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FLORENCE CASSEZ CASE

CASE: *Amparo Directo en Revisión 517/2011*

REPORTING JUDGE: Olga Sánchez Cordero De García Villegas

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

DATE: January 23, 2013

KEYWORDS: right to consular notification, contact, and assistance, right to be brought immediately before the public prosecutor's office, right of the presumption of innocence, right of adequate defense, right to due process, Vienna Convention on Consular Relations, foreign persons subject to criminal proceedings, poisonous effect, corruptive effect.

CITATION OF THE DECISION: Mexico's Supreme Court of Justice, *Amparo Directo en Revisión 517/2011*, First Chamber, Olga Sánchez Cordero De García Villegas, J., decision of January 23rd, 2013, 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/2021-04/ADR%20517-2011.pdf>

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SUMMARY OF AMPARO DIRECTO EN REVISIÓN 517/2011

BACKGROUND: Florence Marie Louise Cassez Crepin (Florence) and her boyfriend were arrested and taken to a ranch where the police staged their detention and the rescue of the kidnapped victims. That operation was livestreamed on national television as if it were happening at that moment. Both Cassez and her boyfriend were asked questions for the T.V. and they were singled out as members of a criminal gang. The images circulated widely throughout the country. Later, under diverse scrutiny, the investigative authority admitted that it had staged the event to satisfy the media's interest in their job. Florence was sentenced to 60 years of prison. Against this decision, she filed an *amparo directo* procedure, because she considered her rights to consular assistance, to be brought immediately before the *Ministerio Público* (*public prosecutor's office*) and of the presumption of innocence were violated. Nevertheless, the Collegiate Court denied the *amparo*. Florence challenged this decision by filing an appeal (*recurso de revisión*), which was granted and heard by Mexico's Supreme Court of Justice (this Court).

ISSUE PRESENTED TO THE COURT: Whether there was a violation of the fundamental rights to consular notification, contact, and assistance, right to be brought immediately before the Public Prosecutor (*Ministerio Público*), and right to the presumption of innocence. If so, to determine the consequences in the criminal process and the scope of its effects.

HOLDING: The *amparo* was granted, essentially for the following reasons. This Court determined that there was a violation of the right to be brought immediately before the Public Prosecutor (*Ministerio Público*) because after Cassez was detained, she was held and taken to a ranch under the argument that they were going to liberate kidnapped victims. In reality, the detaining authorities staged the detention and thus violated that right. Also, the content of the right to consular assistance was analyzed and the Court concluded that it was violated. This right entails an immediate communication to establish contact between the foreign national and the consular authorities. In the present case that did not happen until after thirty-five hours. This infringement transcended to Cassez's right to defense, because she did not receive technical

assistance or any other aid that stems from this right of instrumental character in order for the person to learn about the accusation and take decisions regarding her defense. Furthermore, these two breaches of Florence's rights contributed to the staging of the events, followed by a narrative in the media against her and public treatment as a guilty person, violating her right to the presumption of innocence, which in turn caused a poisonous effect in all the procedure. The testimonies against her cannot be considered, due to the infringement of the right to the presumption of innocence, as a procedural rule, because the detaining authorities influenced the victims and used them in staging the events; hence the victims' statements provided to the authorities were not reliable.. Therefore, the totality of the process was seriously affected, and with it, the compliance of the right to due process. Consequently, this Court ordered Florence's release from prison.

VOTE: The First Chamber decided this matter by the majority of three votes of judges Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea (reserved the right to draft a concurring opinion), and Alfredo Gutiérrez Ortiz Mena. Judges José Ramón Cossío Díaz (reserved the right to draft a particular opinion) and Jorge Mario Pardo Rebolledo voted against.

The votes can be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=125754>

EXTRACT OF THE *AMPARO DIRECTO EN REVISIÓN* 517/2011

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in the session of January 23, 2013, issues the following decision.

