



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.

**APPLICATION OF CONVENTIONAL CRITERIA TO JUST COMPENSATION FOR
EXPROPRIATION
(APLICACIÓN DE CRITERIO CONVENCIONAL PARA UNA JUSTA INDEMNIZACIÓN POR
EXPROPIACIÓN)**

CASE: *Amparo en Revisión 337/2017*

REPORTING JUDGE: Jorge Mario Pardo Rebolledo

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

DATE: March 7, 2018

KEY WORDS: right to property, right to just compensation, right to a prior hearing, expropriation, commercial value, cadastral value, tax value

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 337/2017*, First Chamber, Jorge Mario Pardo Rebolledo, J., decision of March 7, 2018, Mexico.

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

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AR%20337-2017.pdf>

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SUMMARY OF THE *AMPARO EN REVISIÓN* 337/2017

BACKGROUND: On March 4, 1998, the Governor of Tamaulipas issued an expropriation decree for the construction of a bridge, expropriating several lots for that purpose, including one belonging to BARI. BARI filed an *amparo* proceeding against said decree, which was decided in his favor granting him the right to a prior hearing. Both the affected party and the responsible authorities filed appeals (*recursos de revisión*) and on April 11, 2013, the federal collegiate court of Tamaulipas that heard them decided to grant the *amparo* to BARI, thereby granting the right to a hearing in the expropriation procedure. In compliance, the Governor issued an administrative ruling invalidating the expropriation order only with respect to the land owned by BARI and it was determined to grant him the right to the hearing ordered. Finally, by decree of March 6, 2014, the Governor declared the expropriation of BARI's property. The affected party filed a new *amparo* against this second declaration in which he questioned the constitutionality and conventionality of the Expropriation, Temporary Occupation or Limitation on Ownership Law for the State of Tamaulipas (Expropriation Law) and the governmental expropriation decree. The district judge of Tamaulipas that heard the matter decided, on the one hand, to deny the *amparo* with respect to the claims of the law's unconstitutionality and, on the other hand, to grant it with respect to the compensation amount since, in its judgment, the amount was not a just compensation. Various appeals (*recursos de revisión*) were filed against this decision, which were heard by the First Chamber of Mexico's Supreme Court of Justice upon resuming its original jurisdiction.

ISSUE PRESENTED TO THE COURT: Whether the various articles of the Expropriation Law of the State of Tamaulipas are constitutional, as well as the scope of the just compensation principle, in terms of the American Convention on Human Rights and the Federal Constitution.

HOLDING: The *amparo* was granted to BARI and article 12 of the Expropriation Law was declared unconstitutional and unconventional, essentially for the following reasons. Based on article 1 of the Federal Constitution, the catalog, the conditions of application and the premises for protection of human rights established in it, may be significantly expanded with the content

of the international treaties. This could only be constrained by an express restriction, prohibition, limitation or exception referred to in the Constitution itself. The content of article 27 of the Constitution does not contain any express restriction or prohibition regarding the amount that must be paid as compensation or the time of payment. It does expressly refer to the right to the judicial examination of the compensation to be paid. Under this reasoning, article 21, part 2 of the American Convention on Human Rights should prevail, which maximizes the constitutional principle since it establishes the principle of just compensation and that this should be understood as referring to the commercial value of the good; an adequate, prompt and effective compensation; and a just balance between the general interest and the private interest. This in turn, requires that such value may be disputed before judicial authorities when the person affected disagrees with the amount set and any corresponding damages and losses may be paid. As a result of the above, the *amparo* was granted to BARI for the responsible authorities to invalidate the governmental expropriation decree in relation to the amount of compensation and to calculate it based on the referenced just compensation. In addition, it was ordered to grant BARI the right to judicially dispute the amount of compensation that will be set.

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

The votes may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=213945>

EXTRACT OF THE *AMPARO EN REVISIÓN* 337/2017

p. 1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 7, 2018, issues the following decision.

