

The Court considers that the Explanatory Memorandum, expressed in the recital of the decree No. 43-2005 and 44-2005, as its contents constitute a clear violation of the principle of unity of Jurisdiction, powers under the Judiciary, and not the executive branch as claimed by the President of the Republic, all with base and foundation in Articles 158, 159 Cn. Exceeding their authority to the President of the Republic violates the principle of independence of the powers contained in section 129 Cn.

The Supreme Court considers that in accordance with Art. Cn in fine 97 which states: "... Inside the National Police office will assist the Judiciary ..." Decree 44-2005 enters an open clash with that provision, since the President ordered the Director General of National Police , where arto. 2: "... the National Police must refrain from executing orders of any officer of the branches of government and autonomous entities, which go against the sentence ordered in the Central American Court of Justice at five in the afternoon of the twenty-ninth day March of two thousand five. "Moreover, in its Art. 1 directs the First Commissioner Edwin Cordero Ardila, Director General of the National Police, to ensure immediate execution of sentence issued by the Central American Court of Justice ... "It violates the Organic Law of the National Police, Law No. 228 , which in its Art. 1 states: "The National Police is an armed body of civil, professional, apolitical, non-partisan, non-deliberative and governed in strict accordance with the Constitution of the Republic to that show respect and obedience ..." The head of the Executive within the powers laid down in Art. 150 Cn, the first is: "The powers of the President, the following: 1) Follow the Constitution and laws, to make officials under his authority also comply with ..." will be subordinated administratively to the President of the National Police the Republic, in accordance with Art. 97 Cn. However you mention the Decree violates the judicial branch has the right to request the assistance of the National Police are also violates the arto. 150 Cn, inc. 16) which reads: ... 16) Provide to the officials of the judiciary the necessary support to enforce their orders without delay. "Whose writing can be seen is in the infinitive and imperative," provide ", ie not is power, but an obligation of the President of the Republic being ignorant to Decree No. 44-2005, to order the police to refrain from executing orders of any branch of government and autonomous entities.

The government can only act in the public interest, each within its own jurisdiction, in accordance with the procedures that the law marks, and with respect to the principles and

constitutional values and legal ... It is, in short, acting in accordance with the legal system and in the first place, with the Constitution and the law, which allows the exclusion of arbitrary conduct also includes, of course, the legislator, who despite being the repository of sovereignty, is subject to the Constitution and can not therefore act contrary to the principles and constitutional values. (Luis Lopez Guerra, op cit., Pg. 72).

The Supreme Court believes that through Decreet 43-2005, it violates the established principle of constitutional supremacy in Art. 182 Cn, when states: "The Constitution is the fundamental law of the Republic, the other laws are subordinate to it. No value laws, treaties, orders or regulations which conflict with or alter its provisions. "The President is above the Constitution and through the decree in question, in one fell swoop to transgress the constitutional provision cited , objecting to the requirements of Public Constitution. The decree is an instrument, a means of committing a crime against the Constitution, cause even disobedience to the judiciary.

The Board considers that it violates the principle of hierarchy which means that there are several categories of legal rules, each with a specific range, and that they are related hierarchically to each other, in such a way that lower-level or rank, in no time may conflict with those of higher rank. The rules have equal weight bearing on the other hand, of course, the same legal force, while ultimately, higher standards prevail in all cases range over those of lower rank. This hierarchical structure has a pyramidal shape whose top is the Constitution, the supreme law imposed on all others, and whose other levels there are a number of growing standards. So a decree or regulation may not modify, amend, or repeal the provisions of law. According to this principle, the Constitution is characterized as a source of law while normarum standard, ie provision governing the creation of other legal sources and their relationship ... Respect for the principle of hierarchy is crucial to determine the validity of a standard, since a rule that contradicts the other superior, not only has no normative force enough to repeal it, but fundamentally flawed ad validity origin; this is a rule contrary to law that can not permanently join the legal ...

Note that this conflict led to the Powers and political forces to a national dialogue that culminated in a framework agreement that defers the implementation of constitutional reforms to January 20, 2007.