BACKGROUND

- p.1,20 On August 30, 2010, Florence Marie Louise Cassez Crepin (Florence) filed an *amparo* procedure against the sentence imposed by a unitary court. A collegiate court confirmed the sentence and denied the *amparo*.
- p.20-21 Cassez was sentenced to 60 years of imprisonment for the crimes of kidnapping, carrying and possessing a firearm of the exclusive use of the Army, and infringement of the Federal Law against Organized Crime [Ley Federal contra la Delincuencia Organizada].
- p.21 Cassez challenged the collegiate court's decision denying the *amparo* by filing a petition for review (*recurso de revisión*). On March 10th, 2011 this Court addressed the matter.
- p.33, 36 The main facts considered in the case are the following. As part of an investigation, the federal police found evidence that some people had been kidnapped and illegally held at a ranch. At 4:00 a.m., on December 9, 2005, federal police officers launched an operation in the ranch's surroundings. At 4:30 a.m. the federal police arrested Florence Cassez and her boyfriend on a federal highway close to the ranch.
- p.38-39 At 6:47 a.m., a daily news program broadcasted on a national TV channel, was abruptly interrupted to transmit a live report. A reporter from said channel was outside the ranch, from where he informs that the Investigative Federal Agency (*Agencia Federal de Investigación*, AFI) was about to "hit hard over the kidnapping industry." The reporter announces that they are broadcasting "practically live," while a banner on the screen displays "live." The reporter tells the news anchor the police are trying to rescue three people: a woman, her 8-year-old child and a man. Furthermore, the reporter informs that "the gang's chief is a man married to a foreign woman."

- p.40-41,43 Inside a cabin in the ranch, the camera streams the boyfriend, submitted and handcuffed by the federal agents. The camera zooms on his face while the reporter informs that he is showing the kidnappers. Next, , the camera shows a couch with high-caliber rifles labeled by the reporter as the weapons they used to kidnap. Then, a woman covering her face – Florence Cassez– is shown. The reporter states that "she is a foreign woman. She is the wife who helped in planning the kidnapping." Then Cassez says to the reporter that she has nothing to do, that she is not his wife, that he is her ex-boyfriend, and that she did not know anything and that she was staying in the ranch while she could find an apartment. Around 6:50 a.m., the reporter interviews the rescued people in the police operation.
- p.47-48 A reporter from another TV national channel introduces Florence Cassez to the audience as "another woman who was part of this kidnapping" and proceeded to interview her. Florence affirms she has nothing to do with it, that she was not in the ranch and was arrested in the street. The reporter closes by saying that, despite Florence's statements, "it is evident that she was in this property and was part of the kidnapping gang." A different news anchor repeats information about Florence and affirms that "the people who were kidnapped there recognized Florence as the person who fed them."
- p.59-61 At 7:40 a.m., the reporter accuses them of being involved in nine other kidnappings. At 7:50 a.m., the news anchor says that pictures of both alleged kidnappers will be displayed and asks the audience to report them to the authorities in case someone recognizes them.
- p.65 At 10:16 a.m. –five hours and forty-five minutes after the arrest, according to the time indicated in the police report – , Florence and her ex-boyfriend were brought to the Office of the Assistant Attorney General for Special Investigations in Organized Crime (*Subprocuraduría de Investigación Especializada en Delincuencia Organizada, SIEDO*).
- p.65-66 The news on the operation, the victims' rescue and the detention of the alleged kidnapers, were replayed by the most-watched news channels in the country. The media recreated kidnappings, showed images of the reencounters between the victims and their family members, and interviews with neighbors of the ranch.

p.69-71 On February 5th, 2006, the Director-General of the AFI and the head of Special Investigations and Kidnappings of the Federal Attorney General's Office (*Unidad Especializada en Investigación y Secuestro de la Procuraduría General de la República, PGR*) were interviewed in a national TV channel. The host journalist started by pointing out that there were contradictions regarding the detention date. The journalist was informed that Florence was listening and wanted to "go live." While "on air," Florence stated that she was detained on December 8, 2005, on the highway and "was kidnapped" in a van, stressing that, it was false that her detention had occurred on December 9. She assured that her detention occurred at 11:00 a.m. and that she was held in custody that day and part of the next. Finally, at 5:00 a.m., on December 9th, 2005, she was forced to enter into the cabin's ranch by the police using force and hitting her. The Director-General of the AFI added that, "the media arrived after the events took place and at the reporters' request, "the authorities showed them how they came in the ranch and how were the victims rescued."

