

Diario Oficial de la Federación

JUDGMENT issued by the Supreme Court of Justice of the Nation in Constitutional Controversy 82/2016, as well as the Concurring Opinions formulated by Minister Javier Laynez Potisek and Particular by Minister Luis María Aguilar Morales.

In the margin a stamp with the National Coat of Arms, which reads: United Mexican States.- Supreme Court of Justice of the Nation.- General Secretariat of Agreements.

CONSTITUTIONAL DISPUTE 82/2016.

PLAINTIFF: MUNICIPALITY OF PLAYAS DE ROSARITO, STATE OF BAJA CALIFORNIA.

SPEAKER: MINISTER EDUARDO MEDINA MORA I.

SECRETARY: VIANNEY AMEZCUA SALAZAR.

COLLABORATOR: DIEGO DE LA CAMPA JIMENEZ.

Mexico City. Agreement of the Full Court of the Supreme Court of Justice of the Nation, corresponding to January twenty-fourth, two thousand and nineteen.

SEEN; AND RESULTING

1. FIRST. By writing received on August 18, two thousand and sixteen at the Office of Judicial Certification and Correspondence of this Supreme Court of Justice of the Nation, Silvano Abarca Macklis and Tomás de la Rosa Martínez, who held office as President and Attorney Trustee of the Municipality of Playas de Rosarito, State of Baja California, filed a constitutional controversy against the Legislative Power of said entity, for not having issued the Territorial Statute of the Municipalities of that State.
2. SECOND. The background of the case narrated in the lawsuit is as follows:
3. a) On July 21, 1995, by Decree Number 166 was published in the Official State Newspaper, which modified the Organic Law of Municipal Public Administration, by virtue of the creation of the Municipality of Playas de Rosarito, with part of the territory of the Municipality of Tijuana, leaving as the southern limit the one that the latter had with the Municipality of Ensenada.

4. b) On May 22, 1998, by Decree Number 146 was published in the Official State Gazette, which ratified the territorial limits established in the Decree Number 166, mentioned in the previous paragraph.

5. c) On October 15, two thousand and one, the Municipal Regime Law was published in the Official State Newspaper, which, in its transitory sixth article, provided that the Local Congress would issue the Territorial Statute of Municipalities, referred to in the Article 26 of the law itself, within ninety days after its entry into force.

6. d) The aforementioned sixth transitory article was reformed by virtue of Decree Number 37, published in the Official State Gazette on February 22, two thousand two, in order to provide that the Statute would be issued within a period of one year, from the publication of the law.

7. e) The Revenue Laws of the Municipality of Playas de Rosarito for Fiscal Years 1996, 1997 and 1998 established, as homogeneous zones subject to property tax, "Alisitos", "La Fonda" and "Misión Playas". From 1998 to date, in addition to these areas, "Santa Anita", "Fraccionamiento San Miguel", "Misión San Miguel" (municipal limit), "La Misión Playa", "La Fonda y Alisitos North of the Highway".

8. f) On November 26, 2010, the agreement issued by the Local Executive Power was published in the Official State Newspaper, approving the Urban Development Program of the Primo Tapia Population Center, Municipality of Playas de Rosarito, which includes the areas "Popotla", "El Morro", "El Coronel", "El Gato", "Primo Tapia", "El Descanso", "Alisitos" and "La Misión Playa" as part of the southern zone of said Municipality.

9. g) Through official letters 0165/2010 and CJ/0258/2010, received at the State Congress Reports Office on February 18 and April 23, two thousand and ten, FJMM/128/2012, on June 5 of two thousand two and PM/265/2013, on August twenty-nine of two thousand and thirteen, the Municipality of Playas de Rosarito requested the Local Congress to issue the Territorial Statute of State Municipalities.

10. h) On December 26, 2014, the agreement issued by the Local Executive Power was published in the Official State Newspaper, approving the Regional Program for Urban, Tourism and Ecological Development of the Tijuana Coastal Corridor, Rosarito and Ensenada, which includes the areas "La Fonda", "Alisitos west of the highway", "Fraccionamiento Fuente San Miguel", "La Misión Playa" and "Santa Anita" as part of the Municipality of Playas de Rosarito; as well as the population centers "Alisitos", "La Fonda", "Misión Playa" and "Santa Anita". This

regional program was incorporated into the corresponding agreement, signed by the Presidents of the five Municipalities that make up the State.

