

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.

**CONSTITUTIONAL ANALYSIS OF DETENTIONS AND THE RIGHT NOT TO BE
ARBITRARILY DETAINED, TO NON-SELF-INCRIMINATION, DUE PROCESS AND TO
EXAMINE THE PROSECUTION WITNESSES
(ANÁLISIS CONSTITUCIONAL DE LAS DETENCIONES Y DEL DERECHO A NO SER
DETENIDO ARBITRARIAMENTE, A LA NO AUTOINCRIMINACIÓN, DEBIDO PROCESO Y
A INTERROGAR LOS TESTIGOS DE CARGO)**

CASE: *Amparo Directo en Revisión 3623/2014*

REPORTING JUSTICE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: August 26, 2015

KEY WORDS: due process, non-self-incrimination, arbitrary detention, presumption of innocence, criminal process, right to remain silent, preventive control, emergency case, right to question prosecution witnesses, adequate defense.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 3623/2014*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of August 26, 2015, 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/ADR3623-2014.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 3623/2014* Mexico.

SUMMARY OF THE *AMPARO DIRECTO EN REVISION* 3623/2014

BACKGROUND: Police officers detained and handed RRP over to the Prosecutor's Office by means of a subpoena. About 18 hours and 10 minutes after the detention, the Prosecutor's Office determined that the requirements to declare an emergency detention were met. However, RRP was not indicted before the judicial authority until 43 hours and 10 minutes after his detention. A criminal judge issued a decision in which RRP was convicted for the crime of aggravated homicide. The decision was confirmed on appeal and in *Amparo*, so RRP filed a *recurso de revisión* in which he indicated that the Collegiate Circuit Court was incorrect to declare his detention as legal because the authorities neither had an arrest warrant nor faced a situation of in flagrante delicto or emergency detention. He added that the violation of the presumption of innocence could not be reviewed by the constitutional control courts and that the Collegiate Circuit Court's declaration of legality of the Criminal Court's determination of self-incrimination solely because he was silent and did not exercise his right to testify was inadequate. He also argued that the court was incorrect to declare as lawful the failure of the Criminal Court Chamber to submit the statements of the prosecution witnesses to interrogation. This *recurso de revisión* was referred to the Mexico's Supreme Court of Justice (this Court) for consideration and resolution.

ISSUE PRESENTED TO THE COURT: Whether the decision issued by the Collegiate Circuit Court complies with the standards established in the precedents issued by this Court in relation to the right not to be arbitrarily detained, to non-self-incrimination, due process, and the right to interrogate the prosecution witnesses.

HOLDING: The decision under appeal was overturned, essentially, for the following reasons. This Court considered that contrary to the arguments of the Collegiate Circuit Court, RRP's detention was arbitrary because it was not carried out by means of an arrest warrant, during an instance of in flagrante delicto or in an emergency. It was also determined that all judicial authorities are obligated to ensure the right to the presumption of innocence and that this is not an exclusive faculty of the *Amparo* courts. In addition, this Court found that the right to non-self-

incrimination includes RRP's right not to testify and to remain silent and that RRP has the right to confront prosecution witnesses as part of his right to due process. In view of the foregoing, this Court ordered the case be referred back to the Collegiate Circuit Court for the purpose of issuing a decision in which it identifies the evidence that may be affected by the violation of RRP's fundamental rights and excludes it from the evidence that may be assessed. Likewise, the Collegiate Circuit Court was ordered to decide on the violations raised by RRP in his *amparo* lawsuit in relation to the right to the presumption of innocence, the right to non-self-incrimination and the right to interrogate prosecution witnesses, considering the constitutional doctrine on these rights reiterated in this decision.

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

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=169217>

EXTRACT OF THE *AMPARO DIRECTO EN REVISION* 3623/2014

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of August 26, 2015, issues the following decision.

BACKGROUND

p.28 On 15 March 2007, the Prosecutor's Office requested a subpoena for RRP and others for the suspicion of the crime of homicide.

p.29 At approximately 4:20 a.m. on April 29, 2007, Police officers of the Federal District arrived at a nightclub where RRP was and detained him.

