

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.

**INTRUSION OF THE DOMICILE IN FLAGRANTE DELICTO WITHOUT A WARRANT AND TORTURE  
(INTROMISIÓN DEL DOMICILIO EN FLAGRANCIA SIN ORDEN JUDICIAL Y TORTURA)**

**CASE:** *Amparo Directo en Revisión 3244/2016*

**REPORTING JUSTICE:** Alfredo Gutiérrez Ortiz Mena

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

**DATE OF THE DECISION:** June 28, 2017

**KEY WORDS:** In flagrante delicto, torture, inviolability of the domicile, criminal proceeding.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 3244/2016*, First Chamber, Alfredo Gutiérrez Ortiz Mena, J., decision of June 28, 2017, 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/2022-01/ADR3244-2016.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 3244/2016*, Mexico.

## SUMMARY OF THE *AMPARO DIRECTO EN REVISION* 3244/2016

**BACKGROUND:** TDD was walking down the hallway of a building and started running toward an apartment when he noticed police were present. However, before entering it, he was arrested by the investigating police, who transferred him to the Prosecutor's Office, where TDD says he was tortured physically and psychologically. The investigating police did not have a search warrant to enter the apartment. However, in their opinion, as TDD was detained in flagrante delicto, they were allowed to enter the property. When entering the domicile, they found that prostitution was being practiced there. Therefore, from their perspective, the evidence obtained from this procedure was not unlawful. TDD was convicted of human trafficking, which determination was upheld on appeal. He filed an amparo lawsuit which was denied by a Collegiate Circuit Court that upheld the legality of the detention, the intrusion into TDD's domicile and the failure to investigate the alleged torture, so TDD filed a *recurso de revisión* that was sent to the Mexico's Supreme Court of Justice (this Court) for resolution.

**ISSUE PRESENTED TO THE COURT:** Whether the Collegiate Circuit Court's determination to declare the legality of TDD's detention, the intrusion into his domicile and the failure to investigate the probable existence of torture is constitutional.

**HOLDING:** The decision appealed was essentially overturned, for the following reasons. This Court considered that an intrusion into the domicile of a person will only be constitutionally valid in cases of in flagrante delicto when a crime is being committed inside of it or when, after being committed in a different place, the offender is immediately pursued there. However, this was not the scenario that took place because, contrary to what was stated by the Collegiate Circuit Court, at the time of the arrest, the investigating police did not have objective data to justify their actions, only verifying that prostitution was indeed practiced after entering the apartment. In this regard, the arrest was justified on a simple suspicion and occurred prior to the intrusion of the domicile. Furthermore, the decision of the Collegiate Circuit Court erroneously implied that prostitution, by itself, could be a crime, when in any case what could be cause for the entry into the domicile would be sexual exploitation by third parties. Finally, this Court determined that the authorities

are obligated to investigate the existence of torture and its impact on a criminal proceeding, which the Collegiate Circuit Court did not comply with. Consequently, this Court determined that the decision of the Collegiate Circuit Court violated its constitutional criteria and so overturned it, ordering a new one be issued in which the constitutional guidelines contained in this decision were addressed. In this regard, in the event any violations of TDD's human rights had taken place, the Collegiate Circuit Court is ordered to exclude any evidence that may be considered unlawful and to notify the Prosecutor's Office of the torture allegation to have it investigated as a crime.

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

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=199660>

## EXTRACT OF THE *AMPARO DIRECTO EN REVISION* 3244/2016

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 28, 2017, issues the following decision.

### BACKGROUND

p.7 TDD was walking down the hallway of a building when he noticed police were present and began to run toward an apartment where several people were engaged in prostitution (victims). However, before entering the domicile he was arrested by the investigative police, who transferred him to the Prosecutor's Office where TDD says he was tortured physically and psychologically.

The investigating police did not have a search warrant to enter the apartment. However, according to their description of the facts, TDD's arrest occurred while the crime was being committed, in flagrante delicto, so the police entered the building and verified that prostitution was taking place. Therefore, from their perspective, the evidence derived from this police procedure is not unlawful.

p.2 A criminal judge held TDD criminally liable for the crime of human trafficking.

p.1 Subsequently, on January 8, 2016, TDD filed an *amparo* lawsuit against the decision issued on September 9, 2014 by a criminal court which confirmed the judge's decision.

p.3 Afterwards, on May 12, 2016, a Collegiate Circuit Court granted the *Amparo* in order for the criminal court to declare the challenged decision void and issue another one in which, on the one hand, it reiterates the aspects that were considered constitutional and, on the other, establishes that TDD's criminal liability in the crime committed against one of the victims was not established.