11. i) By official letter INE/BC/JLE/VBRFE/4862/2014, the Vocal Office of the Federal Voter Registry of the Local Executive Board in Baja California informed the Secretary of Municipal Urban Administration that, of the geographic electoral data it had the institution and the documents provided, concluded that the polygons were attached to Decree Number 146 - mentioned in subsection b).

12. j) By official letter DCZTAP-143/15, the Superintendency of the Tijuana Zone of the Federal Electricity Commission informed the Attorney General that, in its database, "La Misión" appeared as neighborhoods of the Municipality of Playas de Rosarito. , with the numeral 8; "Santa Anita (The Mission)", with the numeral 17; "La Misión", with number 109; "Santa Anita (The Mission)", with the numeral 110; and "Santa Anita", with the number 128.

13. k) By official letter 458/2015, the Council of the Judiciary of the State Judiciary informed the Attorney General that on March 8, two thousand, the Playas de Rosarito Judicial District was created, with territorial jurisdiction equal to that of the aforementioned Municipality; attaching to this effect a copy of the Judicial Bulletin Number 9515, of the following March 9, in which said determination was published.

14. l) Through communication 2278/SUB/RTO/15, the Sub-Attorney for the Zone in Playas de Rosarito, dependent on the State Attorney General's Office, informed the Attorney General that, by Decree Number 64, published in the Official Gazette on July 1, 2015, article 5 of the organic law of said dependency was amended, in order to provide that the five sub-prosecutors of the zone would operate under the deconcentrating regime, but directly subordinate to the Prosecutor, in their respective established territorial jurisdictions. in the Municipalities of Mexicali, Tijuana, Tecate, Playas de Rosarito and Ensenada; Likewise, by Decree Numbers 166 and 146, published in the same publication on July 21, 1995 and May 22, 1998, the Municipality of Playas de Rosarito was created, establishing its territorial limits, and Article 9 Bis of the Organic Law of the Municipal Public Administration was added, in order to specify such limits, which were taken into account for purposes of defining the territorial jurisdiction of the Deputy Attorney General's Office.

15. m) On March 10, two thousand and fifteen, the City Council, through its Secretary, ordered the performance of various acts in compliance with legal and regulatory provisions on commercial activities of sale, storage, sale and consumption of alcoholic beverages, in the "La

Fonda" zone, which is considered a homogeneous zone in the income laws and catastral value tables of the Municipality of Playas de Rosarito.

16. In view of the infractions committed by a commercial establishment located in "Los Alisitos", the respective circumstantial act was drawn up and closure seals were imposed, which were removed, without legal cause for it, by police authorities of the Municipality of Ensenada who, they even threatened the municipal inspectors and witnesses who participated in the investigation with the firearms they were carrying; the foregoing motivated the presentation of a complaint for the crimes of abuse of authority, breach of seals and others that resulted, before the Agent of the Public Ministry of Common Order, Head of the Specialized Investigative Agency of Patrimonial Crimes of Playas de Rosarito, filed with the preliminary inquiry number 2215/504/AP.

17. n) On April 7, two thousand and fifteen, according to the Cabildo Act VI-013/2015, the City Council approved the creation of the Santa Anita Subdelegation, in order to establish an administrative division in its territory, as a mechanism of management so that the residents of the Municipality participate in the improvement of the quality of life, in accordance with the statute that contemplates the internal demarcations, taking into account the geographical, demographic and social factors of the communities immersed in the municipal territory and starting from the premise of harmonizing public work with the rhythm of life of the Municipality.

18. On the following August 21, in compliance with the agreement, the Municipal President took the oath of the subdelegate of the community of Santa Anita, who, while carrying out a day of municipal public services, was confronted by the Director of the Municipal Police de Ensenada and a group of agents under his command, prohibiting him from providing services in that town, under pain of being arrested; which, finally, took place, together with two employees of the Municipal Social Development Secretary, against whom complaints were filed for the crimes of outrages against authority, resistance by individuals and damage to property of others, before the Agent of the District Attorney Office of Ensenada, which were filed under preliminary inquiry numbers 1804/15/300, 1805/15/300 and 1806/15/300.