Subsequently, at 5:45 a.m., the officers handed RRP over to the Prosecutor's Office, requested his "permanent custody" since he was a suspect. Subsequently, at 10:30 p.m., about 18 hours and 10 minutes after his "detention," the Prosecutor's Office determined that the requirements for ordering the detention as an emergency were met. Finally, RRP was referred to the judicial authority approximately 43 hours and 10 minutes after his "detention".

On September 8, 2008, a criminal judge issued a decision convicting RRP of the crime of aggravated homicide.

p.1 RRP filed a *recurso de apelación* and a Criminal Chamber upheld the appealed decision.

p.2 On February 10, 2014, RRP filed an *amparo directo* against the decision issued by the Criminal Chamber. The Collegiate Circuit Court denied him the *amparo* and thus he filed a *recurso de revisión*.

The Court that heard the case sent the case file to this Court.

By decree of September 10, 2014, this Court undertook the case.

STUDY OF THE MERITS

I. Right not to be arbitrarily detained

p.14 This point resolves RRP's argument that the Collegiate Circuit Court did not consider the doctrine of this Court on the right to personal freedom and the premises constitutionally authorized to detain a person.

In resolving the *Amparo Directo* 14/2011, the First Chamber of this Court stressed that "article 16 of the Federal Constitution enshrines a general regime of freedoms in favor of the person, amongst which is the right to personal freedom," understood "as a specific category equivalent to freedom of movement or ambulatory freedom."

p.15 In this precedent, it was pointed out that article 16 itself establishes the premises under which it is authorized to impact personal freedom, which are limited to "the arrest warrant, detentions in flagrante delicto, and an emergency." While the general rule is that detentions must be preceded by a court order, this is not possible "under the exceptional situations of in flagrante delicto and an emergency."

A. Arrests in flagrante delicto

p.16-17 An arrest in flagrante delicto is valid only in the following cases: (i) when the perpetrator of the offence is directly observed engaging in the action at that very moment, i.e., in the *iter criminis*; or (ii) when the perpetrator of the crime just committed is pursued and there are objective elements which make it possible to identify him and to corroborate that he was committing the crime at the moment immediately before that.

p.17 This Court determined in the aforementioned precedent that "police do not have the authority to arrest on the sole suspicion that someone might be committing a crime or that they were about to commit it", nor "can they detain to investigate", it being specified that in the case of continuing crimes "if the person is not caught at the time of committing the crime or immediately after it, it is not acceptable that the arresting authority detain the defendant, unawares and then attempt to justify that action on the grounds that the person was arrested while committing the offence."

In this regard, the role of the judges is to verify whether the person arrested was in fact in flagrante delicto and to analyze the evidence that was available before the arrest was made. Thus, if there is no evidence to justify that a crime was being committed or had just been committed at the time of arrest, the detention must be declared illegal.

B. Preventive control

- p.19 In resolving the *Amparo Directo en Revision* 3463/2012, the First Chamber of this Court clarified that "the purpose of these controls is not to find evidence of the commission of any particular criminal conduct, but rather they are carried out with the aim of preventing any possible crime, safeguarding the integrity and life of police officers, or to corroborate the identity of any person based on information of crimes previously reported to the police or an authority". Along these lines, it was determined that "in order to justify the constitutionality of a provisional preventive control, it is necessary for the objective reasoned suspicion that a crime is being committed to take place and not a simple suspicion resulting from the subjective criterion of the agent of the authority based on the presumption that, by the mere appearance of the subject, it is possible that he is a criminal".
- p.20 Subsequently, in resolving the *Amparo Directo en Revision* 1596/2014, the First Chamber of this Court distinguished "three levels of contact between an authority that exercises public security powers and a third person": (i) a simple immediacy between the security agent and the individual for the purposes of investigation, identification or crime prevention; (ii) a temporary restriction on the exercise of a right, such as personal freedom, property, freedom of movement or privacy, and (iii) detention in the strict sense.
- p.22 In said precedent, it was established that the aforementioned action levels of the public security authority should not be confused, since there will be situations in which temporary restrictions on personal freedom become detentions as the existence of criminal conduct is verified at the time of the restriction; while in other cases, the police action will be exhausted in said restriction without any detention taking place.