TDD filed a *recurso de revisión*, which was sent to this Court.

### STUDY OF THE MERITS

**I. Inviolability of the domicile and the exception the Collegiate Circuit Court considered proven to justify the entry of the arresting officers into the property involved in this criminal proceeding (in flagrante delicto) without a court order**

p.17 In deciding the *Amparo Directo en Revision 2179/2009*, the First Chamber of this Court determined that the inviolability of the domicile referred to in article 16 of the Constitution is a manifestation of the right to privacy, understood as the protection of the reserved area of a person's life, excluded from the knowledge of third parties, whether they are public or private powers.

The protection of privacy is established in more provisions than the one mentioned above all of which aim to protect a person's right to enjoy a space free from interference. Under this optic, different impacts on privacy can be identified and, consequently, different guarantees and levels of protection.

p.18 It is therefore important to distinguish these degrees of protection, differentiating between whether the State is a guarantor or protector of the right as against society or itself.

Moreover, there is a "legitimate expectation of privacy" in relation to the protection of the domicile, so intrusion in the home must be analyzed under strict scrutiny, assuming that it requires, as a rule, a prior judicial authorization, in which the necessity, suitability and proportionality of the intrusion is justified. However, intrusion in exceptional circumstances justifying a search of the premises without prior judicial control must also be recognized as valid.

p.18-19 In the mentioned precedent, it was emphasized that the inviolability of the domicile prevents any entry and/or search therein, unless: a) a search warrant has been issued; b) it involves a crime in flagrante delicto; or c) the occupant authorized the entry.

p.19 The delimitation of this right required this Court to specify that the "domicile", for purposes privacy, is "the space of reserved access in which people exercise their most intimate freedom".

Therefore, on that occasion it was determined that the concept of domicile that underlies article 16 of the Constitution must be understood in a "broad and flexible" way, since it is a question of defending the areas in which people's private lives are developed. Consequently, any closed place in which the private life can occur will be considered a domicile, whether such private lives are individual or as a family, even if it is temporarily or accidentally occupied.

p.20 In this regard, the purpose or the use constitutes the essential element for the delimitation of the spaces constitutionally protected by the right to privacy, while their location, physical configuration, condition as personal property or real estate, are irrelevant, as is the type of legal title that enables their use or the frequency with which the private life in it is developed. What is important is the existence of external signs that reveal the clear desire of its owner to exclude this space and the activity developed in it from the knowledge and intrusion of third parties.

In accordance with the foregoing, it was considered that accidental, temporary or movable domiciles could be subject to constitutional protection.

In the *Contradiccion de Tesis 75/2004*, the First Chamber of this Court determined that it is constitutionally valid to intrude in a domicile without a court order in the case of in flagrante delicto, specifying that " police do not necessarily require a search warrant to enter the private domicile in which the crime is being executed".

p.21 Such intrusion will be constitutionally valid only in the following cases: a) a break-in of the place when a crime is being committed inside; or b) after the crime has been committed in a different place, the active subject is immediately pursued there.

In the first of these hypotheses, a person who breaks into the private sphere must have actual information that allows him to reasonably consider a crime is being committed. In the second, the exception must be derived from the immediate and continuous pursuit of the alleged perpetrator.

- p.22 In both cases, the decisive factor is the urgency of the case, so that the intervention cannot be postponed, whether to prevent the consummation of an unlawful act, to cease its effects or to prevent the escape of the person responsible.
- p.22-23 In this case, the Collegiate Circuit Court determined that the restriction of TDD's personal freedom adhered to the provisions of article 16 of the Political Constitution of the United Mexican States, since his detention occurred at the time of committing the crime, which is to say in flagrante delicto. According to the Collegiate Circuit Court, the arrest occurred when TDD tried to enter the apartment where the victims were engaged in prostitution.
- p.23 However, since no reference was made to objective data that would reasonably lead to the belief that TDD was involved in the acts attributed to him, it would appear that in the appealed decision the detention was justified on the basis of a simple suspicion. This ignores the precedent of the First Chamber of this Court established when deciding the *Amparo en Revision* 703/2012 in which it held that since the constitutional reform of June 18, 2008, in flagrante delicto re-acquires a literal and restricted sense, where flagrant is that which burns or shines like fire or flame. Thus, a crime committed in flagrante delicto must shine brightly (be obvious and unmistakable), allowing anyone to appreciate it through the senses and come to the conclusion that unlawful conduct is occurring.

In that precedent, the First Chamber of this Court determined that police officers do not have the power to arrest a person on the sole suspicion that he or she may be committing a crime or that he or she is about to commit one.