19. ñ) The collection authorities of the Municipality of Ensenada illegally collect property taxes from the residents of the homogeneous areas of "Santa Anita", "Alisitos" and "La Misión" which, in accordance with the Law of Income of the Municipality of Playas de Rosarito for Fiscal Year 2015 and its table of catastral values, correspond to the territorial jurisdiction of the latter.

20. In view of the foregoing, on September 23, 2015, various residents of the Municipality, whose properties are located in the homogeneous area of "Santa Anita", filed an annulment proceeding before the State Administrative Court, against various tax credits related to the payment of property tax, established by authorities of the Municipality of Ensenada; which was filed under file number 660/2015-S.S.

21. THIRD. The concept of disability formulated by the plaintiff is, in summary, the following:

22. In exercise of the competence granted by sections I, IV and XXVI of article 27 of the Political Constitution of the State, the Local Congress issued the Municipal Regime Law, in force as of December two thousand and one, which, in its article 26, establishes that the territory of the State is integrated by the Municipalities of Mexicali, Tecate, Tijuana, Ensenada and Playas de Rosarito, with the surface, limits and boundaries established by Congress itself in the Territorial Statute of Municipalities.

23. For its part, the sixth transitory article of the aforementioned law provided for a suspensive condition of ninety days, from the entry into force of said ordinance, to issue the aforementioned Statute, which was modified by Decree Number 37 , published on February 22, 2002 in the Official State Newspaper, within one year.

24. To date, the aforementioned period has elapsed in excess, without the State Congress having issued the Statute, which has incurred in an absolute legislative omission of mandatory exercise, since it has not expressed its will to legislate on the matter yet. there being an express constitutional mandate at the local level; in addition to the fact that its inactivity has resulted in an affectation to the competence and territorial jurisdiction of the Municipality of Playas de Rosarito, since the limits and boundaries with the Municipality of Ensenada have not been delimited, with crystal clarity, preventing it from the full and due exercise of its faculties and functions, which eventually, in the end, generates inefficiency in the application of laws, regulations, government programs and public policies to satisfy the needs of those who reside in the town of Santa Anita and the homogeneous areas "Fraccionamiento San Miguel", "Misión San Miguel" (municipal limit), "La Misión Playa", "La Fonda" and "Alisitos".

25. Effectively, the aforementioned legislative omission produces a degree of indeterminacy such that it creates spaces of confusion for the authorities of the Municipality of Ensenada to exercise acts of government, police and collection in the territorial circumscription of the Municipality of Playas de Rosarito; which directly violates the principles of legality, legal certainty and territorial integrity and, indirectly, the powers assigned to the municipal regime established in articles 40, 41, first paragraph and 115 of the Federal Constitution and 81 to 85

of the Local Constitution. , while the territory constitutes an essential element for the development of government activity.

26. FOURTH. The precepts of the Federal Constitution that the plaintiff considers violated are 14, 16, 40, 41, first paragraph, and 115.

27.FIFTH. By agreement dated August 19, 2016, the Minister President of this Supreme Court of Justice of the Nation ordered the preparation and registration of the file related to this constitutional controversy, to which number 82/2016 corresponded and, due to turn, appointed Minister Eduardo Medina Mora I as instructor.

28. In an agreement dated August 22, 2016, the examining Minister admitted the constitutional controversy claim; he had as a defendant the Legislative Power of the State of Baja California, which he ordered to be summoned in order to formulate his answer from him; and gave notice to the Attorney General of the Republic to state what corresponded to her representation of her.

29. SIXTH. The Legislative Branch of the State of Baja California answered the claim in the following terms:

30. The causes of inadmissibility established in sections III and VI of article 19 of the Law Regulating the Matter are updated, since the controversy over territorial limits between the Municipalities of Ensenada and Playas de Rosarito, promoted by the latter, is pending resolution. before the Twenty-first Legislature of the State Congress.