p.71-73 During a press conference convened by the PGR, on February 10th, 2006, the Federal Attorney General, the Assistant Attorney General for Special Investigations in Organized Crime, and the head of the AFI clarified that the media was not present during the detention of the accused nor at the moment of the victims' liberation. The Assistant Attorney General for Special Investigations in Organized Crime declared that the success of the victims' release cases provided by the AFI brought up the media's interest. In this logic, he accepted that the videos streamed on TV did not reflect the actual moment of the detention nor the victims' rescue, because it would have been irresponsible that the media had joined the agents at that moment. He clarified that this kind of TV streaming did not affect the process legally, because it was not relevant. The Director-General of the AFI affirmed that there were no media at the time of the rescue and that the staging was made at the media's request, in order to show them how the entrance to the security house happened.

p.73 The facts above represented the public acknowledgment that the broadcasted videos were staged and did not constitute actual live streaming. This public recognition caused a significant media impact.

STUDY OF THE MERITS

I. Right to the consular notification, contact, and assistance

p.79,81 The right of foreign nationals to consular notification, contact, and assistance is a fundamental right in force in our country. Our legal system recognizes the rights embodied in Article 36 (1) of the Vienna Convention on Consular Relations (the Convention), which is the result of an international consensus: foreigners face particular disadvantages when detained by an authority and subjected to a criminal process under the norms of a foreign legal system.

p.81-82 Article 36 not only grants the right for the consuls to communicate and assist their nationals in detention but also comprises the fundamental right of the foreigners to be immediately informed that they have the right to communicate with their respective consulate and to receive assistance if so requested.

p.82 The consular assistance provides at least three basic actions: of humanitarian nature because consuls offer contact to the external world and take care of their essential needs; of protection, because the presence of consuls helps mitigate acts against human dignity or that jeopardize the criminal process; and the technical legal assistance.

p.83 Also, consular assistance reduces the gap that separates foreign nationals from nationals regarding the protection of a minimum standard of rights. Consular assistance is vital to secure an adequate defense where violations of foreign nationals' fundamental rights are common due to a lack of knowledge of the legal system in which they find themselves immersed. A detained foreigner faces a multitude of linguistic, cultural, and conceptual barriers that make difficult her ability to understand, fully and comprehensively, the rights she is entitled to, as well as the situation she is going through.

- p.86-87 It is necessary to establish the specific rights that derived from article 36 of the Convention. First, there is an obligation to inform the foreign national of her right to communicate with the consular office or a consular representation of her country. The information must be immediate, cannot be delayed under any circumstance. Second, to choose, if desired, to contact or not their respective consulate. Third, if selected to contact the consular office, the authority shall inform the situation to the closest consular office. This communication must be immediate, through every means possible. Lastly, the authorities must guarantee the communication, visitation and contact with the foreign national and the consular office of her country, so that the consulate may provide immediate and effective assistance; this represents the consular assistance *strictu sensu*.
- p.87 The aim of the right to consular assistance is to assure the effective application of the principles of equality of the parties and confrontation that underlie the criminal process in order to avoid imbalances or limitations in the defense of the foreign national. In this logic, consular assistance guarantees the correct development of the process and a structural requirement of it. Thus, foreigners' fundamental right to consular assistance cannot be conceived as a mere formal requisite. To impede a foreign national the possibility of bridging a gap in the process through the means provided by article 36, not only limits but turns impossible the satisfaction of the right to an adequate defense.
- p.88 Consular officers shall make sure that the foreign national not only be informed about the accusation and her rights but also that the person fully understands them. In order to consider that a foreign national was informed in a free and conscious manner about these issues, it is indispensable that the element of cultural idiosyncrasy be covered.
- p.89 In some legal systems, statements made to the police and cooperation with the investigative authorities may be considered, throughout the process, as a sign of good faith from the detainee. On the contrary, it is recommendable that the accused not utter a word in other systems until he is before a judge. Likewise, in some legal systems, cooperation with the police and stipulation to some facts may lead, in the future, to a reduced sentence. In others, the spontaneous confession of the accused is irrelevant.