- p.24 Hence, to consider a detention in flagrante delicto to be legal, objective evidence is required to justify the restriction of personal freedom, which must be clearly identified.

In addition, according to the decision of the Collegiate Circuit Court, this interference was considered legal because the capture of TDD occurred when he ran to the apartment where the victims were engaged in prostitution, thus implying that prostitution was a crime, when it is not, since what is criminally punishable is sexual exploitation by third parties.

The strict scrutiny to which the constitutional study of in flagrante delicto must be subjected requires that it can be inferred from the objective data mentioned in the preceding paragraphs that a criminally relevant act exists, beyond its subsequent legal classification by the authorities competent to do so.

The foregoing is relevant for the understanding of in flagrante delicto, given that if the fifth paragraph of article 16 of the Political Constitution of the United Mexican States establishes that any person may arrest the defendant at the time he is committing a crime or immediately after committing it, it is logical to conclude that such an assessment takes into account a reasonable perception of what has happened, unrelated to technical-legal aspects specific to a legal expert.

p.25 Thus, it is important to emphasize that the in flagrante delicto must shine clearly, allowing anyone to appreciate it through their senses and reach the reasonable belief that one is indeed in the presence of conduct possibly constituting a crime.

Therefore, in analyzing the appealed decision, it is clear that the Collegiate Circuit Court's understanding of in flagrante delicto was misguided for the following reasons:

a) Because it seems that the capture of TDD was justified on the basis of a simple suspicion, when this Court has repeatedly established that this is in violation of the Federal Constitution;

p.26 b) This reasoning implies that prostitution, in itself, is a crime, when in any case what could have motivated the interference was exploitation of prostitution by third parties; and

c) It is maintained that the intrusion in the apartment was subsequent to the arrest, which contradicts the constitutional guidelines given by this Court.

Consequently, the decision appealed must be overturned so another one may be issued in which the constitutional guidelines contained in this final judgment are met, since in the event it is considered that the arrest or the intrusion into the domicile was illegal, the illegal evidence resulting from it must be excluded.



## II. Alleged torture

The Collegiate Circuit Court dismissed TDD's claim that during his detention he was subjected to physical and psychological pressure. It did so on the grounds that there was no evidence of torture in the case, "since TDD did not manifest this circumstance before the Prosecutor's Office, the judge or the responsible chamber". In addition, it added that: "requesting the opening of investigations with the mere manifestation of torture from TDD in the *Amparo* without this situation being proven in the criminal procedure, would lead to an indeterminate number of criminal cases halted."

p.26-27 In the *Contradiccion de Tesis* 75/2004, the First Chamber of this Court ruled that torture is absolutely prohibited in the Mexican State and that the right not to be subjected to it has the nature of *jus cogens*. Therefore, conditions of timeliness to formulate the respective complaint cannot be imposed, and thus it can be alleged at any stage of the criminal proceedings or in the *Amparo* trial itself.

p.27 It follows that torture must be investigated from two angles: i) as a crime in the strict sense; and ii) as a violation of the human rights of the person subjected to criminal proceedings, on the basis of evidence allegedly obtained in connection with the proceedings.

In this precedent, the First Chamber of this Court decided that the failure to investigate the possible procedural impact of torture constitutes a violation of the laws of criminal procedure and that, if it was necessary to reinstate the procedure so that the possible existence of torture and its procedural impact could be investigated, the reinstatement would begin from the procedure immediately prior to the ruling closing the investigation. This ensures that the necessary steps are taken to verify what happened, so that, if torture is ruled out, all actions and motions previously presented will remain entirely in force according to their terms.

p.28 Subsequently, in the *Amparo Directo en Revision* 6564/2015, the First Chamber of this Court ruled that when there is no confession or any act that implies self-incrimination as

a result of the alleged torture, it is not appropriate to reinstate the procedure for the purposes indicated because the torture did not have an impact on the criminal process.

p.30 Therefore, although the interpretation of the Collegiate Circuit Court regarding the allegation of torture was misguided, the reinstatement of the procedure so that it can be investigated cannot be ordered, since it is not seen that if torture had existed, this would have had any impact on the criminal process followed against TDD.

However, the Collegiate Circuit Court must give notice to the public prosecutor's office so that the allegation of torture in its criminal aspect can be prosecuted.

### **DECISION**

The decision appealed is overturned so that another one may be issued in which the constitutional guidelines contained in this final decision are followed, with the understanding that if it is considered TDD's human rights may have been violated evidence that is considered illegal must be excluded and the Prosecutor's Office must be given notice of the allegation of torture in order to investigate it as a crime.