

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.

**PRESUMPTION OF INNOCENCE AS AN EVIDENTIARY STANDARD AND AS AN  
EVIDENTIARY RULE**  
**(PRESUNCIÓN DE INOCENCIA COMO ESTÁNDAR DE PRUEBA Y COMO REGLA  
PROBATORIA)**

**CASE:** *Amparo Directo en Revisión 3457/2013*

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

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

**DATE OF THE DECISION:** November 26, 2014

**KEY WORDS:** right to the presumption of innocence, adequate defense, right to due process, right to non-self-incrimination, right not to be tortured, *indirect intent*.

**CITATION OF THE DECISION:** Supreme Court, *Amparo Directo en Revisión 3457/2013*, First Chamber, A Arturo Zaldivar Lelo de Larrea, decision of November 26, 2014, 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/ADR3457-2013.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 3457/2013*, Mexico.

## SUMMARY OF AMPARO DIRECTO EN REVISION 3457/2013

**BACKGROUND:** On July 12, 2012, a judge convicted AMM of the crime of aggravated manslaughter of his six-month-old daughter. The affected party appealed. The court issued its decision on August 29, 2012 unitarily, amending the ruling of the first instance court, determining that it had not been proven that the acts were committed with direct intent rather than indirect intent. The prison term was reduced, material and moral damages were modified and the remainder of the appeal decision was also upheld. Dissatisfied, the affected party filed an *amparo directo* lawsuit before the Collegiate Circuit Court against the final decision issued on August 29, 2012. On January 24, 2013, the Collegiate Circuit Court granted the *amparo* to the AMM, for the responsible chamber to overturn the challenged ruling and issue another one rectifying, with full jurisdiction, the procedural defects regarding the existence of the subjective element of the crime of homicide. On February 19, 2013, the responsible chamber issued a decision in which it amended the decision under appeal and determined that AMM is responsible for committing the crime of aggravated homicide against his daughter, specifying that such conduct was carried out with indirect intent. Disagreeing with the *Amparo* decision of January 24, 2013, AMM filed a *recurso de revisión*, which was heard by the Mexico's Supreme Court of Justice (this Court) through the exercise of its authority to assert jurisdiction. On April 24, 2013, this Court upheld the appealed decision. AMM party filed an *Amparo directo* lawsuit for the second time, this time against the final decision issued on February 19, 2013. The Collegiate Circuit Court denied the *Amparo* to the affected party. AMM filed a *recurso de revisión* against this denial, which was heard by this Court through the exercise of its authority to assert jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether the acts challenged are in violation of the right to the presumption of innocence, due process, right to an adequate defense, right to non-self-incrimination, and the right not to be tortured.

**HOLDING:** The appealed decision is overturned for the following reasons: it has been proven that when analyzing the claims of violation of the affected party the Collegiate Circuit Court

failed to take into account the doctrine of this Court on the presumption of innocence, due process, the right to non-self-incrimination, and the right to an adequate defense. It did so when it considered certain evidence that may be unlawful in light of the content of those fundamental rights to be valid incriminatory evidence for proving the subjective element of the crime of homicide committed by the affected party against his daughter. Accordingly, the case file must be returned to the Collegiate Circuit Court so that the new decision adopts an interpretation in accordance with the guidelines and constitutional doctrine of this Court.

**VOTE:** The First Chamber resolved this case by a majority of four votes of justices Olga Sánchez Cordero de García Villegas, Arturo Zaldivar Lelo de Larrea, José Ramón Cossío Díaz and Alfredo Gutiérrez Ortiz Mena. Justice Jorge Mario Pardo Rebolledo voted against.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=157581>

## EXTRACT OF THE *AMPARO DIRECTO EN REVISION* 3457/2013

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of November 26, 2014, issues the following decision.