These decisions may only be considered once the consular officers have provided effective technical assistance.

- p.90 Hence, it is not a rule that can be conceived as a mere formal requisite of process, but it is a Human Right with diverse objectives and scopes. It is a norm specially applied to criminal proceedings against foreigners. Its function is to introduce to legal operators the notion that proceedings against a noncitizen are necessarily a situation of potential legal insecurity if acting without considering this right.
- p.91,93 Therefore, the consular officer's presence guarantees protection against the legal insecurity that can logically be produced by being subjected to an unfamiliar and possibly unknown legal system. It is intended that consulates guarantee legal security and take part in the perspective between the legislators that articulated the process and the person's diverse cultural perspective facing a criminal procedure in the foreign country. Therefore, its non-compliance significantly affects the validity of the criminal actions that ignore it.
- p.93-94 The fundamental core of the right of a foreign national to an adequate defense may be precisely observed, not only in the designation of a legal expert but also in the effectiveness of the defense; meaning, the one provided immediately after the detention. In case the assistance occurs in a moment of the process where it is no longer relevant, it will result in a mere declaration of good intentions.
- p.94-95 The importance of this right stems from the fact that it is a right that is instrumental in defending the foreigner's other rights and interests. The foreigner's opportunity to be heard publicly, with complete equality and justice, before an independent and impartial court, absolutely depends on the prior presumption that the defendant received real and effective assistance from the members of the diplomatic office of her country.

II. Right to be immediately brought before the Public Prosecutor

- p.95,97 This right is recognized in the Federal Constitution. An undue delay happens when, without having reasonable cause that makes it impossible for the authorities to immediately bring the detained person to the Public Prosecutor (*Ministerio Público*), the

detainee remains with the apprehending authority and is not surrendered to the competent authority to determine her legal status. Said reasonable causes may only be based on factual, real, verifiable, and, particularly, lawful impediments.

p.97-99 This entails that police agents cannot hold a person for a period longer than the strictly necessary to transport her to the public prosecutor's office, where all pertinent and immediate investigations may be conducted to determine the legal status of the detainee. The police cannot simply hold a person to obtain a confession or information related to the investigation, to incriminate her or others. This right, it is the most significant guarantee against illegal police actions destined to exert pressure or to influence the detainee, in an environment that is totally against her. Under this logic, the courts must make a strict exam of the case's circumstances. In Cassez's case, the period between the detention and the moment she was brought to the Public Prosecutor resulted in an unconstitutional deprivation of liberty.

III. Violation of the right to be brought immediately before the Public Prosecutor and of the right to consular assistance

p.107-108 It was argued that the reason for Florence not being immediately brought before the public prosecutor was justified by the need to protect the life and integrity of the victims and, in any case, despite the fact that the staging was reprehensible, it was not taken into account for the sentencing. The court considers that, even conceding – which the court does not – that the justification to go to the ranch with Florence to release and protect the victims was real, the fact is that there is no constitutional justification that accounts for the time in which Florence was retained at the property and exposed to a planned staging conducted by AFI,, with the purpose of exposing her as the person responsible of three kidnaps.

p.108-109 Indeed, the reasons or justification as to why an authority keeps a detained person for a longer period, have to be considered. However, in this case, the police actions were not laudable, but the manipulation of facts and circumstances of the investigation. It is impossible to conclude that the police's actions are not relevant because it is evident that the illegal staging brought a series of significant infringements to her rights, which had a

complex impact on the process. Hence, this Court determines that the detainee suffered a violation of the right to be immediately brought before the public prosecutor.

p.109-112 Regarding the fundamental right to consular notification, contact, and assistance, this Court considers that in the present case there was a violation of the fundamental right contained in Article 36 of the Convention. The record shows that she was not informed of her right to communicate with the consular office when she was detained, nor that the authorities had contacted the consulate directly.

