



**Suprema Corte**  
de Justicia de la Nación



**DERECHOS**  
**HUMANOS**

This summary contains the cover page, the synthesis and the extract of a decision of Mexico's Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

**LEGISLATIVE OMISSION ON OFFICIAL PUBLICITY**  
**(OMISIÓN LEGISLATIVA SOBRE PUBLICIDAD OFICIAL)**

**CASE:** *Amparo en Revisión* 1359/2015

**REPORTING JUDGE:** Arturo Zaldívar Lelo de Larrea

**DECISION ISSUED BY:** First Chamber of Mexico's Supreme Court of Justice

**DATE OF DECISION:** November 15, 2017

**KEY WORDS:** right to freedom of expression, principle of relativity, absolute legislative omission of mandatory exercise, democracy, official publicity, social communication, indirect measures of censure, organization of civil society

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión* 1359/2015, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of November 15, 2017, Mexico.

The full text of the decision can be consulted at the following link:

[https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AR%201359-2015\\_0.pdf](https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AR%201359-2015_0.pdf)

**SUGGESTED CITATION FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en Revisión* 1359/2015, México.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 1359/2015

**BACKGROUND:** The civil association Campaña Global por la Libertad de Expresión A19 (Article 19 civil association or Article 19) filed an *amparo indirecto* against the omission of the Legislative Branch to issue the regulatory law of the eighth paragraph of article 134 of the Mexican Constitution, as established in the third transitory article of the Decree reforming the Constitution in “political-electoral matters”, published in the Official Federal Gazette on February 10, 2014. This is due to the fact that the omission to issue such regulatory law makes it impossible for Article 19 to perform its purpose, violating its right to freedom of expression. The district judge of the Federal District that heard the matter decided to dismiss the proceeding. Article 19 filed a *recurso de revisión* against this decision which Mexico’s Supreme Court of Justice (this Court) heard through the exercise of its authority to assert jurisdiction.

**ISSUE PRESENTED TO THE COURT:** To determine whether the omission of the Legislative Branch to issue the regulatory law of the eighth paragraph of article 134 of the Constitution, in accordance with the third transitory article of the Decree that reforms the Mexican Constitution in political-electoral matters, is unconstitutional for violating the right to freedom of expression of a civil association, which cannot meet the purpose for which it was created without this law.

**HOLDING:** The *amparo* was granted to the Article 19 civil association, essentially for the following reasons. In this matter the validity of the *amparo* had to be analyzed prior to studying the merits. To declare first of all that the *amparo* proceeding is valid, this Court considered that the legislative omission did not constitute an electoral matter per se, although the constitutional reform addressed that topic; rather there was a possible violation of a fundamental right such as the freedom of expression of the Article 19 civil association. Furthermore, it recognized that in fact an express obligation to issue a law existed, which had not been done within the time limit established, resulting in an absolute legislative omission. In light of the new constitutional and legal framework, the principle of relativity of decisions had to be reinterpreted, since the *juicio de amparo* broadened its spectrum of protection of fundamental rights with a collective and/or

diffuse dimension, which implies that the concession of the *amparo* may benefit, in addition to the affected party, third parties unrelated to the dispute. With this, this Court recognized that in a constitutional State of law the *amparo* courts have the obligation to guarantee that the fundamental rights are not violated by legislative omissions. Furthermore, Article 19 demonstrated it had a legitimate interest in that the regulatory law had to be issued for it to be able to comply with its corporate purpose. Once this Court determined the validity of the matter, it considered that the absolute legislative omission, in fact, affected the freedom of expression in its individual and collective dimension of the Article 19 civil association. Thus, it recognized that the freedom of expression remains an indispensable aspect of the exercise of democracy and the construction of an informed and critical society, and therefore indirectly limiting or restricting the freedom of expression means impeding the means of communication from doing their work without censure, adopting silencing or dissuasive positions in order to continue receiving resources for the official publicity contracted by the government. Therefore, this Court revoked the appealed decision and granted the *amparo* to the Article 19 civil association so the Legislative Branch would issue the regulatory law of the eighth paragraph of article 134 of the Constitution, in accordance with the third transitory article of the Decree, before April 30, 2018.