31. Although it is true that since two thousand and eleven (sic) the Territorial Statute of the Municipalities of the State of Baja California has been pending, it is also true that the procedure related to the dispute over territorial limits between the Municipalities had to be previously processed. Referred to, initiated as a result of the failed conciliation attempt during two thousand fourteen and two thousand fifteen to seek an amicable agreement.

32. Indeed, on June 11, 2015, the Municipality of Playas de Rosarito filed a territorial dispute claim. On the following June 30, the Commission on the Interior, Legislation and Constitutional Points of the Local Congress summoned the Municipality of Ensenada and gave notice to the Municipalities of Tijuana and Tecate, warning that they could be affected by the resolution that was issued. On July 8 of the same year, the aforementioned Commission denied the precautionary measures requested by the Municipality of Playas de Rosarito and ordered the consolidation of its controversy to the one presented by the Municipality of Ensenada on

October 24, two thousand and eleven; On the following August 6, the Municipality of Playas de Rosarito filed motions against such determinations, which were confirmed by the Plenary of Congress on May 19, two thousand and sixteen. On July 13, 2015, the Municipality of Ensenada filed an annulment motion for defect in the summons, which the Plenary declared unfounded on May 19, 2016. On August 10, 2015, the Municipality of Ensenada answered the claim, counterclaimed, and filed a new claim; the latter were dismissed, as it was considered that he had exhausted his action with the lawsuit filed in two thousand and eleven.

33. On August 10, 2016, the Municipality of Playas de Rosarito withdrew from the response to the claim filed by the Municipality of Ensenada, as well as from the claim filed on June 11, 2015; withdrawal that he ratified at the time. On August 24, the conciliation hearing was held, which was attended only by the representatives of the Municipalities of Ensenada and Tijuana. The following day, the evidence offered by the Municipality of Ensenada was admitted; not those of the Municipalities of Playas de Rosarito -since they withdrew- and Tijuana -since they did not appear at the hearing in relation to the lawsuit-. On September 14 of the same year, proceedings were ordered to better provide and, with the probative material obtained, the parties were given a hearing so that they could state what was appropriate to their rights. The following day, a period of five days was granted to formulate arguments, which were presented by the Municipalities of Ensenada and Tijuana on September 26. Two days later, the aforementioned Commission issued Opinion Number 137, related to the territorial dispute, which was subsequently approved by the Plenary and notified to the parties.

34. As can be seen from its sole resolution, the dispute was resolved in favor of the Municipality of Playas de Rosarito; likewise, in the sixth transitory, the issuance of the Territorial Statute of the State Municipalities is ordered in an immediate term after the Secretary of Infrastructure and Urban Development prepares and makes known the demarcation and description of the corresponding dividing parameters, authorizing the delivery of the necessary resources for such purposes.

35. The foregoing demonstrates that the Local Legislative Power has not violated the principles of legality, legal security and territorial integrity, but, on the contrary, has acted at all times within the framework of its powers in the matter and will proceed to issue the aforementioned Statute, in the terms of the opinion to which reference has been made.

36. SEVENTH. The Attorney General of the Republic did not formulate an opinion in this matter.

37. EIGHTH. Substantiated the procedure in this constitutional controversy, the hearing provided for in article 29 of the Regulatory Law of Sections I and II of Constitutional Article 105 was held, in which, in terms of article 34 of the same ordinance, a list of the case file, the

evidence offered was considered admitted, without arguments having been presented, and the file was placed in a state of resolution.

CONSIDERING:

38. FIRST. This Plenary of the Supreme Court of Justice of the Nation is competent to hear this constitutional controversy, in accordance with the provisions of articles 105, section I, subparagraph i), of the Political Constitution of the United Mexican States and 10 , section I, of the Organic Law of the Judiciary of the Federation, given that a conflict arises between the Municipality of Playas de Rosarito, State of Baja California, and the Legislative Power of said federal entity.

39. SECOND. In the first place, it must be determined if the constitutional controversy was promoted in a timely manner, as it is a matter of public order and preferential study.

40. The Municipality of Playas de Rosarito, State of Baja California, challenges the omission to issue the Territorial Statute of State Municipalities by the Local Legislative Power.