BACKGROUND

- p. 2 On March 4, 1998, the Governor of Tamaulipas issued an expropriation decree, through which it declared the construction of a bridge in Matamoros, Tamaulipas, of public utility, public order and social interest, expropriating various lots for that purpose. Among them, one belonging to BARI, who was not mentioned in the referenced expropriation decree.
- p. 2-3 BARI filed an *amparo* proceeding against said governmental action. The *amparo* was granted to BARI to invalidate the Expropriation Order, solely and exclusively for the part of land allocated to BARI for which he proved legitimate ownership, and he was granted a prior hearing, without prejudice of reinstating the expropriation act if it was possible to do so.
- p. 3-4 Both BARI and the responsible authorities filed appeals (*recursos de revisión*), which were heard by a federal collegiate court that. On April 11, 2013, the collegiate court granted the *amparo* for purposes of granting the right to a hearing.
- p. 4 In compliance, the Governor of Tamaulipas issued an administrative ruling invalidating the expropriation order of March 4, 1998, solely and exclusively with respect to the land allocated to BARI. It was also decided to grant the right to a hearing.
- p. 5 On December 2, 2013, the Declaration of Public Utility was issued, which was notified to BARI on December 6, 2013, as owner of the affected area. He was also granted a period of 15 business days to make any statements. BARI appeared to make various statements related to the amount of the compensation.
- p. 6 Finally, by decree of March 6, 2014, the Governor declared the expropriation for public utility of the property owned by BARI. This ruling determined, among other things, that the compensation would be paid to the owner or whoever represents his rights based on the amount that the cadastral offices calculate as its tax value.

- p. 7-9 On April 22, 2014, BARI requested the *amparo* and protection of the Federal Justice, claiming, among other things, the unconstitutionality of articles 9, 12 and 26 of the Expropriation, Temporary Occupation or Limitation of Ownership Law for the State of Tamaulipas (Expropriation Law) and the governmental expropriation order.
- p. 10-12 The district judge of Tamaulipas that heard the matter denied the *amparo* to BARI with respect to the unconstitutionality of the challenged articles, and granted it with respect to the governmental expropriation order, solely and exclusively in relation to the amount of compensation, since if the responsible authorities determined the amount of the compensation based solely on the cadastral value without taking into consideration the time occupying the property, the damages caused to BARI's assets, or its just value, they have violated to his detriment article 27 of the Constitution and article 21 of the American Convention on Human Rights (ACHR).
- p. 12-13 BARI, the Governor and the Ministry of Public Works of the State Government each appealed (*recursos de revisión*). The Ministry of Communications and Transportation also filed an adhesive appeal (*revisión adhesiva*).
- p. 13 A collegiate court of Tamaulipas heard those challenges, which dismissed the adhesive appeal as invalid and reserved jurisdiction to this Court to analyze, within the constitutional framework (*regularidad constitucional/ parámetro de control de regularidad constitucional*), articles 9, 12 and 26 of the Expropriation Law and the setting of the scope of the human right to a just compensation, established in article 21 of the ACHR. This Court decided to assume original jurisdiction over the appeals filed.

STUDY OF THE MERITS

- p. 52 The subject matter of this *recurso de revisión* is limited to the analysis of the following questions: 1) whether articles 9, 12 and 26 of the Expropriation Law are constitutional, and 2) the scope of the principle of just compensation, in terms of articles 21.2 of the ACHR and 27, section VI, of the Federal Constitution.

I. Study of the constitutional and conventional context applicable in the matter

p. 71-72 This Court has established that the minimum rights established in the Constitution may be expanded by the ordinary lawmaker —*federal or local*—. Similarly, it has been held that according to article 1 of the Constitution, the conditions of application and the premises for protection of the human rights established in the Federal Constitution can be significantly expanded with the content of international treaties, which can also expand the catalog of the fundamental rights.

p. 72 The above may only be constrained if there is an express restriction, prohibition, limitation or exception in the Federal Constitution, but if that is not the case, the parameter of control of constitutional regularity (*parámetro de control de regularidad constitucional*) will be constituted by both the human rights contained in the Constitution and those contained in the international treaties signed by the Mexican State.