### BACKGROUND

- p.1-2 In 2012, a criminal judge in the Federal District convicted AMM of the crime of aggravated homicide of his six-month-old daughter. AMM appealed the criminal judge's decision. The criminal chamber that decided the appeal amended the sentence of the criminal judge, considering that it was not proven that the acts were committed with direct intent rather than indirect intent, so the criminal chamber reduced the prison term and modified the material and moral damages.
- p.2-3 AMM brought an *amparo directo* lawsuit before a Collegiate Circuit Court against the criminal chamber's decision. The Collegiate Circuit Court granted the *amparo* to AMM so that the criminal chamber would overturn its decision and issue a new one in which it would correct the procedural defects on the existence of the subjective element of the crime of homicide. AMM requested the review of the decision of the Collegiate Circuit Court, which was heard by this Court, which confirmed the decision of the Collegiate Circuit Court and, consequently, denied the *amparo* to the complainant.
- p.2-4 In compliance with the *amparo* ruling, the criminal chamber amended its decision and determined that AMM was responsible for committing the crime of aggravated homicide against his daughter, specifying that such conduct was carried out with indirect intent. AMM filed an *amparo directo* lawsuit against this decision, but the Collegiate Circuit Court denied the *amparo*. AMM filed a *recurso de revisión*, which was referred to this Court.

### STUDY OF THE MERITS

- p.17 With the deficiencies in AMM's pleadings amended by this Court, in accordance with the provisions of section II of article 76 bis of the repealed Amparo Law, this Court considers that AMM's arguments regarding the violation of the following fundamental rights are justified: presumption of innocence, adequate defense, due process, non-self-incrimination, and the right not to be tortured.

## I. Right to the presumption of innocence

In the *amparo* claim, AMM argued that the criminal chamber failed to apply the *in dubio pro reo* principle. In this regard, this Court considers that the *amparo* decision contains an incorrect interpretation of the right to the presumption of innocence that is contrary to the constitutional doctrine of this Court when it states that the principle *in dubio pro reo* is not applicable in the *amparo* lawsuit because it is reserved for the trial courts and not the constitutional control bodies, which should only verify whether the acts challenged are in violation of the Constitution.

p.18 The presumption of innocence is a right of mandatory observance for all judicial authorities in the country. As this is a fundamental right, the *Amparo* courts are obligated to protect it if it has not been respected by the trial courts. The Collegiate Circuit Court's decision on the scope of *in dubio pro reo* is based on an understanding of this principle dating back to a time when the presumption of innocence was not expressly recognized in the Constitution and was not properly considered a fundamental right.

p.18-19 In the *Amparo en Revision* 349/2012, the First Chamber of this Court identified three aspects of the presumption of innocence: (1) as a rule of procedural treatment; (2) as an evidentiary rule; and (3) as an evidentiary standard or judgment rule. This conceptual scheme has been used by this Court in the case law development of this fundamental right. For purposes of this case, it is useful to reiterate how this Court has understood the presumption of innocence as an evidentiary standard and as an evidentiary rule.

### A) The presumption of innocence as an evidentiary standard

p.19 In the *Amparo en Revision* 349/2012, the First Chamber of this Court pointed out that two implicit aspects of the evidentiary standard aspect of the presumption of innocence must be distinguished: (i) the standard itself: the conditions that the inculpatory evidence must satisfy in order to consider that it is sufficient to convict; and (ii) the burden of proof rule: the rule that establishes which of the parties must be procedurally harmed by the fact that the evidentiary standard is not met.

p.20-21 The *in dubio pro reo* constitutes a "second-order rule" that requires the defendant to be acquitted in case of doubt about compliance with the standard. Consequently, in

accordance with the burden of proof rule implicit in the presumption of innocence, the party harmed by the failure to meet the standard is the Prosecutor's Office.

- p.21 The First Chamber of this Court has dealt on other occasions with developing the content of the right to the presumption of innocence in its evidentiary standard aspect – *Amparo Directo en Revision* 715/210, *Amparo en Revision* 466/2011, *Amparo en Revision* 349/2012, *Amparo Directo* 78/2012 and *Amparo Directo* 21/2012 –. In those precedents, it was pointed out that in order to be able to consider that there is sufficient inculpatory evidence to overcome the presumption of innocence, the judge must ensure that the inculpatory evidence undermines the theory of innocence effectively put forward by the defense at trial and, at the same time, it must be ruled out that any exculpatory evidence or contradictory facts raise a reasonable doubt as to the theory of guilt sustained by the accusing party.
- p.22 In the *Amparo Directo en Revision* 4380/2013 the First Chamber of this Court explained that "when there is both inculpatory and exculpatory evidence, the theory of guilt can only be sufficiently proven if at the time of evaluating the evidentiary material the levels of corroboration of both the theory of guilt proposed by the prosecutor and the theory of innocence alleged by the defense are analyzed concurrently", hence "the evidentiary value cannot be reduced from the exculpatory evidence simply with the argument that there is sufficient inculpatory evidence", since in the scenario described above – when there is inculpatory and exculpatory evidence in the available evidentiary material – "the sufficiency of the inculpatory evidence can only be established in confrontation with the exculpatory evidence", in such a way that the latter "may give rise to a reasonable doubt both in the event that it questions the reliability of the inculpatory evidence, and in the event that the theory of innocence effectively alleged by the defense is corroborated by these exculpatory elements".
- p.23 A reasonable doubt can also occur in cases where the defendant's defense does not properly propose a theory of innocence, but a version of the facts that is only incompatible with some aspects of the prosecution's account. In such circumstances, confirmation of the defense theory only raises a reasonable doubt as to one aspect of the prosecution's