**VOTE:** The First Chamber decided this matter by a majority of votes of the president Norma Lucía Piña Hernández (reserving the right to issue a concurring opinion, against the one issued by judge Jorge Mario Pardo Rebolledo), and judges Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz (reserved the right to issue a concurring opinion), Alfredo Gutiérrez Ortiz Mena (reserved the right to issue a concurring opinion). Judge Jorge Mario Pardo Rebolledo voted against (reserved the right to issue a dissenting opinion).

The votes can be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=190443>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 1359/2015

p.1 Mexico City. The First Chamber of Mexico’s Supreme Court of Justice (this Court), in session of November 15, 2017, issues the following decision.

### BACKGROUND

Campaña Global por la Libertad de Expresión A19 (Article 19 civil association or Article 19) is a Mexican civil association whose purpose is to promote research, analysis, teaching and defense of human rights, in particular the rights to freedom of expression, press and information.

p.2,15 On February 10, 2014, the “Decree reforming, adding to and derogating various provisions of the Political Constitution of the United Mexican States in political-electoral matters” was published in the Official Federal Gazette (the Decree). The third transitory article of the Decree establishes that the Congress of the Union (the Congress) must issue (before April 30, 2014) the law that regulates the eighth paragraph of article 134 of the constitution which establishes the principles that must govern the social communication policies of the authorities of the three branches of government: the institutional nature that must animate such social communication—in contrast to the personal use of the official publicity—and the informative, educational or social orientation purposes that it must pursue.

p.2-4 By brief filed on May 23, 2014 before the district administrative courts in the Federal District, the Article 19 civil association, through its representative, filed a *juicio de amparo* against the Chamber of Deputies and the Senate of the Congress of the Union and indicated as challenged acts the omission to issue the regulatory law of the eighth paragraph of article 134 of the Constitution, in accordance with the third transitory article of the Decree. The district judge that heard the matter issued a decision on July 18, 2014 in which it decided to dismiss the *juicio de amparo*. Article 19 filed a *recurso de revisión* against that decision on November 3, and it was admitted by a collegiate administrative

court on November 13th of the same year. In session of August 5, 2015, this Court decided to exercise its authority to assert jurisdiction to hear the *recurso de revisión* filed by Article 19 against the decision of July 18, 2014.

## STUDY OF THE MERITS

- p.8 The dismissal declared by the district judge is supported by two independent arguments: that the proceeding is invalid because it involves an electoral dispute since the political rights of the Article 19 civil association are at play; and that, based on the challenged act, the *juicio de amparo* is also invalid given that what is challenged is a legislative omission, whose analysis would mean a violation of the principle of relativity. In this regard, in the *recurso de revisión* Article 19 challenged the two lines of argument that support the decision to dismiss the *juicio de amparo*.
- p.9 In this respect, this Court considers that the *juicio de amparo* filed by Article 19 is valid. To justify this decision, it will maintain the following: I. this case does not have to do with a question that must be considered an “electoral matter”; II. the *juicio de amparo* is valid against legislative omissions, III. this does not presume a violation of the principle of relativity of decisions, IV. nor that it can be maintained that the *amparo* courts lack competency to analyze the constitutionality of these types of acts; V. Article 19 has a legitimate interest to file a *juicio de amparo*; and finally, VI. the fact that the President and Ministry of the Interior are not indicated as reasonable authorities does not affect the validity of the *amparo*.

### I. The “political-electoral matter” according to Court doctrine

The district judge considered that the matter was invalid because it involves an electoral matter. For its part, Article 19 alleged that while the constitutional transitory article whose violation is alleged arose in the context of an electoral reform, the article itself does not have any electoral content.