LAST CONFLICT OF AUTHORITY EXECUTIVE-LEGISLATIVE-JUDICIAL

As for the question that Section 201 is Cn second paragraph now become third section in the conflict of jurisdiction raised by the Deputy Alba Palacios, the Supreme Court, despite the public statement that the Deputy René Núñez Téllez , President of the National Assembly made through the Press Conference April 7, two thousand ten, and the publication inthe Official Gazette of the Constitution, it necessary to rule on the merits, and I could have thought he had lost a legal interest. So the Supreme Court

considered that it should be resolved as well as set forth in the Constitution of 1995 and is an obligation and a duty of the Supreme Court, based on Articles 163 and 184, paragraph 2 12 Cn invivo rule on the merits of this case. In this respect, we believe that the National Assembly, as stated by the Decree 3-2010,

In this respect it is considered that the National Assembly, as stated by the Decree 3-2010 in Article 1 is the power to appoint officials of all branches of government, "It is the duty of the National Assembly in due course make elections and appointments of the charges set forth in Article 138 paragraphs 7, 8 and 9 of the Constitution of the Republic of Nicaragua under the warnings of unconstitutionality by omission and crime against the Constitution of the Republic of Nicaragua. " However, the National Assembly has refused to fulfill its obligation and the time has elapsed at the expense of normal development and functioning of the organs of state, for which they were created by the Constitution of 87. The refusal or failure to elect constitutional officers from before the pronouncement of the Decree No. 3-2010, highlights the power struggle through a will, which constitutes a default commission of an offense to the Constitution, as they had beaten the period Attorney and Assistant District Attorney of Human Rights, the Superintendent and Deputy Superintendent of Banks and Other Financial Institutions. Where is it necessary that this invalidates state power, whether this conflict through this cause, as any that could possibly arise in the future, meaning that the decision handed down in the case sub judice will set a precedent and define the rules for the future. In this regard it is noteworthy that the constituent primitive, displaying this type of conflict envisioned the second paragraph of Article 201 Cn which reads: "Members of the Supreme Court and the Supreme Electoral Council and other authorities and officials the various branches will continue in the exercise of their duties while taking up not agree who should replace the Constitution. "Also worthy of note that when this Constitution was enacted, or the Supreme Court or the Supreme Electoral Council had to naming anyone, since they were fully constituted.

The Supreme Court held that both the constitutional failure of the National Assembly to appoint the officers mentioned in Article 138 Cn numbers 7, 8 and 9, and Decree No. 3-2010 were the cause of Competition and Constitutional Conflict of the branches of government, the Supreme Court accurately noted: This provision actually was the subject of the first partial amendment to the Constitution made in 1990 as an offering of revolutionary democracy to advance Presidential Election 25 February 1990; reform completely and literally read: "Article 1 .- amends Arto 201, first paragraph of the Constitution, which read as follows: The representatives elected to the National Assembly on 25 February 1990, will be installed by the Supreme Electoral Council on April 24 of that year, ending the period of those who were elected on November 4, 1984 and fulfill its own period under the Article. 136 Cn. The President and Vice-President elected on February 25, 1990 will take up their positions to provide the promise of law to the President of the National Assembly on April 25 of that year, ending the period of which were elected on November 4, 1984 and fulfill its own period, under the Article. 148 Cn. As we can see, the second paragraph was not and has not been spared by any constitutional reform.

It is widely known that the constitutions and this range can only be reformed so prior express statement of reasons, never assumed that a constitutional rule has been repealed or amended, if not expressly, or at worst cases that the disuse of a constitutional rule leads to extinction. So that until it is amended or repealed expressly Decree No. 3-2010 and the second paragraph of today become the third paragraph of Article 201 Cn., Both have and enjoy full force, as it was not intended Derived from the 1990 Constitutional reform that second paragraph, as was done with the first National Election for 1990, so we submit to the spirit and letter of the text of the third paragraph of Article 201 and Decree No. 3-2010.

