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**EVIDENCE EXCLUSIONARY RULE IN THE CASE OF TORTURE  
(REGLA DE EXCLUSIÓN PROBATORIA ANTE LA DEMOSTRACIÓN DE TORTURA)**

**CASE:** *Amparo Directo en Revisión 4530/2014*

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

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

**DATE OF THE DECISION:** September 30, 2015

**KEY WORDS:** right to due process, rights of the defendant, torture, exclusion of evidence, weighing of evidence.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 4530/2014* Plenary, Arturo Zaldívar Lelo de Larrea, J., decision of September 30, 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-emplematicas/sentencia/2022-01/ADR4530-2014.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center of Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 4530/2014*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISION* 4530/2014

**BACKGROUND:** In Veracruz, a criminal judge sentenced JOV for the crime of kidnapping and, later, the criminal court chamber that heard the case confirmed JOV's guilt and increased the sentence imposed by the criminal judge. JOV filed an *amparo* lawsuit against the court's decision in which he stated that he had been tortured during the transfer from the place of detention to the prison in order to obtain the confessions from him and his co-accused. JOV also argued that this situation was manifested in the preliminary statements and amendments, and that specialists in psychiatry concluded that JOV was indeed subjected to torture. The collegiate court denied the *amparo*, considering that it was not credible that JOV and the co-accused had been tortured when giving their preliminary statements. JOV filed a *recurso de revision* against the collegiate court decision, which was heard by the First Chamber of Mexico's Supreme Court of Justice (this Court).

**ISSUE PRESENTED TO THE COURT:** Whether constitutional and conventional standards for the investigation, prevention, punishment, and reparation of torture were applied in the case and what are the effects of the occurrence of torture on the weighing of evidence.

**HOLDING:** The *amparo* was granted for the following reasons. The Court warns that torture is a violation of human rights, that it affects the fundamental right to due process of law, and that, in the event of such a complaint, the judicial authority has the obligation to investigate it. This obligation is an essential formality of due process since it impacts the effective defense of the accused in the criminal process. In the event that torture is claimed, judges must analyze whether this violation of human rights had an impact on the generation, introduction or presentation of evidence incorporated into the criminal case, because if it did, they must apply the evidence exclusionary rules to the unlawful evidence.

If torture is not claimed, but there is a complaint or signs of torture, the judicial authority hearing the criminal proceedings must give notice to the Prosecutor's Office so that the act may be investigated as a crime. In addition, it must carry out an informal analysis of the material

elements available so far in the proceeding, to determine whether or not there are elements that lead to the conclusion that torture occurred.

Hence, when a failure to investigate is detected after the conclusion of the pre-trial criminal proceeding, the proceeding must be reinstated so the omission can be remedied and the legal situation of the defendant can be resolved taking this circumstance into account. This reinstatement of the proceeding must go back to the action immediately prior to the order to close the trial, in the case of the traditional procedural system. In the event that it is determined that torture did occur in the process, either as a crime or as a violation of the human right to due process, any evidence that has been obtained directly from or derived from it, including statements, confessions, and any incriminating information resulting from them, must be excluded.

**VOTE:** The First Chamber resolved this case by a majority of four votes by Justices Olga María del Carmen Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, and Alfredo Gutiérrez Ortiz Mena. Judge Jorge Mario Pardo Rebolledo voted against (he issued a dissenting opinion).

The votes cast can be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=171221>

## EXTRACT OF THE *AMPARO EN REVISION* 4530/2014

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of September 30, 2015, issues the following decision.