C. Arrests in emergencies

p.23 In the *Amparo Directo en Revisión* 1428/2012, the First Chamber of this Court noted that according to article 16 of the Constitution, a detention in an emergency is only appropriate and justified when, despite the fact that there is no in flagrante delicto, the Prosecutor's Office has elements to establish that the person was probably involved in a crime, and therefore, if the detention is not made immediately, the suspect could escape the action of justice.

p.24 Along these lines, the First Chamber of this Court, in deciding the *Amparo Directo en Revision* 3506/2014, characterized the detention in an emergency "as a measure restricting personal freedom, extraordinary, exceptional and subject to the prior order of the Prosecutor's Office".

It was also stated that an emergency detention must be preceded by an order from the Prosecutor's Office for which the three requirements established in article 16 of the Constitution should be met: "i) that it is a serious crime; ii) there is a well-founded risk that the defendant will abscond; and iii) that a prior judicial review is not possible for extraordinary reasons."

p.26-27 Consequently, the First Chamber of this Court established that "once the three preceding requirements have been concurrently proven, the Prosecutor's Office may order the arrest of the person, under its strictest responsibility, providing the factual and legal elements that motivate its decision", which "means that only by means of an order previously issued by the Prosecutor's Office, duly supported by factual and legal elements, may the subsequent detention of a person be carried out."

p.27 Thus, judges should not limit themselves to verifying that the three requirements that trigger an emergency are met in the specific case; it is also essential that they corroborate the prior existence of the arrest warrant and, where appropriate, also analyze whether, at the time of ordering the arrest, the Prosecutor's Office had evidence justifying the idea that an emergency had occurred.

D. Application of constitutional doctrine

p.29-30 The limitation of the fundamental right to personal freedom is an exception that must be strictly scrutinized, so in order for this right to be affected, all the necessary elements must be present for one of the premises provided for in article 16 of the Constitution to be considered to have occurred: (i) the issuance of an arrest warrant by a judicial authority; (ii) the occurrence of a situation of in flagrante delicto; or (iii) an emergency that can be proven by the Prosecutor's Office. In addition, cases in which a "reasonable suspicion" is present for the police authority to exercise "preventive control" which may subsequently also lead to detention for in flagrante delicto should be considered.

p.30 However, this Court finds that in this case there was no court order authorizing the arrest of RRP and that he was not arrested at the precise moment he committed a crime or at a moment immediately thereafter so it is clear that the premises indicated in points (i) and (ii) of the previous paragraph were not met.

Furthermore, the Prosecutor's Office determined that the requirements to issue an emergency detention order against RRP were present, however, this was 18 hours and 10 minutes after he was materially detained, so neither that detention nor his subsequent holding during that period of time were justified.

p.30-31 The justification used by the police officers and the Prosecutor's Office for the detention and subsequent holding of RRP consisted of a subpoena.

p.31 The First Chamber of this Court, in ruling on the request for modification of court precedent 4/2011, established that this class of subpoenas are not intended to restrict the freedom of the person being sought, "but only to achieve their appearance to testify if deemed appropriate and, once the proceeding ends, they can return to their daily activities".

p.32 Therefore, this Court considers that when police officers have a subpoena issued by the Prosecutor's Office, the only thing they are empowered to do is to notify that person of the existence of a preliminary investigation against them and to indicate that they have the right to appear before the Prosecutor's Office to make their statement, but under no

circumstances may they detain the person and hand them over to the Prosecutor's Office against their will.

- p.33 If the foregoing is not complied with, the detention must be considered arbitrary and, therefore, its invalidity must be declared, as well as the invalidity of all the evidence obtained directly and immediately as a consequence of the detention, a situation that occurred in this case.