Currently, the prevailing legal system is universally accepted constitutional legal system in such a way that the notion of rule of law has given way to constitutional rule of law. The Law Society has evolved and organized the rule of law has been passed to the Rule of Constitutionality. Evolution is explained, the Constitution appears in the history of humanity as the first limit imposed on the monarch, the concept of Louis XIV "L'Etat c'est moi", where it appears the need to strengthen Parliament, possessor of popular sovereignty and strengthen the reason for this is that the role of the state organ or threatening to their power is not the legislature, but the executive branch, whose head was the King. Today, the fundamental premise on which the legal system is based on the supremacy of the Constitution, based on the theory of Hans Kelsen's Legal Pyramid. In this sense our constitutional beginnings in the 87 states in Title X "Supremacy of the Constitution ... Article 182:" The Constitution is the fundamental law of the Republic, other laws are subordinate to it. No value laws, treaties, orders or regulations which conflict with or alter its provisions. "Section 183" No branch of government, government agency or official shall have other authority, power or jurisdiction than that conferred by the Constitution and the laws of the Republic "and sets the Control of Constitutionality of acts, Articles 187 to 190, creating a constitutional complaint against any law ..., writ of Amparo against any provision, act or resolution and in general against all act or omission of any officer ...; Writ of Habeas Corpus ... and Protection Act which governs the remedies provided, in relevant part of which reads: Article 1 "The present law, constitutional status, aims to maintain and restore the supremacy ... the constitutional resolution of conflicts of jurisdiction and constitutionality between the branches of government, as provided in the second paragraph of Articles 163, 164, subsection 12, 187, 188, 189 Y190 of the Constitution. "The Constitution as a set of rules is paramount for the constituent assembly as a single primitive or a simple lyrical statement proclaims, rhetoric (as I said Vallarta, cited by Burgoa) but mainly to prevail over any other law. "The multiplicity of standards in a society as a complete unit, system, order, if its validity can be referred to a single standard as the ultimate foundation of validity. This fundamental rule is acting as ultimate source unit of the plurality of all the rules that constitute an Order. "(Hans Kelsen, Pure Theory of Law). The constituent defines our Constitution as fundamental law, that is the supreme law of which shows its strength and its rule and direct effect, because if not its effectiveness would be indirect and would be subject to the laws say it derived secondary and purpose "would only regulate the production of standards, primarily of secondary laws. Then the Constitution would not be true right, but "right target" as well, says Juan Fernando Badia in his work Theory of the

Constitution, Editorial Lo Blanch, 1992 180. The effectiveness of the Constitution and legal system, superior, comes after his political effectiveness has been confirmed by the facts. Ivan Castro Patiño says "it was necessary that the Constitution works primarily as a political tool of effective regulation of the exercise of sovereignty, so that legal protection of their virtues." (Editorial Católica de Santiago de Guayaquil, p.17) Both the doctrine and jurisprudence, now argue that the Constitution is essentially a rule of law in full force and determines claims life in society. Francisco Fernández Segado in this sense holds that "the liberal dogma of absolute sovereignty of Parliament, as is well known, has been replaced in our time as the sovereignty of the Constitution ..." The Spanish Constitutional Court ruling No. 16-1998 writes, "should never forget that the Constitution, far from being a mere catalog of principles, no linkage and no immediate immediate compliance until they are further developed through the legal system is a rule of law, the supreme law of our legal system , and as such, both the public and all public authorities are subject to it ... "The rules of the Constitution effectively overcome the old idea that the fundamental law was a mere collection of catalogs and formulating principles and political structures led to a characterization as Constitution. Today the constitutional provisions are not only supreme standards but are also legal rules effectively direct regulation. "The normative character of the fundamental law operates as a complement and counterpoint to the principle of constitutional supremacy. If the Constitution is supreme law and grounds for the entire legal system must be enforceable rules. "Therefore we could speak ill of State Constitution, if only people living in the country had to be subject to the Constitution, they also have the powers that be, the public authorities to be subject to it because it is the Constitution which determines who, when, how and where, who has this or that authority, as stated in Article 183 Cn. "No branch of government, government agency or official shall have other authority, power or jurisdiction conferred upon it by the Constitution and laws of the Republic." Finally it should be noted that our section 198 Cn, said: "The existing law remain in effect in all that he was not opposed to this Constitution, while not changed. "What brings out the express legislative purpose that is our Constitution, as indeed is typical of any statutory provision in derogation capacity regarding any previous standard of equal or lesser rank. The principle of lex posteriori repealing priori, general principles of law, in relation to the Constitution, Magna Carta (Article 198) highlights the overall effectiveness and direct application of the Constitution, with respect to the entire legal system since she is at the top of the legal pyramid, its effectiveness is then repeal the maximum possible, by adding to the effect of subsequent law nature of supreme law, superior position that derives from their intrinsic nature as the only primary rule issued by the constituent power , where it is clear from both the validity and binding nature. It is in this sense is meant in Article 4 of the Judicial Power Organic Law, which states: "The Constitution is the supreme law of the legal and binding on those who administer justice, which must apply and interpret laws, international treaties , regulations and other legal provisions or other sources of law, according to constitutional precepts and principles. "