Thus, an analysis of the current content of article 27 of the Constitution reveals that it does not contain an express restriction or prohibition regarding the amount that must be paid as compensation (tax value), nor regarding the time of payment (by compensation), on which aspects there are only minimum guidelines that must be addressed in relation to expropriation, which cannot be diminished but can be expanded to benefit protections or rights.

p. 73 Furthermore, the constitutional text contains an express provision referring to the right to judicial examination of the compensation that must be paid (the surplus value or the depreciation of the private property due to improvements or deterioration occurring after the date of assessment of the tax value, will be the only thing subject to expert opinion and judicial decision).

p. 74 Thus, it is essential to consider the international context regarding impacts on private property, and, in particular, address the provisions of article 21 part 2 of the ACHR, which contemplates a principle similar to the one established in the constitutional text regarding the time of payment of the compensation (by), but that incorporates the notion of “just compensation”, which article 27 of the Constitution does not expressly contain.

- p. 75 This international norm has been interpreted by the Inter-American Court of Human Rights (IACHR), which has specified that just compensation should be understood as referring to the commercial value of the property subject to expropriation prior to the declaration of its public utility, and addressing the just balance between the general interest and the private interest.
- p. 76 This criterion is consistent with the notion of just compensation, which this Court has accepted, in relation to the payment of damages and losses that must be paid as substitute compliance with *amparo* decisions, in those cases in which affected real estate cannot be restituted, since in such cases it has been considered that the commercial or market value is appropriate for determining its price.
- p. 76-77 According to the above logic, it is clear that the provisions of article 21 part 2 of the ACHR maximizes the principle derived from article 27 of the Federal Constitution, at least with regard to the price that will be set as compensation on the thing expropriated.
- p. 77-78 In this regard, a compensation is “adequate” when it is based on the fair market value immediately before the expropriation or immediately before the expropriation decision is made public. The condition is added that the determination of the fair market value may be acceptable if it is done according to a market method agreed by the State and the foreign investor or by a court or by any other institution designated by the parties. Similarly, it is understood that compensation is “effective” if it is paid in convertible free currency and it is understood as “prompt” if it is paid without delay or, in exceptional circumstances, if it is paid in installments, but as soon as possible.
- p. 78-79 In addition, although a just compensation must be adequate, prompt and effective, the prompt payment of the compensation does not necessarily imply that it must be prior to or at the same time as the expropriating act; but it does require that it be made shortly and as soon as possible after the respective impact takes effect, since otherwise the delay in the payment of compensation will require the payment of damages and losses.
- p. 79 It is difficult to establish a fixed rule that would address the particularities of each matter. Therefore, it is appropriate for the applicable laws to contemplate the possibility of

judicially challenging the amount fixed by the respective authority to confirm the existence of a just compensation or to determine it, and to claim any damages and losses, which could cover, among other things, adjustments in value and any undue occupation by the State before the expropriation act, which would have to be evaluated by the judge, supported by expert opinion.

- p. 80 This situation does not prevent the authority that orders or executes the expropriation from including or considering in advance the relevant damages and losses in the just compensation it determines, which could also be challenged before the judicial authority.
- p. 80-81 The criterion of this Court on prompt compensation has evolved to specify that the period for the payment of the compensation will be understood to comply with the constitutional requirement as long as it is reasonable, taking into account the time necessary to determine its amount and deliver it to the affected party, so the compensation does not become illusory or unreal, except when the State expropriates to fill an urgent social function and its economic conditions do not permit the payment of the compensation in the mentioned conditions. Then, such payment can be ordered within the possibilities of the treasury, since in this case the satisfaction of a social necessity prevails over the right of the affected party to be compensated for the harm caused to it by the act of expropriation.
- p. 81 With regard to the judicialization of the amount that should be paid for the concept of compensation for the surplus value or the depreciation in the private property due to improvements or deterioration after the assignment of the tax value, it will be the only one that must still be subject to expert opinion and judicial ruling, which question is extended in the provision itself to cases referring to objects whose value is not fixed in the rental offices.
- p. 81-82 However, it should be understood that such restricted access to the judicial route based on the idea of a fixed value of compensation, ineludibly conditioned on taking into account the tax value already recorded of the respective property, given that, in such scenario, it would be unnecessary to appeal to the judgment of experts and even less to the courts,

since it is a value that is already set in the respective offices, and in fact implicitly accepted by the taxpayer who has paid taxes or fees based on that value.