- p.13-14 In this respect, the cause of invalidity in question can be said to consist of two elements whose presence can be alternative or joint: the content of the act that is challenged should be an electoral matter and/or the right whose violation is alleged must be considered a political right, which must be used as a parameter of constitutional control.
- p.14-15 The fact that some of the constitutional articles that the Article 19 civil association considers violated were amended as a result of a reform in “political-electoral” matters does not imply that the cause of invalidity the district judge invokes has been triggered in this case.
- p.15 First of all, neither the eighth paragraph of article 134 of the constitution nor the third transitory article of the Decree involve electoral matters per se. Although no one denies that social communication is a matter that can have an impact on electoral questions, it is clear that this transcends the electoral sphere.
- p.16 The second element of the invalidity criteria of the *juicio de amparo* is also not present, since the Article 19 civil association does not argue that the act it claims is unconstitutional had affected its political rights; rather, the legislative omission in question violated its right to free expression.

### **I. The validity of the *juicio de amparo* against legislative omissions**

- p.17 In addition to maintaining that the cause of invalidity established in section XXIII of article 61 of the Amparo Act was present, the judge also argued, as the basis for dismissing the *juicio de amparo*, that any concession against a legislative omission would violate the principle of relativity. In this regard, it indicated that the effect of an eventual granting of the *amparo* would be to obligate the legislative authority to repair that omission, which would presume giving general effect to the *amparo* enforcement. For its part, Article 19 argues in the *recurso de revisión* that such interpretation of the principle of relativity is erroneous and that the *amparo* is valid against legislative omissions.

- p.20 This Court considers that in the framework of the *juicio de amparo* there will be only one legislative omission as such (or absolute legislative omission) when there is a constitutional mandate that establishes precisely the duty of legislating in a particular sense and that obligation has been totally or partially violated.
- p.22 Thus, the interpretative doubt that is established in this matter is whether the *juicio de amparo indirecto* is valid against the omissions to legislate that are attributed directly to the Legislative Branch in light of the current constitutional and legal framework.
- p.22-23 This Court understands that the *juicio de amparo indirecto* in fact is valid against legislative omissions. First of all, the Constitution establishes generically the validity of the *juicio de amparo* against “omissions of the authority” without expressly indicating that the omissions attributable to the lawmaker are excluded. In this regard, it is undisputed that the Legislative Branch can be a responsible authority for purposes of the *juicio de amparo*. Section VII of article 107 of the constitution establishes the possibility of filing a *juicio de amparo* against “general norms”, among which are undoubtedly the laws.
- p.24 To definitively clear up the interpretative doubt stated above and, therefore, be able to hold conclusively that the *juicio de amparo indirecto* is valid against legislative omissions, not only must it be verified that there is no cause of invalidity with an express constitutional basis—which does not occur in this case—, but it also must be ruled out that that procedural impediment can arise from the constitutional principles that discipline the *juicio de amparo*. For that reason, the arguments based on those principles supporting the invalidity of the *amparo* against legislative omissions are studied below.

### **III. Principle of relativity of the *amparo* decisions in legislative omissions**

- p.24-25 First of all, this Court considers it relevant to emphasize that the constitutional design of the *juicio de amparo* was substantially changed with the reform of June 10, 2011. In this case, before that constitutional reform there was a very consolidated position in the doctrine of this Court that the *juicio amparo* was invalid when legislative omissions were

challenged, because any such process would presume a violation of the principle of relativity.

p.26,30 Nevertheless, this Court understands that the new constitutional configuration of the *juicio de amparo* clearly broadened the spectrum of protection of that procedural mechanism, such that now it is possible to better protect fundamental rights that have a collective and/or diffuse dimension, as occurs with the freedom of expression. Thus, the amparo proceeding which was conceived originally to strictly and exclusively protect individual rights can now also be used to protect more complex rights. For that reason, recently this Court has recognized the need to reinterpret the principle of relativity of the *amparo* decisions, so that such procedural mechanism can comply with the constitutional function that is entrusted to it: the protection of all the fundamental rights of people.

p.27 With regard to the rest, the need for such reinterpretation has been made especially clear in recent cases in which this Court has analyzed violations of economic, social and cultural rights. In this regard, if a strict interpretation of the principal of relativity is maintained, in the sense that the concession of the *amparo* can never presume any type of benefit with respect to third parties unrelated to the proceeding, in the great majority of cases it would be very complicated to protect these types of rights in the framework of the *amparo* proceeding, taking into account that one of its most outstanding characteristics is precisely its collective and diffuse dimension.

p.30 This Court understands that the principle of relativity orders the *amparo* courts to study only the arguments of the parties—supplementing them if appropriate— and, if applicable, to grant the *amparo* only for purposes of restituting the rights violated of the persons affected; however, it is perfectly admissible that, when protecting them, indirectly and eventually, third parties unrelated to the constitutional dispute may be benefited.

