TEMA 17

THE RIGHT TO JURISDICTIONAL PROTECTION.

CONTENT AND MEANING.

As we have seen, our constitution gives the power to Judges (Judicial Power) to decide through their judgments and to enforce their judgments. In order to put this jurisdictional function into operation, it is not necessary, in some cases, for any action to be taken by a citizen. For example, in the field of the criminal process, the procedure can be started ex officio by the investigative judge, by the public prosecutor or by the police when the nature of the crime is public. In contrast, in the civil process, it is necessary for the interested party to bring a claim to the court in order for the process to start.

The rationale behind this statement is logical: while in the criminal process the ius puniendi belongs to the State, and prosecution of the crime is in the public interest, this permits the State to empower its representative officials (police, public prosecutors and investigative judges) with investigative and prosecutorial faculties. In contrast, when the right invoked is of private nature, it is exclusively a citizen’s decision whether or not to bring an action before the court of justice.

Indeed, procedural action is a right given to the citizen, in order to protect his rights when he considers that they have been violated, applying for a resolution by way of judicial decision. It is not permitted for citizens to solve conflicts by themselves, because the State has created a judicial organization with the aim of giving the citizen the right tools to solve his conflict. The right given by the State to the citizen to apply for a judicial ruling on his case is a right that consists of a guarantee to obtain a judicial decision on the grounds of the action brought.
The nature of this kind of right does not necessarily imply the right of the citizen to have a judicial decision in his favor that is, that the decision supports the claimant, but rather it is a right to bring an action, to have a process and a judicial decision that resolves the conflict.

Therefore, from what has been said before, the cornerstones of the fundamental right to access to justice and to judicial activity are:

a) The right to submit a pleading;
b) The right to start a proceeding;
c) The right to have a decision on the grounds;
d) The right to the enforcement of the judgment.

The logical consequence of that, on the other hand, is that the State obliges the citizen to use a specific process for resolving conflicts, making sure that there are no obstacles impeding access to the process.

However, it is also said that delayed Justice is not Justice at all, and that means, that slowness in the procedure equals an inadequate way to solve the conflict. Finally, it is the State which should guarantee correct access to Justice, in such a way that even a citizen’s lack of economic means does not impede his access to Justice. When this happens, access to justice is guaranteed by way of the grant of Legal Aid.

We have said before that the right to Access to Justice had some cornerstones, and the first of all was the right to submit a pleading, but what does it means?
Pleadings are the things that the citizen wants to obtain from the Judge. In legal terminology it could be defined as the petition (demand) of a specific legal consequence that is referred for judicial decision.

That demand or petition to the Judge could be of a diverse nature: a mere declaration (for example that the judge declares the property right on a real estate); a sentence (for example a sentence to pay a debt); or to create, to cancel or to modify a right or legal status, like a divorce, or legally handicapped person /individual)

This pleading is composed of several elements: the fact plus legal rule plus legal consequence: for instance: the fact a contract of sale has been signed and the buyer has not paid the stipulated price) plus the legal rule (Civil Code, article…stipulates the obligation on the seller to deliver the goods and the obligation on the buyer to pay the price), plus the legal consequence (the buyer has to pay the price, so he must be sentenced to pay it).

Professor Asencio states that this pleading is different from the substantive law. Indeed, the right that is claimed could exist or not (that is, the claimant could be or could not be the owner of the right or the belongings), this is the matter at issue that should be ruled by the judge. The process has started because the claimant states that he has a right that has been violated, but that does not means that this is actually the truth. On the other hand, in the civil process the power of the judge to decide is bound by the limits of the pleadings, that is, that the fact is legally relevant and that a consequence has been legally established.
Finally, as Professor Asencio states, the Judge will lay down a new legal fact by declaring that the right exists when deciding on the grounds in his judgment, but if he denies the claim (that is, if the judgment holds that the buyer is not under obligation to pay the price because the contract is null and void, the truth is that a process existed but it could not be said that, because the claimant fails, there was not a valid pleading.

The last point of this unit of study is related to the following case:
The claimant knows that he has a right that has been violated. He brings an action to the Court and the judgment is adverse to his pleadings (but he was right! Why is then is the judgment adverse?

It is possible that the evidence presented by the claimant was not enough to prove the facts, or maybe the Judge, by judicial mistake, did not allowed some evidence to be produced, and that evidence could proof the claimant’s pleading.

Those mistakes could make you think that the right to Access to Justice has been violated; however the law has a way to amend those mistakes through:

1. The establishment of a system of appeals.
2. The application of some principles such as adversarial and equality of arms that tends to guarantee that the judicial decision is as close as possible to the truth.
3. The criminal, civil and disciplinary accountability of Judges.
4. The revision process.
5. The right to appeal to Constitutional Court that makes possible a revision of those Judgments which are thought not to have been sufficiently reasoned. (Due to lack of sufficient reasoning).