41. Omissions occur when the authority does not carry out the acts that correspond to it, which gives rise to permanent inactivity that is not remedied until action is taken; Said situation is generated and reiterated day by day as long as the passive attitude of the authority subsists, whose consequences are constantly updated.

42. Therefore, if the claim was received by this Supreme Court of Justice of the Nation on August 18, two thousand and sixteen and the term to promote the constitutional controversy for omissions is updated day by day, it is concluded that it was filed in a timely manner.

43. In this regard, theses numbers P./J. 43/2003, heading: "CONSTITUTIONAL DISPUTE. WHEN IT REGARDS OMISSIONS, THE OPPORTUNITY TO CHALLENGE THEM IS UPDATED DAY BY DAY, WHILE THEY EXIST"(1) and P./J. 66/2009, heading: "CONSTITUTIONAL CONTROVERSY. FOR IT TO BE PROMOTED DUE TO AN OMISSION ATTRIBUTED TO THE DEFENDANT, IT IS NECESSARY TO PROVE ITS INACTIVITY"(2).

44. THIRD. Next, the legitimacy of who promotes the constitutional controversy is studied.

45. In accordance with articles 10, section I and 11, first paragraph, of the Regulatory Law of Sections I and II of Article 105 of the Federal Constitution(3), the entity, power or body that promotes the constitutional controversy, which must appear in court through officials who, in

terms of the rules that govern it, are empowered to represent it and, in any case, it will be presumed that whoever does so enjoys legal representation and has with capacity to do so, unless proven otherwise.

46. In the present case, the claim is signed, on behalf of the plaintiff Municipality, by Silvano Abarca Macklis and Tomás de la Rosa Martínez, acting as Municipal President and Attorney Trustee, an authority they prove with a certified copy of the solemn proclamation by which announce the municipalities that were elected to integrate the City Council, for the period from November 1, two thousand and thirteen to November thirty, two thousand and sixteen, as well as the act VI-001/2013, corresponding to the solemn session of installation of the City Council, held on November 30, two thousand and thirteen(4).

47. However, in accordance with articles 7, section IV and 8, section I, of the Municipal Regime Law for the State of Baja California(5), it is the responsibility of the Municipal President to exercise the legal representation of the Municipality, while the Attorney Trustee for the legal representation of the City Council in jurisdictional disputes.

48. In this sense, the legal representation held by both the Municipal President and the Attorney Trustee should be recognized; hence, having both signed the lawsuit, they are empowered to request this path on behalf of the Municipality, in terms of section I of article 105 of the Federal Constitution.

49. FOURTH. Next, the legitimacy of the defendant is analyzed, as it is a necessary precursor for the origin of the action.

50. In accordance with articles 10, section II and 11, first paragraph, of the Regulatory Law of Sections I and II of Article 105 of the Federal Constitution(6), the entity, power or body that has issued and promulgated the norm or pronounced the act that is the subject of the constitutional controversy, which must appear in court through the officials who, in terms of the norms that govern it, are empowered to represent it and, in any case, It will be presumed that whoever does so enjoys legal representation and has the capacity to do so, unless proven otherwise.

51. In this case, the Legislative Branch of the State of Baja California was considered the defendant, which appeared in court through Antonio Paricio Robles García, in his capacity as General Director of Legal Affairs, which he accredited with a certified copy of the appointment issued by the Board of Directors on October twenty-four, two thousand and thirteen (7).

52. Now, in principle, in accordance with article 38 of the Organic Law of the Legislative Power of the State of Baja California, in force on the date the claim was answered, the Board of Directors has the legal representation of Congress before all authorities; notwithstanding which the various article 83 of the legal system itself, also in force on the date the claim was answered, authorizes the General Director of Legal Affairs, as a dependent and auxiliary body of Congress, to respond and follow up on matters disputes in which the legislative body is a party(8).

53. In this sense, the legitimacy of the aforementioned official must be recognized to appear in court, on behalf of the Legislative Branch of the State, to which the challenged omission is attributed, in terms of the presumption established in article 11, first paragraph, of the Regulatory Law, which was not distorted by the acting Municipality.