p.113-115 The authority must favor consular communication through all the means at its disposal. It is not relevant that the detention was carried out during non-working hours, since the consulate has emergency telephones. Indeed, the authority provided an excuse stating that, hours after her detention, at the public prosecutor's office, a call to the consulate was placed at 3:05 p.m. and a recording indicated that office hours had already ended. The authority that practiced the detention should have had an institutional, direct, and immediate coordination with the Ministry of Foreign Affairs , custodian of the diplomatic delegations' records, as well as of the contact details of embassies and consulates. In any case, the violation lasted until 12:20 p.m., on December 10, 2005, the moment where at least the public prosecutor's agent managed to communicate with the consulate. Between 4:30 a.m., on December 9, and 3:45 p.m., on December 10, 2005, where the first consular contact between Florence and the consular agent was made, she did not receive consular assistance.

p.115-116 This makes 35 hours that shaped the criminal process and that the events that took place could have been avoided if consular assistance was provided. During this period, Florence was taken to the ranch; the staging of the events was planned and executed by the authorities to involve her in the crimes; she was taken to the public prosecutor's office, where she made her first statement; and the authorities disseminated to the media the recorded scenes.

p.116-117 Effective consular assistance may only be that that is provided when immediately after detention, not in another moment of the process where it is empty of content. It is in the

moment of arrest that understanding the accusation, the rights that assist her, the criminal system, the effects of the first declaration before the authorities, as well as the decisions to be taken related to the contact or hiring a local attorney to establish her defense, become conclusively relevant to avoid the state of defenselessness. Thus, it is incompatible with this interpretation the argument that consular assistance is not necessary before her first statement to the authorities. Rather, it is a constitutional requirement to preserve her rights of defense. Because of these reasons, this Court determines that in this case, there was an infringement of the right to consular notification, contact, and assistance.

p.118 There are cases where the material violation of a fundamental right brings together practical consequences that consist of the total deprivation of the defense and a real and effective prejudice to the affected person's interest. This case is one of them. This Court faces a very particular case in which the violation of fundamental rights to the consular assistance and to be immediately brought before the public prosecutor produces, by themselves, a total defenselessness of the defendant here. Moreover, in this particular case, this defenselessness was not only the product of said violations, but those violations produced a devastating effect on other fundamental rights, namely the presumption of innocence and adequate defense.

p.120-121 Said violations to the fundamental right to the consular assistance and the fundamental right to be immediately brought before the public prosecutor were the causes that led, favored, and prepared the field for the police to organize and carry out the staging contrary to the actual events. The police clearly and appallingly violated Florence's fundamental rights and decided to continue with their conduct contrary to the Constitution by setting-up a scenario through which they could incriminate Cassez of three kidnappings. That staging has direct and immediate repercussions to the violation to the fundamental right to the presumption of innocence.

IV. Fundamental right to the presumption of innocence

- p.121-122 The recognition of the right to the presumption of innocence by the Federal Constitution links all the public powers, and it is of immediate application. Besides being a principle or criterion in the criminal statutes, it is, above else, a fundamental right.
- p.124-125 Its scope transcends the orbit of due process. It also applies in extra-procedural situations and constitutes the right to receive the consideration and the treatment of "not being author or participant" in the crime until proven guilty. Therefore, it grants the right not to apply the consequences to such events until after a determination as to the culpability of a person is made. It has a triple meaning: as a rule of treatment, as a probatory rule, and as a trial rule or probatory standard in the process.
- p.126 As a probatory rule, it establishes requirements that the probatory activity must comply with and the characteristics of the means of proof must have in order to be able to consider that a valid prosecutorial proof exist and to destroy the innocence status. Consequently, not just any evidence may undermine the presumption of innocence, but it must be practiced in accordance with certain guarantees and in a certain way to comply with that purpose. In this regard, there must exist prosecution evidence, that is, evidence about the existence of the crime and the accused's responsibility, that had been provided by the prosecutor's office, respecting the constitutional principles and that rules its practice.
- p.126-127 As a trial rule or probatory standard, it can be understood as a norm that orders the judges to acquit the accused when sufficient prosecutorial evidence has not been provided to prove the existence of the crime and the person's criminal responsibility. This rule so understood, applies at the time of assessing the evidence.
- p.128 As a rule of treatment in its extra-procedural aspect, it constitutes a right to receive the consideration and treatment of a non-author or non-participant in criminal acts and determines, therefore, the right not to apply the consequences or legal effects to the acts in question. Simply put, the Constitution does not allow early sentencing. The violation of this aspect can stem from any State agent, especially from the police.
- p.128-129 The Federal Constitution grants a series of rights that aim to guarantee a fair trial. Nevertheless, they are worthless when the authorities carry out actions with the aim to