II. The right to the presumption of innocence

- p.36 The presumption of innocence is a right of obligatory observance for all the judicial authorities of the country in the context of any criminal proceeding.
- p.37 The Collegiate Circuit Court's decision that the analysis of the violation of the principle *in dubio pro reo* is the responsibility of the trial courts and not of the *Amparo* courts must be rejected. However, the obligations of the *Amparo* courts in relation to the presumption of innocence must be specified, which implies explaining the scope this Court has established for this right.

In the *Amparo en Revision* 349/2012, the First Chamber of this Court identified three aspects of the presumption of innocence in criminal law: (1) as a procedural treatment rule; (2) as an evidentiary rule; and (3) as an evidentiary standard or judgment rule.

A. The presumption of innocence as an evidentiary rule

- p.39 In relation to the presumption of innocence *as an evidentiary rule*, in the mentioned *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 meet 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 overcome the presumption of

innocence understood as an evidentiary standard is that they can be qualified as inculpatory evidence.

- p.40 Thus, when analyzing the legality of a sentence, the *Amparo* courts must verify that the evidence on which the conviction is based can be considered as inculpatory evidence; they cannot uncritically assume that all the evidentiary material in the court record constitutes inculpatory evidence that can enervate the presumption of innocence.
- p.41 Furthermore, the mentioned precedent held that "the current wording of article 20 of the Constitution encompasses the principles of publicity, contradiction and immediacy; constitutional principles that will govern the evidence procedures (offering and presentation) once the constitutional reform in criminal matters has entered into force, so any evidence provided by the Prosecutor's Office in the trial must respect them in order to be considered as valid inculpatory evidence at the time of the probatory assessment". However, in any case, for inculpatory evidence to be valid it must have been obtained without infringing the fundamental rights of RRP.

B. The presumption of innocence as an evidentiary standard

- p.42 In the mentioned *Amparo en Revision* 349/2012, the First Chamber of this Court explained that the presumption of innocence *as an evidentiary standard or a judgment rule* "can be understood as a rule that orders judges to acquit the defendant when sufficient inculpatory evidence has not been provided during the process to prove the existence of the crime and the responsibility of the person", in such a way that "two implicit aspects must be distinguished regarding the presumption of innocence: (i) what is the standard itself: the conditions that the inculpatory evidence must satisfy to consider that it is sufficient to convict; and (ii) the burden of proof rule, understood in this context as the rule that establishes which of the parties must be procedurally harmed by the failure to meet the evidentiary standard."
- p.45 Moreover, in the *Amparo Directo en Revision* 4380/2013 the First Chamber of this Court explained that "probatory value cannot be subtracted from the exculpatory evidence simply on the grounds that there is sufficient inculpatory evidence", since "the sufficiency

of 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 they question the reliability of the inculpatory evidence, and in the event that the premise of innocence actually alleged by the defense is corroborated by those exculpatory elements".

- p.46 In this regard, in resolving the *Amparo Directo en Revision* 3457/2013, the First Chamber of this Court held that "one of the particularities of the standard of evidence in criminal matters has to do with the fact that often the parties propose at least two totally or partially incompatible versions of the facts relevant to the process, which are included respectively in the premise of the accusation and in the premise of the defense", which means that "both inculpatory evidence and exculpatory evidence can coexist in the probatory material". In the aforementioned precedent, this Court clarified that "not only must evidence that directly supports the theory of the defense be considered exculpatory, but also any evidence intended to question the credibility of the inculpatory evidence or, more broadly, to call into question any aspect of the theory of the prosecution", recalling that "ordinary judges have the obligation to assess all the exculpatory evidence so as not to violate the presumption of innocence enjoyed by all defendants".
- p.50 From the foregoing, it follows that the evidentiary standard operates with a prerequisite of two basic premises in relation to the knowledge of the facts in the criminal process. First, the probatory conclusion in relation to the existence of a crime and/or the responsibility of a person can only be established with a certain degree of probability. This means that the relevant facts in the criminal process can never be "fully" proven, in the sense that they cannot be known with absolute certainty.
- p.51 Secondly, the criminal process constitutes an institutional mechanism aimed at ascertaining the truth, where two versions of the legally relevant facts are normally in competition: the theory of the accusation and the theory of the defense. The fact that the probatory debate is structured in this way determines the way in which, from a

methodological point of view, the decision must be made on the question of whether the prosecution proved the theory of guilt that it maintained during the trial.