54. FIFTH. Continuous act analyzes the causes of inadmissibility or reasons for dismissal alleged by the parties, or that this Full Court warns ex officio.

55. The Legislative Power of the State of Baja California declares that, in the case, the causes of inadmissibility provided for in sections III and VI of article 19 of the Law Regulating the Matter are updated, since the dispute over limits is pending resolution, territorial agreements between the Municipalities of Ensenada and Playas de Rosarito, which the latter promoted before the Twenty-first Legislature of the State Congress.

56. Regardless of the fact that, during the processing, this High Court was made aware that the aforementioned controversy over territorial limits had been resolved, the causes of inadmissibility adduced by the defendant authority are unfounded, since, on the one hand, in order to be a litispendens, a diverse constitutional controversy must have been promoted before this Supreme Court, in which there is identity of parties, norms or acts and concepts of invalidity, which is pending resolution, which is not updated herein, and on the other hand, it was not necessary to wait for the issuance of the final resolution in the controversy over territorial limits to promote this constitutional controversy, since the matter of analysis in one and the other is different (the first resolves a conflict in which the territorial extension of the Municipalities of the State, while the second verifies whether or not there was a breach due to the lack of issuance of a general rule related to territorial limits), hence the former cannot be considered as the legally established path for the solution of what is stated in it, contrary to what is indicated in the thesis number P./J. 12/99, heading: "CONSTITUTIONAL DISPUTE. IT IS ILLEGAL WHEN THE RESOURCE OR MEANS OF DEFENSE LEGALLY PROVIDED FOR RESOLVING THE CONFLICT HAS NOT BEEN PROMOTED PREVIOUSLY OR, IF HAVING DONE, THE RESPECTIVE RESOLUTION IS PENDING".(9)

57. Since the updating of causes of inadmissibility or reasons for dismissal other than those examined is not observed, the study of the concept of invalidity that is asserted proceeds.

58. SIXTH. The Municipality of Playas de Rosarito challenges the omission incurred by the Legislative Power of the State of Baja California, by not issuing the Territorial Statute of State Municipalities, despite being obliged to do so, in terms of local regulations, which, in his opinion, violates the principles of legality, legal certainty and territorial integrity, as well as the due exercise of municipal powers, by fostering spaces of confusion used by the Municipality of Ensenada to provide public services and functions and perform government acts within of his constituency.

59. Well, the exercise of the powers established in article 115 of the Federal Constitution in favor of the Municipality presupposes the existence of a territory, as a material space in which said powers are developed(10). In accordance with the provisions of article 124 of the Constitution itself(11), the States have powers to legislate regarding the territorial limits of the Municipalities that comprise them.

60. In this regard, Article 27 of the Political Constitution of the State of Baja California authorizes the Local Congress to legislate on all branches of the State's competence and to reform, abrogate and repeal the laws and decrees it issues; set the territorial division; define, delimit and modify the extension of the territory of the Municipalities, with the vote of two thirds of the deputies that integrate it, reforming the Territorial Statute; and issue all necessary laws, in order to make effective, among others, the above powers(12).

61. In use of the aforementioned powers, the State Congress issued the Municipal Regime Law which, in its article 26, provides for the territorial division of the entity into five municipalities (Mexicali, Tecate, Tijuana, Ensenada and Playas de Rosarito) and provides that the surface, limits and boundaries of these will be established by Congress in the Territorial Statute of Municipalities; likewise, that the controversies that arise regarding the territorial limits between two or more municipalities will be resolved by Congress, in accordance with the State Constitution, modifying, where appropriate, the aforementioned Territorial Statute(13). For its part, article 28 of the aforementioned ordinance reaffirms that the territory determines the spatial scope of validity of the acts of government and administration of the Municipality, which are the responsibility of the City Council(14).

62. In accordance with the sixth transitory article of the decree by which the Municipal Regime Law was issued, published in the Official Gazette on October 15, two thousand and one,

Congress was obliged to issue the Statute within ninety days following the entry into force of said law (December 1, two thousand and one, in terms of the first transitory article of the decree), that is, no later than March 1, two thousand and two(15). Before this term expired, the sixth transitory article was amended, by decree published in the Official Gazette on February 22, two thousand and two, obliging Congress to issue the Statute within one year, counted from the publication of the law, that is, no later than October 15, two thousand two(16); whereupon the term originally indicated was extended by seven and a half months.