publicly exposing someone as responsible. With these actions, there is a huge risk to convict the accused ahead of time, since the center of gravity that corresponds to the process itself has been displayed to the public accusation. Furthermore, it may introduce factual elements that do not correspond with reality, influencing the tribunal and especially the victims and possible witnesses, that may act as evidence against the most elementary rights of the defense.

p.129-130 The violation of the rule of treatment of the presumption of innocence may influence a process when the manipulation of reality by the police tends to refer to: (i) conduct, credibility, reputation, or criminal record; (ii) the possibility of a confession, admission of facts, a prior statement by the accused or refusal to testify; (iii) the result of examinations or analyzes of someone involved; (iv) any opinion regarding the guilt of the detainee; and (v) the fact that someone had identified the detainee, among many others. Thus, in these types of scenarios, the "true trial" was held long before the judge's appearance. In these situations, the police do not intend to provide information on the case that is being processed before the courts but rather to anticipate or reproduce its development without complying with the guarantees of due process.

p.135-136 The presumption of innocence is not limited to the actions of the judges. Neither is "public opinion" nor the media who should be accused of recreating the actual events and the anticipated treatment of guilt. It was not the media who detained Florence and did not bring her immediately the public prosecutor's office, nor who denied her consular assistance and took her to the ranch. AFI Agents and their leadership were responsible to organize and prepare a staging in order to publicize it, as the head of the AFI acknowledged it.

p.136-137 Cassez was exposed repeatedly and deeply to a spectacle inadmissible in a democratic system of rights and freedoms. For the thousands of citizens who saw and heard it, such a spectacle was the actual judgment of Florence. Any judicial process carried out afterward, in which victims and witnesses were exposed so thoroughly to this setup, could

not be more than a mere formality. Thus, there is a violation to the right of the presumption of innocence as a rule of treatment.

- p.138 This Court considers that the violation of the presumption of innocence –derived from the violations to the right to consular assistance and to be immediately brought before the public prosecutor– generated in this case a corrupt effect in all the criminal process that poisoned all the incriminatory evidence against the defendant. This Court understands this effect as the consequences of that conduct or set of conducts, intentional or unintentional, on the part of the authorities, which produce suggestive conditions in the incriminating evidence. For the authority's behavior to produce a corrupting effect on the evidence, its action must be improper, that is, carried out outside of all constitutional and legal channels.
- p.139 The evidentiary material affected by the corrupting effect causes its lack of reliability, a situation that impacts the rights of the accused, since the Constitution protects the right that her conviction is not based on questionable evidence, especially when it is attributable to the illegal actions of the authority.
- p.139-140 This Court considers that a corrupting effect is clearly observed in the case as a consequence of the undue and arbitrary conduct of the AFI members when exposing Florence to the media as guilty without a trial that clarified her legal situation, in addition to an alleged recreation of events that never occurred but which, without a doubt, were intended to have an impact on public opinion and all those linked to the process.
- p.140 The fact that the authorities orchestrated a media performance generated a poisonous effect on the entire process because, in addition to the fact that the entire society was influenced, so were the people involved in the process, vitiating the reliability of their statements. This situation is inadmissible and dangerous since the probability of causing an erroneous and irreparable identification against Florence became latent from that moment.
- p.149-150 The corrupting effect that the staging had on the child victim's statement is clear. Despite having been present at the staging that same day –before the public prosecutor– the child declared that he did not recognize Florence neither for her physic nor by her voice.