According to the above, it must be concluded that when the *amparo indirecto* indicates an absolute legislative omission as a challenged act, no cause of invalidity that presumes a violation of the principle of relativity is triggered.



#### IV. Competency of the *amparo* courts to analyze legislative omissions

- p.30-31 Aside from the above, it could even be argued that the *amparo* is invalid against legislative omissions because, although the principle of relativity is not violated, the *amparo* courts do not have powers to force the Legislative Branch to legislate. According to the principle of separation of powers established in article 49 of the constitution, the government bodies can only exercise the competencies and functions that are granted to them. In this sense, if the Constitution attributed the function of legislating to the Legislative Branch (with the collaboration of the Executive), it could be argued that the courts, when granting an *amparo* for legislative omission, would be intervening in the legislative process without having a constitutional basis for doing so and, in this way, they would be violating the principle of separation of powers.
- p.31 Nevertheless, this Court considers that the *amparo* courts have constitutional powers to order the restitution of the rights of the people affected when they are violated by an absolute legislative omission.
- p.31-32 In effect, when the Constitution establishes a duty to legislate with respect to a specific matter entrusted to the Legislative Branch, the exercise of the power to legislate ceases to be discretionary and becomes a competency of mandatory exercise. In this scenario, the only manner to maintain a state of constitutional regularity is if the *amparo* courts are able to determine if in a particular case an omission to legislate also means a violation of people's rights. In this respect, this Court considers it is important to emphasize that an act of authority that violates rights is unconstitutional, regardless of whether it involves an action or an omission, or the authority to which this act is attributed.
- p.32 In this sense, if the *amparo* judges have competency to control the constitutionality of laws issued by the Legislative Branch, they also have the power to control their omissions. Under this logic, to hold the invalidity of the *amparo* proceeding against legislative

omissions when it is alleged they violate fundamental rights would imply ignoring the normative force of the Constitution, which is unacceptable in a Constitutional State of law.

## V. Legitimate interest of the Article 19 civil association

p.34 Although the legitimate interest of the Article 19 civil association was not discussed in the decision of the district judge and, therefore, such question was not challenged in the motion for review, the validity of the *amparo* proceeding is a question of public order that must be studied even *ex officio* in accordance with article 62 of the Amparo Law. For this reason, in this part this Court will analyze whether in fact Article 19 has a legitimate interest in filing this *amparo* proceeding.

p.38 This Court has understood that for there to be a legitimate interest the following is necessary: that such interest is guaranteed by an objective right; that the act challenged produces an impact on the legal sphere understood broadly, whether directly or indirectly by the special situation of the claimant in relation to the order; the existence of a link between a person and the claim, such that the annulment of the act produces a current or future but certain benefit; that the impact is appreciated under a parameter of reasonability; and that such interest is harmonic with the dynamics and reach of the *amparo* proceeding.

In this case Article 19 indicates that the omission of the Congress violates its right to the freedom of expression. In this regard, the civil association argues that the purpose of the omitted regulatory law is to generate tools to prevent the expenditure on communications to citizens from functioning as a form of censure on the freedom of expression. According to Article 19, since it is a civil society organization that is dedicated to documenting and denouncing the use of official publicity as a method of censure, the omission challenged clearly obstructs the fulfillment of its purpose and impedes it from having the legislative tools necessary to defend the causes it represents.

p.38-39 First of all, this Court notes that the Article 19 civil association was founded for the purpose of defending the right to the freedom of expression globally, and its bylaws show that its purpose is to promote the research, teaching and defense of human rights, in particular the rights of freedom of expression, press and information; as well as to promote, sponsor and impart courses, studies, surveys, radio and television programs and conferences, among other things, the purpose of which is training, research and dissemination of topics on freedom of expression. Similarly, the corporate purpose of the complainant also includes litigating freedom of expression cases, where it is presumed that those rights have been violated, and analyzing and offering advice regarding the content, reforms, application and fulfillment of the laws on access to information.