theory, and therefore such doubt should not result in acquittal, but should take the prosecution's theory as proven to the extent proposed by the defense.

- p.23-24 One of the peculiarities of the evidentiary standard in criminal matters has to do with the fact that the parties often propose at least two totally or partially incompatible versions of the facts relevant to the process, which are included respectively in the theory of the prosecution and in the theory of the defense. Both inculpatory and exculpatory evidence may coexist in the evidentiary material at the same time. It should be clarified that exculpatory evidence is evidence that directly supports the defense's theory and any means of proof intended to question the credibility of the inculpatory evidence or to call into question any aspect of the prosecution's theory. Ordinary judges are obligated to assess all the exculpatory evidence so as not to violate the presumption of innocence enjoyed by any defendant.
- p.24 The concept of "doubt" associated with the *in dubio pro reo* principle adopted by the Collegiate Circuit Court is contrary to the doctrine of this Court in relation to the presumption of innocence in its aspect as evidentiary standard. Conceiving doubt in a psychological aspect, that is, as "the lack of conviction" or the "indeterminacy of the mood or thought" of the judge is an interpretation contrary to a protective understanding of the presumption of innocence. To assume that the "doubt" of which this principle speaks refers to the "psychological state" that the evidence presented in the process can arouse in the judge, is something typical of the conceptions that use the idea of "intimate conviction" as an evidentiary standard. These subjectivist conceptions of evidence not only prevent objectively establishing when there is sufficient evidence to establish an evidentiary theory but they are also incompatible with the principles governing the rational assessment of the evidence.
- p.25-26 The concept of "doubt" implicit in *in dubio pro reo* should avoid this disconnect between the judge's beliefs and the available evidence. "Doubt" should be understood as the existence of rational uncertainty about the truth of the prosecution's theory, uncertainty that is determined not only by the degree of confirmation of that theory, but also eventually by the degree of confirmation of the defense's theory, assuming that there is evidence to support it. When the defense's theory is totally or tendentially incompatible with the

prosecution's theory, the fact that the defense's theory is confirmed by the available evidence creates a rational uncertainty as to the truth of the theory held by the prosecution, which results in the existence of a reasonable doubt as to the guilt of the defendant. The satisfaction of the evidentiary standard does not depend on the existence of a subjective belief of the judge that is free of doubts, but on the absence of evidence within the whole of the evidentiary material that justifies the existence of doubt.

- p.27 The obligation imposed by the right to the presumption of innocence on an *Amparo* court is to verify whether, in light of the available evidentiary material, the trial court should have doubted the guilt of the accused, since there is evidence to justify the existence of a rational uncertainty about the truth of the theory of guilt, either because it is not sufficiently confirmed or because the theory of innocence raised by the defense is corroborated.
- p.27-28 The interpretation of the presumption of innocence by the Collegiate Circuit Court is also incorrect in claiming that "when the set of circumstances and evidence in a criminal case, as occurs in this case, show enough inculpatory elements to undermine that principle of presumption of innocence and, the accused rejects and denies his guilty participation, he must necessarily prove the facts on which his exclusionary stance rests." In an evidentiary scenario in which inculpatory and exculpatory evidence coexist, it cannot be assessed whether the theory of the prosecution is sufficiently proven solely on the basis of the evaluation of the inculpatory evidence. In any event, the levels of confirmation of both the theory of guilt proposed by the prosecution and the defense theory must be jointly analyzed.