Whereas in accordance with Article 138 Cn numbers 7, 8 and 9 is the prerogative of the National Assembly to appoint the officers of the branches of government, it is also true that it is an obligation of the National Assembly in due course make choices and appointments to those positions because they do not incur an unconstitutionality by omission and plausible while incurring liability for crimes against the Constitution of the

Republic. In our Constitution, Cn Article 52. establishes the obligation of the State authorities to answer or solution to what is requested and Cn Article 131 reminds us that the officials of the four branches of government, elected directly or indirectly accountable to the people for the proper performance of its duties and must inform their work and official activities. Should attend and listen to their problems and try to solve them. The civil service must be exercised in favor of the interests of the people ... public officials and employees are personally responsible for the violation of the Constitution, for lack of probity and any other crime committed during the performance of their functions ... "This Court Supreme Court, given the unconstitutional omission by the National Assembly, complete failure of an act whose nature is not even that is eminently legislative but administrative - that is the appointment of officials covered by Article 138 Cn numbers 7, 8 and 9 - whose implementation by the Constitution and the fact that there is no specific regulation on the deadline, that does not mean that the National Assembly will be given the abuse of power or arbitrariness in the exercise of their functions . The constitutional omission in the National Assembly incurred beyond the scope of what could be considered the rule of "permission broad" or rational logic that could be considered as elementary reasonable time, since ten months should have made the first call for the appointment of the Superintendent, Deputy Superintendent of Banks, as well as for the Attorney and Assistant District Attorney of Human Rights and so forth has been beating the senior officials of the Comptroller General of the Republic, the Court Supreme Court and the Supreme Electoral Council, without being mediated to date, a call, sinking into absolute discretion and real abuse of power, violating the principle of legal certainty. The State proceeds according to established legal rules, in this case by our own Constitution, rules that in turn only legal way can be modified. These rules contain within itself the obligation of state bodies, rules they can not avoid or evade the detriment of citizens and people living in its territory, the more so in the case of non-legislative acts, such as of yore. Jellinek in his Theory of State stated that "the legal order of the state is right for those who are subjected to it, however is it right for the state itself?" To answer this question, Jellinek stated: "Join, then, any principle of law assured that the State itself undertakes to comply, which is a guarantee for those within the law. "Consider the Supreme Court that if the Constitution is the fundamental charter, the supreme law and not has practical applications, would be ineffective regulation and become a single sheet of paper, as I said Ferdinand La Salle, subordinate to those in power, which in our case would violate constitutional norms mentioned above. The contemporary constitutions are no longer exclusively statutes organizers of political power and proclaimers of first generation rights, which require a protective role of the state, but have broadened their horizons to establish rules to ensure economic, social, cultural and collective own the so-called Social Constitutionalism, being therefore the obligation of public bodies - see National Assembly of Nicaragua - acting in the exercise of the powers and responsibilities assigned by the Constitution to meet the terms set out therein. That legal loophole to set you no deadline for the appointment of the officials mentioned in Article 138 Cn, paragraphs 7, 8 and 9 are not allowed to fall in failing and refusing the appointment in question, affecting the constitutionality of the country. Not only violates the Constitution when she does not make, but also when to do what she ordered it done.