p.52 Thus, the right to the presumption of innocence considered as an evidentiary standard requires a high level of confirmation of the theory of the accusation in order to be able to declare it sufficiently proven: the guilt of the defendant must be proven beyond any reasonable doubt. At the same time, the presumption of innocence establishes a methodological rule that requires that the probatory decision in criminal proceedings be made on the basis of a comparative analysis of the levels of confirmation of the two disputed theories.

Thus, the evidentiary reasoning of the trial courts should not be aimed at artificially showing that the defense theory has no level of confirmation on the understanding that this is the only way to justify a conviction. In such a case, it must simply be understood that, despite the existence of elements that support the defense theory, once the inculpatory and exculpatory evidence of the prosecution and the defense have been assessed individually and jointly, the latter do not generate a rational doubt as to the guilt of the defendant.

Furthermore, it is important to point out that the possibility of questioning the theory of the accusation by attacking the credibility of the inculpatory evidence that sustains it, or by proposing a theory of innocence in respect of which the evidence deemed relevant to confirm it can also be offered and presented, is a legitimate defense strategy guaranteed and protected by the presumption of innocence, the right to an adequate representation and the right to due process of all persons subject to criminal proceedings.

p.53 Consequently, the ordinary judges and the *Amparo* courts are obligated to impartially assess the exculpatory evidence that has been presented for any of these purposes, and they may not reduce its evidentiary value based on arguments that presume a disqualification of such evidence solely because the purpose of offering it is to support the defendant's version of events or directly question the prosecution's theory .

This does not imply, of course, that the courts should give credibility to all the exculpatory evidence or that they are obligated to give it the evidentiary force that the defense intends. It only means that the arguments used to reduce the credibility of the inculpatory evidence or to deny it the probatory weight proposed by the defense must be based exclusively on the criteria for the rational assessment of the evidence compatible with the presumption of innocence, the right to an adequate representation, and to due process. Similarly, the obligation to make a rational and impartial assessment of the evidence must be extended to the inculpatory evidence, in such way that evidence should not be assessed favorably simply because it is evidence that supports the version of the facts supported by the Prosecutor's Office.

p.53-54 In accordance with the foregoing, the arguments put forward by the Collegiate Circuit Court to support that the Criminal Chamber reduced the probatory value of some of the exculpatory evidence by sustaining that “the depositions of some of the witnesses denoted partiality in favor of RRP by adapting their testimony to what was argued by him”, are contrary to the constitutional doctrine of this Court.

p.54 Obviously, the statements of the witnesses proposed by the defense are usually consistent with the defense’s theory of innocence; and, in general, the exculpatory evidence aims to corroborate what RRP has argued, so it is reasonable for that evidence to support the defense's version of events. In this regard, the Supreme Court emphatically states that there is nothing objectionable about that. In the same vein, there is also nothing illegitimate in seeking to give probatory value to the evidence that supports a "version of the defense" that RRP is entitled to present. On the contrary, the reasonings of the Collegiate Circuit Court are the ones that denote partiality and are incompatible with the doctrine of this Court on the presumption of innocence and the criteria for a rational evaluation of evidence.

III. Right to non-self-incrimination

p.55 First, it should be recalled that paragraph II of section B of article 20 of the Constitution establishes that RRP has the right to "declare or to remain silent", while article 8.2 g) of

the American Convention on Human Rights provides that every person subjected to a criminal proceeding has "the right not to be compelled to testify against himself or to plead guilty".