However, after it was established that the streamed recordings constituted a staging, he stated that he identified the voice as that of a woman who had a strange and foreign accent and had put an injection to him during his captivity.

p.150-151 The victim and mother of the mentioned witness, despite having been present at the staging, that same day before the public prosecutor declared that she did not recognize Florence as one of her kidnappers, indicating that it was the first time she had seen her and that her voice did not match that of the kidnappers.

Finally, she added that AFI officials informed her that Cassez had participated in her kidnapping. Despite this, three days after the staging was exposed, she declared that her son told her that a woman with a strange accent was the one who drew him blood. Seven days later, she stated again before the public prosecutor and, on that occasion, described that she and her son heard a foreign person whose voice, as they recognized in the news, is that of Florence, and identified her as the woman who she heard in the two safety houses.

p.151-152 The same happens with the testimony of a third party. The same day that the authorities admitted that the images transmitted on television constituted a staging and five days after that information came out to the public light, this witness voluntarily appeared before the public prosecutor to declare that he identified Florence as one of the kidnappers by what he had seen on television.

p.152 This Court does not rule on the credibility of the witnesses. What is relevant is that the staging is an element that undoubtedly reduces the reliability of their testimonies, since exposure to the performance predisposes to judge the reality through the filter created by the authorities, which caused a process of contaminated recall of the events by having fabricated an alternative reality.

p.152-154 A third victim was interviewed at the ranch at least four different times by the media present at the premises. This person recognized the individual who accompanied Florence as one of his captors, but not her. Once at the public prosecutor's office, the victim stated that he recognized her as one of the kidnappers because of her foreign accent and the color of

her hair. That same day, at night, the victim gave an exclusive interview for a television newscast where he not only recognized Florence but also gave her one of the main roles within her kidnappers. This person played a leading role in the staging, as his "liberation" was accompanied by the constant labeling of Florence as guilty. With regard to his kidnapping, he pointed out to three male individuals. Later, however, he corrected himself and pointed out to Florence, to whom he attributes active participation. The foregoing produces a lack of reliability in his testimony, vitiated by the influence produced by AFI's undue actions.

p.154-155 Therefore, the violations of fundamental rights described above made the content of the statements unreliable since the authority influenced them through the staging, contravening the obligations arising from the right to the presumption of innocence as a rule of treatment. Before a sentence was pronounced, the AFI carried out acts that, instead of treating Florence as a "non-author" of the commission of the criminal acts, singled her out as the "author" of the crimes before the victims. Thus, the statements were influenced by the authority based on acts contrary to the Constitution.

p.155 Regarding the testimonies of federal agents contained in the police report, they are also affected by the aforementioned corrupting effect and, therefore, lack reliability. The document represents the official version of the events that constitute the staging that was streamed on TV.

p.156-157 Ultimately, it is clear the probatory material against Florence cannot be considered valid prosecution evidence since it derived from the violation of the fundamental rights to consular assistance and to be brought without delay to the public prosecutor's office, which undoubtedly had a strong impact on her rights to the presumption of innocence and adequate defense. In this case, the violation of the constitutional principle of presumption of innocence occurred in two tracks: as a rule of extra-procedural treatment and as a probatory rule.

p.157 For this reason, this Court considers that the corrupting effect pervaded the entire process, especially in the incriminatory probative material, that is the basis of every criminal process

and which, in this case, was essentially translated into statements of persons that were part of a performance contrary to the reality, who could have been influenced by it. In this case, because the poisonous effect subverted the probatory material, it makes it impossible to determine Florence's guilt.

DECISION

p.158-160 This Court considers that the specific circumstances of this case, the violation of the fundamental rights to consular notification, contact, and assistance, to be brought immediately before the public prosecutor and to the presumption of innocence, which permeated the entire process by producing a serious corrupting effect on it, undoubtedly affected the compliance with the fundamental right to the due legal process by the investigating authorities. Therefore, this Court reverses the challenged decision and grants the *amparo* and protection of the Federal Justice. Consequently, the absolute and immediate liberty of Florence is ordered.