Omission given that the National Assembly, is remedied by the publication in the Official Gazette, No. 176 of 16 September days, two thousand ten, which contains the full text of the Constitution of the Republic of Nicaragua, fully incorporating the existing second paragraph of today become the third paragraph of Article 201 Cn, omitted to include in the publications of the constitution after the year 1995, the High Court considers that although some POSITIVE CONFLICT BETWEEN COMPETITION AND CONSTITUTIONAL POWERS OF STATE: LEGISLATIVE AND EXECUTIVE, lost its contents because the object has been completely overcome, given the political significance of this conflict is the SUPREME COURT decided to analyze the substance of whether there was any violation of the Constitution. One thing is that they have stopped the events giving rise to this Appeal and the other is, it has a legal interest. Finally, the Supreme Court considers that the recent publication in La Gaceta No. 176 of 16 September this year, the official and full text of the Constitution, with all the reforms incorporated, publication ordered by the President Eng Assembly Rene Nunez Tellez, with the support of the Second Secretary of the National Assembly Mr. Alba Azucena Palacios Benavides, including the last paragraph second and now third paragraph of the Art 201, which reads: "Members of the Supreme Court Justice and the Supreme Electoral Council and other authorities and officials of the various powers continue in the exercise of their duties until they take office who should replace them in accordance with the Constitution. " merely put an end to the debate about whether or not that paragraph was in force, as from this publication date, must be at the Official Text of the Constitution of Nicaragua, as the Constitution itself gives the power to the National Assembly by the Presidency of the same and therefore all officials, without exception, must abide by the constitutional mandate to continue in office.

Footnotes:

1. In the same vein, Article 3 Amparo Act.
2. In the same vein, Article 2 Law Amparo
3. Furthermore, the Arto. 190 states that "The Law of Amparo, in Art. 3, Title I, Supremacy of the Constitution, and Title III Appeal of Amparo, (Artos. 23 to 51) regulates the application of the rule laid down in Art. 188 Cn. "There is therefore the constitutional provision, the Remedy of default and the Law on Amparo, how to proceed in it.
4. (Escobar Fornos, Ivan. Constitutional Interpretation and Integration. Ed. Hispamer. Nicaragua 2002, pg. 93 and 94).
5. (See Judgement No. 22 of 1996 Court of the Full Court, Cons. III, and Judgement No. 56, nine in the morning of July 3, 2000, whereas II). In this case the National Assembly Hon has only exercise the power of constituted power (Case No. 22 - 1996, Cons. III, BJ 1996.
6. The unconstitutionality of a rule, statute, ordinance, regulation, may be formal or material. Formal the unconstitutionality is our rule of law, when not meet the basic requirements for preparing the same, as defined in the Constitution, and the Background Material or unconstitutional when some or all of the rules contained in the law, opposed to constitutional precepts. That is a law, decree or regulation

are born with omission or violation of some of the procedures set forth in the Constitution or rules adopted under the Constitution, is as unconstitutional as a regulation that contuvieren contrary to the Constitution .. .

7. (Recital IV). The Honorable Mr. President, Enrique Bolaños Geyer, through these Recitals (III and IV), and motivation of Decree No. 43-2005 and 44-2005, is intended to exercise a judicial function by clarifying the scope and limits of Judgement No. 15, issued by the SUPREME COURT, at twelve noon of March 29, two thousand and five, under Unnamed Action for Jurisdiction and Constitutional Conflict between branches of government, against the Honorable National generated by the initiative to amend the Constitution, which in any case clarification is for the Supreme Court ...
8. With regard to the principle of legality, it is noteworthy that the Constitutional Chamber, in consistent and uninterrupted established case law has left, "considers necessary to state, based on contemporary doctrine states that ... the Control of Legality has joined the teleology of Amparo since the principle of legality inherent in any rule of law, was erected to the status of constitutional guarantee ... Hence, any act of authority, irrespective of the nature of issue or the state body which comes, not fit or contravene the law should rule violates Secondary concurrently by the guarantee, making the protection from ... " . This was expressed by the Constitutional Ignacio Burgoa, (El Amparo, Thirty-Fifth Ed Porrua, Mexico 1999, pg. 148) from which it follows that any act of a public official must be attached to the provisions of the Constitution and the laws of matter, since otherwise it would violate the principle of legality contained in Articles 32, 130, 160 and 183 of the Constitution. (See BJ 1998, Sen. 22, pg. 67, 1999, Sent. N ° 1, from half past eight, the 14 January of 1999, 2000, Sent. N ° 140 from half past three p.m., from August 3, 2000, Sent. N ° 52, from half past twelve, of 26 February 2001, Case 108, 10:45 am on May 20, 2003, Cons. IV, Case No. 5, from 10:45 am on February 1, 2005, Cons. VIII).
9. The Supreme Court at that time and moment in history, was made by Doctors: Alejandro Serrano Caldera, Orlando Corrales, Santiago Rivas Haslam, Zúñiga Hernaldo Montenegro, Robelo Rodolfo Herrera, Ernesto Somarriba and Mariano Barahona, for making the Council was comprised of the Supreme Electoral Doctors: Mariano Fiallos Oyanguren, as President, Leonel Arguello Ramirez, Vice President, Amada Pineda, Carlos Garcia and Jose Maria Icabalzeta Caracas, which never reveals the second paragraph contained, either explicitly or implicitly, the idea transitivity, on the contrary, defined as Title XI was a final provision, where the constituent visualize any kind of crisis that could eventually arise in the future by the constitutional omission on the part of the National Assembly. In this sense it should be noted in comparative law, Guatemala, Costa Rica, Peru, Spain, where in one way or another is expressed the idea in the second paragraph of Article 201 Cn. In these countries would be an irresponsible act that officials leave office, and may be criminal, civil and administrative. In Costa Rica if you do not have enough votes in the National Assembly to impeach or not to renew in office, the officer continues in him. Moreover, our Constitution's partial reform is clear and precise to say: Article 192: "The proposal for partial reform should indicate the article or articles which seek to reform with an expression of