## **B) Presumption of innocence as an evidentiary rule**

- p.28-29 In relation to the presumption of innocence as an evidentiary rule, the *Amparo en Revision* 349/2012 the First Chamber of this Court held that it is a right that "establishes the requirements that the evidentiary activity must meet and the characteristics that each of the pieces of evidence provided by the Prosecutor's Office must comply with in order to be able to consider that there is valid inculpatory evidence and thus destroy the innocent status that every defendant has". According to this doctrine, the first requirement that the evidence must meet in order to defeat the presumption of innocence understood as an



evidentiary standard is that it can be qualified as inculpatory evidence. In the *Amparo Directo* 4380/2013, the First Chamber of this Court explained that only evidence aimed at directly or indirectly proving the existence of the crime and/or the criminal responsibility of the defendant will be considered inculpatory evidence.

- p.30 In analyzing the legality of a decision, the *amparo* courts must verify that the evidence on which the conviction is based can be considered inculpatory evidence; they cannot uncritically assume that all the evidentiary material in the court file constitutes inculpatory evidence likely to defeat the presumption of innocence. When it is considered that indirect inculpatory evidence exists, the *amparo* courts are obligated to check the reasonableness of the inference made by the trial judges to prove the existence of the fact to be proved in the criminal proceedings.
- p.30-31 In the *Amparo en Revision* 349/2012 the First Chamber of this Court held that the presumption of innocence as an evidentiary rule "implicitly contains a rule that imposes the burden of proof, understood in this context as the rule that determines which party is responsible for providing inculpatory evidence. The "fact that the inculpatory evidence is provided to the proceedings by the party with that procedural burden also constitutes a requirement for the validity of the evidence", as is clear from section V of article 20, part A, of the Constitution; in criminal proceedings the burden of proof lies with the accusing party: the Prosecutor's Office (second paragraph of article 21 of the Constitution). In this precedent, it was held that article 20 of the Constitution contemplates the principles of publicity, contradiction and immediacy, which govern the taking of evidence (offering and presentation), and thus any evidence provided by the Prosecutor's Office must respect them in order to be considered valid evidence at the time of the evidentiary assessment. For inculpatory evidence to be valid, it must have been obtained without infringing the fundamental rights of the defendant.

## II. Right to due process

- p.32 In the *Amparo* claim, AMM argued that the criminal chamber had violated the essential procedural formalities and due process to his detriment. The Collegiate Circuit Court did

not rule on this violation. And finally, in his appeal writ, AMM again complained of a violation of due process.

p.32-33 The First Chamber of this Court, in *Amparo Directo* 14/2012, indicated that on several previous occasions it had ruled that the Prosecutor's Office is a party to the criminal proceedings, so in that capacity "it must promote the accusation by asserting arguments it has knowledge of as a result of the inquiries carried out in the preliminary investigation linked to the process submitted to trial." Furthermore, in that precedent, it was also pointed out that all the results of the proceedings of the Prosecutor's Office must be subjected to the qualifier of the adversarial trial: they must be brought before the judge, so that the latter may assess the questioning of the evidence to the contrary and is in a position to make a judgment by exercising the sole and exclusive power to evaluate it. Therefore, the Prosecutor's Office is one more party, whose data are as subject to refutation as those of the accused. The First Chamber of this Court derived the requirements of intermediation and contradiction in the presentation of personal evidence directly from the fundamental right to due process, since it established that the opportunity to argue against a piece of evidence is what ensures due process in criminal procedures. In this precedent, it was indicated that in order to comply with the principle of intermediation, the evidence must be presented directly before the judge, because only when this condition is met will it be considered that a person has been heard and defeated in court and can be deprived of freedom.

p.33-34 Likewise, in this precedent, it was held that the principle of intermediation obligates the counterparties to face an impartial third party, hence a criminal process that respects the guarantee of defense assumes that the accusatory theory can be refuted. Therefore, this Court considers it pertinent to reiterate that the full defense of the accused is impeded when the judge determines that the body of evidence is formed with procedures of the preliminary investigation that are not refuted or contradicted at trial. Otherwise, the defendant would not be able to know the possible defects of the evidence that will affect his legal situation, which would mean denying him the opportunity to fight it, refute it and challenge its content. Finally, in the precedent, this Court concluded that the evidence that

supports a conviction must be presented before a judge so that the counterparty has the opportunity to contradict it and argue against it in his defense.