p.40 In particular, Article 19 has documented the violence to censure the media, and in matters of official publicity, Article 19 has presented various reports on expenditure on social communication and how official publicity is awarded in our country. Thus, for this Court it is clear that the principal activity of the Article 19 civil association is the promotion and protection of the freedom of expression, in both its individual and collective dimension; which activity it has engaged in for more than nine years of operations in Mexico, in which it has documented and denounced the aggressions suffered by journalists, the media and people who in general exercise their right to freedom of expression.

p.41 According to the above, this Court understands that the Article 19 civil association proved it has a special interest in the defense and promotion of the freedom of expression, at the same time that the omission it challenges affects its capacity to meet the purpose for which it was created, such that the eventual issuance of the omitted legislation would bring to it a particular, actual and certain benefit: to be able to fully perform the purpose for which it was formed.

## **VI. Responsible authorities in a legislative omission**

p.42 Finally, this Court notes that Article 19 indicated the Chambers of Congress as sole responsible authorities, without including the President of the Republic and the Minister of

the Interior. Nevertheless, such circumstance does not make the *juicio de amparo* invalid. In effect, while it is true that the President and Ministry of the Interior must be indicated as responsible authorities when the constitutionality of a law is challenged—to the extent they are authorities that participate in the legislative procedure—, this is not necessary in the case of legislative omissions, since their participation in the legislative process is only required when there is already a law passed by the Congress, which is precisely the omission that is challenged in this matter.

p.42-43 In this way, the grievances stated in the *recurso de revisión* having been well-founded, and since no other cause is found ex officio that could make the *juicio de amparo* invalid, this Court proceeds to study the claims for relief.

p.43 This Court deems it relevant to emphasize from the beginning that to be able to grant the *amparo* against a legislative omission primarily two questions must be proven: VII. that there is a legislative omission per se; and VIII. that the omission in question presumes a violation of fundamental rights of the Article 19 civil association.

### **VII. Existence of a legislative omission per se (absolute)**

p.44-45 There is no doubt that the third transitory article of the Decree orders Congress to issue a law that regulates the eighth paragraph of article 134 of the Constitution before the second period of ordinary sessions of the second year of exercise of the LXII Legislature ends, which period concluded more than three years ago, on April 30, 2014. Although this Court notes that various political forces have presented bills in both chambers of Congress to regulate that constitutional article and to establish the norms that will govern the expenditures and the form of social communications in the country, none of these bills has been certified by any commission or been discussed in the Plenary of either of the chambers.

p.45 Thus, given that the Constitution imposes on Congress the duty to issue a law that regulates the eighth paragraph of article 134 of the Constitution within a period that has

already long expired and this has not occurred, it must be concluded that the Legislative Branch has completely violated that obligation. Therefore, Article 19 is right in this point: we have an absolute legislative omission attributable to the two chambers of the Congress.

### **VIII. The effects of the legislative omission on the freedom of expression**

p.45-46 This Court considers that the omission in issuing the regulatory law of the eighth paragraph of article 134 of the Constitution violates the freedom of expression, press and information, since the absence of that normative framework permits an arbitrary and discretionary use of the distribution of official publicity and generates censure of the media and critical journalists, as article 19 argued in its *amparo* claim. To justify this decision, the following topics will be developed: a) the importance of the freedom of expression in a democratic society; b) the role of the media as fundamental actors for a full exercise of the freedom of expression; and c) the manner in which the arbitrary expenditure of social communication can be used as an indirect restriction on the freedom of expression and analysis of the omission challenged in light of the doctrine of this Court on the freedom of expression.