- p. 82 Thus, this logic cannot be compatible with exercises intended for estimating a just value for compensation, since in that situation, the citizen should be given the opportunity to challenge the appraisal or amount determined by the authority responsible for the expropriation before a judicial authority which can, based on the judgment of experts, validate or determine the just commercial or market value that should govern the amount of the compensation, as well as any applicable damages and losses.
- p. 84-85 Thus, a harmonic interpretation of articles 1 and 27 of the Federal Constitution with respect to article 21 of the ACHR leads to the conclusion that, in relation to compensation for expropriation, the notion of “just compensation” established in the convention must prevail, which, in the opinion of this Court, requires taking the commercial or market value of the expropriated asset as a reference, and addressing the just balance between the general interest and the private interest. This in turn requires that such value can be challenged and be submitted to the judgment of experts and the determination of the judicial authority, when the value proposed by the administrative authority that must pay the compensation and the value assessed by the person affected by the expropriation are distinct.
- p. 87-88 It can be concluded that the estimation of the amount of compensation, as guarantee derived from the declaration of public utility and execution of the act of expropriation, does not necessarily require the administrative authority to respect the guarantee to a prior hearing; this is so because otherwise the ultimate purpose of expropriations to convey private property to benefit society could be obstructed or significantly delayed until an agreement on the just compensation amount is reached, first before the administrative authority and then before the judicial authority.
- p. 88 Thus, it is justified in expropriation matters for the right to a hearing with respect to the definition of the amount of compensation to be granted subsequent to the issuance of the

expropriation decree; and, if applicable, the administrative determination of the value or appraisal of the property.

- p. 90 It is important to clarify that both the cause of public utility and the compensation established in article 27 of the Constitution and part 21.2 of the ACHR are guarantees of protection of the right to property. Therefore, in reality, more than rights in themselves, such elements condition the actions of the State regarding its interest in conveying and expropriating private property.
- p. 91 Since the State is the one that must guarantee the right to private property, and in case of its conveyance, must ensure the existence of the cause of public utility as justification for the expropriation and the payment of compensation as a measure of repair, it is necessarily the State itself through the authority that implements the act of expropriation, that is directly responsible for its completion and for avoiding, otherwise, an arbitrary state action.

II. Value of the compensation and judicial challenge procedure

- p. 98-99 The guarantee to a prior hearing, at least in regard to the setting of the amount of compensation or the appraisal done by the administrative authority—which does not constitute in itself a depriving act—, is not contemplated by either the Federal Constitution or the ACHR.
- p. 99 While this Court has determined that the right to a prior hearing must be granted with respect to the declaration of public utility, since this is the direct cause of the conveyance of private property, in the case of setting of the amount of compensation, the right to a hearing can be granted after the valuation or determination of the value of the expropriated property, since such question is not in itself a depriving act, but a consequence of the state determination to expropriate an asset which requires a just compensation.

Therefore, it is valid for citizens to be granted the opportunity to challenge the amount of compensation before the judicial authority subsequent to the issuance of the expropriation decree and administrative determination or valuation of the affected

property, and not necessarily before, in order to ensure that it is adequate, effective and paid promptly, without prejudice of paying the respective compensation in the least time possible where there is no disagreement on the value determined administratively.

- p. 101 The right to a hearing established in article 14 of the Federal Constitution should not be understood to require that the respective law indicate especially and precisely a procedure to regulate each of the relations that are established between the authorities and private parties. Rather, it must contain the minimum elements for the citizen to assert his right and for the authority not to be arbitrary.

In that regard, the right to a hearing is met, with respect to the regulatory provisions, when they provide for the procedures necessary to ensure that the citizens are heard and given the opportunity for a defense. Therefore, it is not necessary that the law specify a detailed procedure to exercise the corresponding right.

- p. 103 Given this, it can be argued that the challenged law is unconventional in establishing the tax value of the affected property as the amount of compensation, and restricting the possibility of challenging the amount of compensation before the judicial proceeding.