reasons ..." On the understanding of the component not there is any possibility of implied repeal or reform implied, is why we can not be argued that the second paragraph of Article 201 Cn, was repealed by the passage of time, in this sense it is important to highlight the year's reform of article 201, paragraph 90 First, see Gazette of 6 March 1990: A report of the constitutional reform, the National Assembly is required to declare in Article 1: Article 201 reforms the first paragraph of the Constitution, which read as ... "Any interpretation that is done, would be making express provision against. The constituent primitive thought primarily on the need for continuity and permanence of public administration, in order to meet the needs of users who demand not only access to justice, but to prompt justice, ie a real effective remedy to ensure the rights enshrined in the Constitution. Also the component, knowing that no set deadline to the National Assembly for such appointments is that the standard uses the second paragraph of Article 201 Cn, thus avoiding a situation that may be of lawlessness, chaos, discontinuity, by the beheading of the branches of government. Finally, without trying to extrapolate the experience of ordinary political law, remember that no term obligations may be required at any time

10. As follows: "Article 201: The Delegates to the National Assembly elected on February 25, 1990, will be installed by the Supreme Electoral Council on April 24 of that year, ending the period of which were selected on 4 November 1984 and fulfill its own period under the Article. 136 Cn. The President and Vice-President elected on February 25, 1990 will take up their positions to provide the promise of law to the President of the National Assembly on April 25 of that year, ending the period of which were elected on November 4, 1984 and fulfill its own period, under the Article. 148 Cn. Members of the Supreme Court and the Supreme Electoral Council and other authorities and officials of the various powers continue to exercise their charges until they take office who should replace them in accordance with the Constitution. "
11. At issue on the validity of the Constitution of 1987 in the Official Debate expressly stated that: "... to be published in the Gazette, is effective throughout the Constitution, that is, all the titles, chapters and articles. What happens - clear - is that in the Title XI are items that are Final and items are transitional provisions that are transient and will not be valid once perfected, to reform or develop new laws, but while Therefore it is not made, shall be applied "(See La Gaceta, Diario Oficial, No. 133 of July 13, 1988, pg. 793) .- As the legal aphorism:" Where the law does not distinguish, it is not possible to judge it ".- Final Provisions unlike the transitional or temporary arrangements, seek to enforce a law and material and shall be valid, as stated in the Journal of Debates, until" they reform or are prepared new laws, but meanwhile it is done, shall be applied ".- In this sense, the Final Provisions in Articles 196, 197, 198, 200, 201 and 202, but instead are transient or temporary provisions contained in the Articles 199 and 201 .- In the first paragraph so that until it is amended or repealed expressly Decree 3-2010 and the second paragraph of today become the third paragraph of Article 201 Cn., both have and enjoy full force, as it was not the intention of the 1990 constitutional reform that Derived from the second paragraph, as was done with

the first National Election for 1990, so we submit to the spirit and letter of the text of the third paragraph of Article 201 and Decree No. 3-2010.

12. The legal interest was known as a right recognized by law, which is nothing but what the legal doctrine understood as the right to exercise the constitutional action derived from the title that corresponds to the complainant in respect of rights or possessions protected through rules of substantive law, that are violated by acts of authority, to finally get through the sentence handed down, benefit or avoided a loss or impairment of a right .-