#### **a) Importance of the freedom of expression in a democratic society**

p.46-47 First it is necessary to recall that the right to freedom of expression is protected in articles 6 and 7 of the Constitution, as well as articles 13 of the American Convention on Human Rights and 19 of the International Covenant on Civil and Political Rights. In the constitutional doctrine on this right, this Court has made a special emphasis on showing that the freedom of expression constitutes a precondition of the democratic life. In this way, the connection between the freedom of expression and democracy has been emphasized in numerous precedents.

p.48-49 Those precedents are useful for understanding that the freedom of expression has an individual dimension, centrally related to the autonomy of persons. Thus, the possibility of

expressing our ideas, backing or criticizing those of others, and disseminating information of all kinds allows people to make decisions on their own lives and act accordingly. In this way, under this right in principle individuals can say anything without state interference. Nevertheless, even from this perspective, autonomy is not protected as an assent in itself, nor as a means of individual self-realization, but rather as a form of promoting broader political purposes, such as the enrichment of the collective debate.

p.49 Thus, there is no doubt that the freedom of expression also has a collective dimension, especially relevant when a community decides to live in democracy. In the context of a democratic society collective manifestations of the freedom of expression are indispensable, such as the exchange of ideas, the uninhibited and informed debate on questions of public interest, the formation of a robust public opinion, the elimination of the obstacles to the search for and reception of information, the suppression of mechanisms of direct and indirect censure, the existence of professional and independent media. Otherwise, this aspect of the freedom of expression imposes on the State positive duties that require it to intervene in order to generate all those conditions and eliminate the obstacles to the free circulation of ideas.

p.52 As a result of the above, this Court restates that the collective dimension of the freedom of expression contributes to the conformation of an informed and critical citizenship, an indispensable conditions for the adequate functioning of a representative democracy such as Mexico's.

#### **b) Media for a full exercise of the freedom of expression**

p.53 As indicated in the part above, one of the elements of the collective dimension of the freedom of expression is the existence of professional and independent media, because as a key player in the adequate functioning of a democracy, they permit citizens to receive information and know opinions of all kinds by being the vehicle for expressing ideas on matters of public interest and disseminating them in society.

### **c) Official publicity as an indirect restriction on the freedom of expression**

- p.56 As has been explained, if the media are fundamental for the existence of the plural and inclusive debate, a deliberative democracy requires professional and independent media that inform and report the difference points of view that exist on a problem of public interest, so that citizens can form an opinion of their own on those matters. Nevertheless, it is clear that the media need financing to be able to operate and perform the above described function.
- p.56-57 In the case of Mexico, it is an undeniable reality that the public powers, the autonomous bodies, the agencies and entities of the public administration carry out daily activities of social communication to comply with informational, educational or social guidance purposes. Thus, the government buys from the media publicity spaces of different types in order for its message to reach the greatest number of recipients. In this way, the income the media obtain to disseminate social communications from the government may be indispensable for them to stay in business, especially during periods of crisis.
- p.58-59 It is in this context of the great dependence of the media on official publicity, that the argument made by Article 19 should be examined, in which it indicates that the omission in issuing the regulatory law in question violates their right to freedom of expression. In this respect, this Court considers that the absence of clear and transparent rules on the assignment of the expenditure of social communication propitiates an arbitrary exercise of the budget in this regard, which results in an unconstitutional state of things that violates the freedom of expression in its collective and individual dimensions of the Article 19 civil association. This constitutes a mechanism of indirect restriction or limitation on the freedom of expression, prohibited by articles 7 of the Constitution and 13.3 of the American Convention on Human Rights.
- p.60 In this case, the indirect restriction on the freedom of expression also has a “silencing effect” on the critical media, to the extent that through financial asphyxia points of view that enrich the robust debate that should exist in a democracy on matters of public interest

are missing. Otherwise, this Court notes that this unconstitutional state of things has a dissuasive effect on the exercise of the freedom of expression of the media in general, since the financial impact suffered by the critical media can lead the rest to adopt deferential positions with the government in order to not lose the resources assigned to the dissemination of official publicity.

## DECISION

p.62-63 In this case this Court decides to revoke the appealed decision, and grant the *amparo* to the Article 19 civil association, for the effect that Congress complies with the obligation established in the third transitory article of the Decree of constitutional reform in “political-electoral matters” on February 10, 2014 and, therefore, proceeds to issue a law that regulates the eighth paragraph of article 134 of the Constitution, before April 30, 2018.