Thus, article 12 of the Expropriation Law contains a legal premise that must be removed from the legal sphere of BARI (tax value), since it is unconventional and contrary to the notion of just compensation that must prevail and is derived from the terms of article 21 part 2 of the ACHR, in relation to the terms of article 1 of the Federal Constitution.

- p. 103-104 The provision contemplated in the challenged article 12, relative to the limitation implicitly imposed by the right established in article 9 to question nothing more than “the surplus value or the depreciation for the private party due to the improvements or deteriorations occurring after the date of the assignment of the tax value”, is also unconventional, since it impedes the right to achieve a just compensation, and therefore the judicial challenge proceeding established in article 9 of the challenged law must be understood without the restriction contemplated in article 12.

- p. 104 With regard to article 9 of the challenged law, there are no elements to conclude its unconstitutionality or unconventionality, since what is established there is instrumental

for guaranteeing to the citizens affected by an act of expropriation, the opportunity to challenge before the judicial authority the amount set as compensation, so it is possible to achieve or validate a just compensation judicially.

This provision also contains the right of citizens to claim the payment of damages and losses from the judicial authority.

III. Period to pay the compensation

- p. 108 The *amparo* judge considered that article 26 of the Expropriation Law did not violate article 27 of the Constitution or article 21.2 of the ACHR.
- p. 109-111 This determination of the *amparo* judge is correct, since the drafters of said constitutional article had the express intention of substituting the term “prior compensation”, with “by compensation”, precisely with the idea of not obstructing or delaying the expropriation and the use of the assets occupied for purposes of public utility; the period of 45 business days established for the payment of the compensation for expropriation is not considered, since it is considered reasonable, taking into account the time necessary that the authority needs to determine its amount and carry out the necessary procedures for its delivery to the affected party. BARI does not show why such 45 days are not reasonable in this case, and the indication that, in the case of expropriation, it must be covered “by expropriation”, is similarly established in article 27 of the Federal Constitution and in article 21.2 of the ACHR.

IV. Inconsistency in the challenged decision

- p. 116-117 Since the granting of the *amparo* when the compensation based on the cadastral value is not just depends on the district judge, there is a contradiction, since in light of such reasoning, a possible unconventionality of the challenged provisions and article 12 of the Expropriation Law which contains the compensation at tax value, would be held implicitly.
- p. 117 In this case, the impact is that the effects of granting the *amparo* for a proper restitution of BARI in his rights that were violated through the application of this provision, imply not only the possibility of the authority that carried out the expropriation and that must

guarantee its payment setting a just amount of compensation, but also that such amount can be disputed judicially and that, in turn, the payment of the corresponding damages and losses can be demanded.

DECISION

p. 125 Articles 9 and 18 of the Expropriation Law are constitutional. Therefore, the *amparo* and protection of the Federal Justice must be denied to BARI.

Article 12 of the Expropriation Law is unconstitutional, due to it being unconventional, because it does not respect the right to a just compensation established for affecting the right to private property in article 21 part 2 of the CADH, in relation to article 1 of the Federal Constitution.

The constitutional arguments brought in the *recurso de revisión* filed by the responsible authorities must be considered groundless.

In order to restitute BARI in the full enjoyment of the right violated, reestablishing things to the state they had before the violation, it is appropriate to grant him the *amparo* and protection of the Federal Justice, so that the Governor of Tamaulipas, the Interior Secretary General of the State and the Secretary of Public Works of the State of Tamaulipas:

- p. 126
1. Negate any effect of the content of Articles Four and Five of the Governmental Expropriation Decree, solely and exclusively in relation to the amount of compensation, with respect to the expropriation of BARI;
 2. Set in a period of no more than 30 business days from the notification of this final decision, the amount of compensation for the thing expropriated, which shall be based on a quantity that addresses the notion of just compensation referred to in this final decision, and shall not be taken from the tax value of the expropriated property, but from its commercial value;

- 3.** Once the amount of the compensation payment is set, pay it in national currency no later than in the next 45 business days, without prejudice of agreeing to its payment in kind, and
- p. 127 **4.** Grant to BARI the right to judicially challenge the amount of compensation that is set, in the understanding that the payment of damages and losses can be claimed in such judicial proceeding.