p.35-36 This Court considers that a total or partial retraction in court of a statement rendered to the prosecution makes it impossible for the defendant to defend himself from that charge in the trial , since not ratifying that statement prevents the accused from being able to submit such statement to contradiction. When a prosecution's witness retracts in court a statement rendered to the prosecution, the defendant cannot make use of the defensive strategies applied in such cases to attack the credibility of the testimonial evidence: (i) whether questioning the way in which the witness acquired knowledge of the facts on which he or she testifies, in such a way as to clarify whether it is personal, referential or inferential knowledge; or (ii) questioning the credibility of the attributes of the statement, which may call into question the veracity of the testimony (arguing that the witness testifies against his or her beliefs), the objectivity of what the witness claims to believe (arguing that the witness did not form his or her beliefs about the facts he or she testifies on according to an objective understanding of the evidence he or she perceived with his or her senses), or the quality of the observation on which the statement was based (arguing that the sensory abilities of the witness are not optimal, that the physical state of the witness at the time of perceiving the facts was not the most suitable for those purposes or that the conditions in which he or she perceived those facts make him or her unreliable).

### **III. Right to non-self-incrimination**

p.36 In the *amparo* claim, AMM argued that the investigating police had obtained statements in which he self-incriminated. In this regard, the Collegiate Circuit Court held that the reports submitted by the policemen were not considered a confession, but rather indications. This consideration is contrary to AMM's right to non-self-incrimination.

p.36-37 In the *Contradiccion de Tesis 29/2004*, the First Chamber of this Court pointed out that the right to non-self-incrimination implies the freedom of the defendant to testify or not, without his oral or written passivity inferring his guilt. The right to non-self-incrimination must be understood as the right of every defendant not to be compelled to testify, either by confessing or denying the acts imputed to him or her; for this reason, cutting of

communications, intimidation and torture are prohibited and, in fact, confessions made before any authority other than the Prosecutor's Office or the judge, or before them without the presence of defense counsel, have no evidentiary value.

p.37 In this regard, it should be noted that the right to non-self-incrimination is established in section II of part A of article 20 of the Constitution and in article 8.2, paragraph g) of the American Convention on Human Rights. The right to non-self-incrimination also prohibits the authorities from obtaining, through coercion or deception, self-incriminating evidence produced by the defendant himself.

p.37-38 In order to ensure that this right is not violated, the authorities have obligations in relation to interrogations while in police custody or before the public prosecutor. These include informing the detainee of his right to remain silent and to have a defense lawyer. The police officers conducting an investigation on criminal acts or carrying out an arrest may under no circumstances question the detainee. Any statement by the defendant obtained in contravention of this constitutional mandate must be declared null for violation of the fundamental right to non-self-incrimination. In these cases, a self-incriminating statement must be excluded from the evidence that can be assessed regardless of the means by which it was formally introduced into the proceedings, whether by a confession of the defendant rendered before the public prosecutor or a referential testimony of a police officer or other authority claiming to have knowledge of the self-incriminating statement made by the defendant.

#### **IV. Right to an adequate defense**

p.38 In the *amparo* claim, AMM stated that his co-defendant's right to an adequate defense was violated by the failure to assign her a defense attorney, despite the fact that she was a minor at the time of her arrest and was questioned as an indicted party. This argument was not answered by the Collegiate Circuit Court.

p.39-40 This Court has held that an adequate defense is satisfied only when it is carried out through law professionals, since they have the professional training to exercise such defense, which would also respect the principle of fairness between the parties, given that the prosecution is a technical body that is represented by a legal professional and,

consequently, the defendant must also be represented by a professional and not merely by a trusted person, since that is the only way to guarantee respect for the right to an adequate defense and procedural equality. In this case, it must be determined whether the right to an adequate defense is violated when it is the co-accused who was not assisted by defense counsel during her statement to the prosecution. In the *Amparo Directo* 9/2008, the First Chamber of this Court indicated that although the defendant has the right to defend himself or be defended by a trusted person, when that trusted person is not a lawyer, the guarantee of an adequate defense is not being exercised. It was also specified that the defense counsel must be present at the statements rendered to the prosecution as a witness or as a defendant starting from the preliminary investigation, so that the defense counsel is present at any questioning of the defendant, in order to ensure that his right to remain silent is respected, or that his statements are freely issued.

p.42-43 The fundamental right to an adequate defense must be interpreted from the perspective that guarantees the greatest protection of the defendant from the preliminary investigation stage, which is imposed under the mandate of article 1 of the Constitution, as a result of the human rights reform of June 10, 2011. The detainee shall be guaranteed his fundamental right to an adequate defense, provided that the defense counsel appointed to assist him legally, both at the preliminary investigation stage and in the proceedings themselves, is a legal professional, since he or she is the person with the technical capacity to advise and assess what is legally convenient for the defendant, a characteristic which is not satisfied by a trusted person t.

p.44 The Collegiate Circuit Court ignored the criterion established by the Plenary of this Court, when ruling on the *Amparos Directos en Revision* 207/2012, 2886/2012 and 2990/2011, in which it was indicated that the adequate defense of the defendant in a criminal process is guaranteed when it is provided by a person with technical knowledge in law, sufficient to act diligently in order to protect the procedural guarantees of the accused and prevent his rights from being harmed.