63. Notwithstanding the foregoing, to date, Congress has not issued the aforementioned Statute, thus failing to comply with the obligation that it imposed on itself to issue it within a certain period; which configures an absolute legislative omission in a mandatory exercise competence, in terms of the thesis that is transcribed below:

"Epoch: Ninth Epoch

Registration: 175872

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Subject(s): Constitutional

Thesis: P./J. 11/2006

Page: 1527

LEGISLATIVE OMISSIONS. ITS TYPES. In attention to the principle of functional division of powers, the legislative bodies of the State have faculties or competences of optional and compulsory exercise, and in their development they can incur various types of omissions. On the one hand, there can be an absolute omission when those have simply not exercised their competence to create laws nor have they normatively expressed any will to do so; On the other hand, a relative omission may occur when, having exercised their jurisdiction, they do so partially or simply do not fully perform it, preventing the correct development and effectiveness of their law-creating function. However, combining both types of powers or powers -compulsory exercise and optional exercise-, and omissions -absolute and relative-, the following legislative omissions may occur: a) Absolute in powers of mandatory exercise, when the legislative body has the obligation or mandate to issue a particular law and has not done so; b) Relative to powers of mandatory exercise, when the legislative body issues a law having an obligation or a mandate to do so, but does so incompletely or deficiently; c) Absolute in powers of optional exercise, in which the legislative body decides not to act because there is no mandate or obligation that imposes it; and, d) Relative to powers of optional exercise, in which

the legislative body decides to make use of its optional powers to legislate, but when issuing the law it does so incompletely or deficiently."

64. Indeed, the omission in the issuance of the Territorial Statute of the State Municipalities, although it derives from a mandate established in a local order, transcends the constitutional level, as it impacts, as has been indicated, on the exercise of the competences that article 115 of the Fundamental Norm grants exclusively to the municipalities, such as the provision of functions and public services and the obtaining of income for this concept; the collection of various contributions, including those related to real estate; attributions in terms of urban development, territorial ordering and human settlements; among others(17).

65. In this sense, since there is no clarity in the definition of the territory that corresponds to each municipality, they are prevented from adequately carrying out the functions that are constitutionally entrusted to them, since with respect to certain areas they cannot provide public services, collect contributions, supervise compliance with the regulations and incorporate them into programs, and there may be cases in which such functions are carried out simultaneously by two or more of them -such as that of the actor- or, even, by none.

66. Without prejudice to what was stated by the Local Legislative Power when answering the claim, in the sense that, prior to the issuance of the Statute, it had to resolve the dispute over territorial limits raised by the Municipalities of Ensenada and Playas de Rosarito (even when the latter had subsequently withdrawn); since the issuance of said ordinance was not subject to a condition of this type, but to a term that, to date, has elapsed in excess. Nor that the issuance of the same has been ordered in the sixth transitory of the resolution issued in said controversy(18); since the obligation to issue it arose long ago, by mandate of law, with respect to all the municipalities and not as a result of the determination adopted in a particular case between two of them (or three, if one takes into account that, in the dispute territorial, the Municipality of Tijuana was also called to proceed).

68. Based on the foregoing and well-founded, it is resolved:

69. FIRST. The present constitutional controversy is appropriate and well-founded.

70. SECOND. The omission attributed to the Legislative Power of the State of Baja California, regarding the issuance of the Territorial Statute of the Municipalities of the State, is declared founded.

71. THIRD. The Legislative Power of the State of Baja California is ordered to issue the Territorial Statute of the State Municipalities within the next regular session period.

72. FOURTH. Publish this resolution in the Official Gazette of the Federation, in the Official Gazette of the State of Baja California, as well as in the Judicial Weekly of the Federation and its Gazette.

73. Notify; doing so by means of official letter to the parties and, when appropriate, file the file as a closed matter.

67. Consequently, the omission challenged by the Municipality involved in this controversy must be declared well founded and the Legislative Branch of the State be ordered to issue the Statute in question within the next regular session.