In this regard, the First Chamber of this Court ruled in the *Contradiccion de Tesis 29/2004* that the right to non-self-incrimination is "a specific right of the generic guarantee of adequate representation that presumes the freedom of the defendant to testify or not", in such a way that "the right of non-self-incrimination must be understood as the right that every defendant has not to be forced to testify, either confessing or denying the facts that are imputed to him or her; for this reason, isolation, intimidation, and torture are prohibited and it is even specified that a confession given before any authority other than the Prosecutor's Office or a judge, or before them without the presence of their defense counsel, shall have no evidentiary value."

p.56 In this regard, it should be noted that this right also protects RRP from the use of a certain type of coercion that may be applied to convince him to cooperate with the authorities by providing information that may incriminate him. This happens in cases where inferences unfavorable to the defendant's interests may be made on the basis of his silence or passivity in both the preliminary investigation and the criminal proceedings, either because the law authorizes those inferences or they are made in practice by ordinary judges. Such inferences constitute a mechanism of indirect coercion prohibited by the fundamental right not to incriminate oneself.

In accordance with the foregoing, it is clear that the Collegiate Circuit Court did not respond to RRP's argument based on the doctrine of this Court on the right not to incriminate oneself.

IV. Right to interrogate prosecution witnesses

p.57 Paragraph IV of section B of article 20 of the Constitution expressly establishes the right of RRP to receive "witnesses and other relevant evidence that he offers, granting him the time that the law deems necessary for this purpose and assisting him to obtain the appearance of the persons whose testimony he requests".

- p.58 In the *Amparo Directo en Revision* 3007/2014, the First Chamber of this Court held that article 8.2 f) of the American Convention on Human Rights establishes "the right of the defense to examine witnesses present in the court, which clearly includes the possibility of challenging the statement of the witness with the intermediation of the judge." Thus, the existence of prosecution testimonies, in respect of which RRP's defense did not have the opportunity to question the persons who testified before the judge, constitutes a violation of the fundamental right in question.
- p.60 In this regard, in the *Amparo Directo* 14/2011 the First Chamber of this Court determined that "since the Prosecutor's Office is considered a party to the process, all the results of its actions must be submitted to the assumptions of an adversarial trial".
- p.61 Along these lines, this Court considers it pertinent to reiterate that "the full defense of the defendant is hindered when the judge determines that the body of evidence is composed of actions originating from the preliminary investigation that are not refuted or challenged in the trial".
- p.62 As for the rest, in the mentioned *Amparo Directo en Revision* 3007/2014 it was also highlighted that "the guarantees of intermediation and challenge are indispensable in order not to leave the defendant defenseless before an accusation made by a witness in the preliminary investigation", therefore "the non-appearance of a witness to render or ratify his statement means that the defendant cannot carry out any of the defensive strategies that could be practiced in such cases to attack the credibility of testimonial evidence: (i) either to question how the witness acquired the knowledge about the facts that he establishes, in order to clarify whether it is personal, referential or inferential knowledge; or (ii) question the credibility of the attributes of the statement, which may call into question the truthfulness of the testimony, the objectivity of what the witness claims to believe, or the quality of the observation on which the statement was based."
- p.63 In accordance with all the foregoing, it is clear that the Collegiate Circuit Court did not respond to the argument raised by RRP in the *Amparo* claim with support from the

constitutional doctrine outlined on the right to interrogate prosecution witnesses in connection with the guarantees of intermediation and challenge.

DECISION

p.71 The decision appealed was overturned and this Court ordered that the case file be referred back to the Collegiate Circuit Court in order to issue a new ruling in which it identifies the evidence that may be affected by such violation of RRP's fundamental right and excludes it from the evidence subject to assessment and decides again on the violations alleged by RRP in his *Amparo* request in relation to the right to the presumption of innocence, the right to non-self-incrimination, and the right to interrogate witnesses presented by the prosecution, taking into consideration the constitutional doctrine on those rights reiterated in this decision.