## **V. Right not to be tortured**

In the *amparo* claim, AMM alleged that he and his wife were separated and psychologically tortured into blaming each other for their daughter's death, but the Collegiate Circuit Court failed to analyze this argument.

- p.45-48 The right to personal integrity is a fundamental right protected by several constitutional norms (articles 1.1. 5.1 and 5.2 of the American Convention on Human Rights; article 7 of the International Covenant on Civil and Political Rights; articles 22 and section II of part B of article 20 of the Constitution; 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture; and 2, 4, 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In relation to this issue, the Inter-American Court of Human Rights has analyzed the cases *Loayza Tamayo vs. Peru*, *Maritza Urrutia vs. Guatemala*, *Bueno Alves vs. Argentina*, *Cabrera García and Montiel Flores vs. Mexico*.
- p.46 In the *Amparo Direct en Revision* 90/2014, the First Chamber of this Court held that the effects on personal integrity comprise a wide range of possibilities that due to their seriousness, intentionality or the context in which they occur, may be classified as torture, cruel, inhuman, degrading treatment, or another type of impact on integrity. Thus, acts of aggression deliberately prepared and carried out against victims in order to suppress their mental resistance and force them to incriminate themselves or to confess to certain criminal conduct could be classified as torture.
- p.52 In conclusion, the Collegiate Circuit Court failed to take into account the doctrine of this Court on the presumption of innocence, due process, the right to non-self-incrimination, and the right to an adequate defense, since in order to prove the subjective element of the crime of homicide committed by the complainant against his minor daughter, it considered as *valid evidence* various means of proof that could actually be unlawful in light of the content of those fundamental rights.

## DECISION

Since the claims of violation set forth by AMM are justified, the decision challenged is overturned and the court file is returned to the Collegiate Circuit Court so that it can determine whether the assumptions referred to in the constitutional doctrine of this Court

are present in relation to the fundamental rights to the presumption of innocence, due process, non-self-incrimination, and an adequate defense, and to proceed again to study the arguments of legality related only to the subjective element of the crime of homicide for which AMM was convicted, in accordance with the following guidelines.

- p.53 1) To determine, in light of the constitutional doctrine on the right to the presumption of innocence as an evidentiary rule, whether the statements of the maternal and paternal grandmothers of the deceased girl constitute valid inculpatory evidence in relation to the subjective element of the crime of homicide.
- p.53-54 2) To assess, in light of the doctrine of due process from which the requirement of contradiction and intermediation in the presentation of any inculpatory evidence and the right to an adequate defense are derived, whether the statement of the mother of the deceased girl and wife of AMM rendered to the prosecution should be excluded as contravening these fundamental rights, taking into account that in the statement rendered to the prosecution she was not assisted by a defense lawyer and in the expansion of the statement rendered to the prosecution she retracted the part incriminating AMM.
- p.54 3) To determine in light of the doctrine on the right to non-self-incrimination whether the statement rendered to the prosecution and the report signed by the investigating police officer (interrogation of AMM and his wife) should be excluded for contravening this fundamental right, bearing in mind that there is no evidence that they were assisted by defense counsel during the interrogations, let alone that they were made aware that they had that right or the right not to testify against themselves.
- p.54-55 4) To take into account the doctrine on the presumption of innocence as an evidentiary standard when assessing the evidentiary material that it has qualified as valid inculpatory and exculpatory evidence, both those that directly support the theory of the defense and those that are solely intended to question the credibility of the inculpatory evidence, the scope of this evidence or in general some aspect of the theory of the prosecution, in such a way as to determine whether in this specific case there is a reasonable doubt in relation to proving the subjective element of the crime of homicide in the terms argued in the accusation .

p.55 5) Adopt the constitutional interpretation in relation to torture understood as a crime, which could lead to informing the Office of the Attorney General of the Republic so it may investigate the facts to which AMM refers.