### BACKGROUND

- p.1-6 On March 19, 2014, JOV filed an *amparo* lawsuit against the decision issued by the criminal court chamber that convicted him of the crime of kidnapping. JOV essentially argued that: (a) the decision issued against him was not properly grounded and reasoned, as there is insufficient evidence to prove that he had committed the offences; and (b) the criminal court chamber failed to exercise *ex officio* conventionality control in human rights, in protection of his right not to self-incriminate, since its decision was based on confessions by him and his co-accused which were obtained under torture. JOV pointed out that this situation was manifested in the respective preliminary statements and amendments, in addition to the fact that the specialists in psychiatry, offered by the defense and the prosecution, concluded that he was indeed subjected to torture.
- p. 9 The collegiate court denied the *amparo*. With regard to the torture referred to in the lawsuit, the collegiate court established that it was not credible that he had been tortured when giving his preliminary statement before the criminal judge, since he had been assisted by defense counsel and had the freedom to express himself. Therefore, it considered that the criminal court chamber was correct to deny probative value to the opinions of specialists in psychiatry, since even though the specialists had concluded that the acts of torture narrated by JOV caused him post-traumatic stress, that did not motivate him to confess in pre-trial, in addition to the fact that there was no evidence to prove that he was beaten. The collegiate court also considered that it was correct to give probative value to the confession of the co-accused made in his preliminary statement and statement at prosecution.
- p.11 JOV filed a *recurso de revisión* and argued that the collegiate court had misinterpreted articles 14 and 16 of the Constitution by failing to analyze all the evidence and by giving

probative value to confessions obtained under torture. Finally, the *recurso de revisión* was heard by this Court.

## STUDY OF THE MERITS

- p.13 This Court considers that the allegations relating to the failure to properly ground and reason the challenged act, as well as the assessment of the evidentiary material on the basis of which the alleged offences and criminal liability were considered to have been demonstrated, are not issues that can be the subject of a *recurso de revisión* in an *amparo directo*, since they relate to questions of legality, so it is not appropriate to rule on their correction or not.
- p.16 In spite of the above, we must correct the deficiency of the complaint to address the collegiate court's failure to rule on JOV's claim that his and his co-accused's confessions should not have been given probative value because they had been obtained under torture, which is demonstrated by psychiatric and graphoscopic opinions.

### **A) Prohibition of torture through the constitutional doctrine of this Court**

- p.20-22 Torture is prohibited in articles 20, section B, section II, 22, first paragraph, and 29, second paragraph of the Political Constitution of the United Mexican States (the Federal Constitution). It is also prohibited in articles 1, 3, 6, 7, 8, 9 and 11 of the Federal Law to Prevent and Punish Torture (LFPST).
- p.23 International instruments require domestic legal systems to condemn torture in the context of a crime, regardless of whether it was consummated or attempted or the degree of involvement of the individual who perpetrates it. Those instruments also establish the obligation to detain the torturer for internal prosecution or extradition after a preliminary investigation; punish this offence with appropriate penalties; render all possible assistance to criminal proceedings relating to crimes of torture, including the provision of any evidence in their possession; and to invalidate any statement or confession obtained under torture for the purpose of forming evidence in any proceedings, except against the torturer.

- p.25-26 The right not to be subjected to torture, cruel, inhuman, or degrading treatment or punishment is an absolute right that is *jus cogens*. Consequently, the authorities have an obligation to prevent, investigate, and punish torture. The right not to be subjected to torture is absolute; therefore, it does not allow any exceptions, even in emergency situations that threaten the life of the nation.
- p.27-29 Torture triggers a special and more serious category that requires careful analysis under national and international standards, in its impact as both a human rights violation and a crime. The Inter-American Court of Human Rights has emphasized that torture and cruel, inhuman, or degrading treatment or punishment are prohibited by International Law on Human Rights. The prohibition of torture and cruel, inhuman, or degrading treatment or punishment is absolute and non-derogable, even in the most difficult circumstances, such as war, threat of war, fight against terrorism and other crimes, state of siege or emergency, internal commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or calamities.
- p.30 The Inter-American Court of Human Rights has also specified that the violation of a person's right to physical and mental integrity ranges from torture to other types of cruel treatment, the physical and mental consequences of which vary in intensity according to endogenous and exogenous factors of the persons involved (duration of treatment, age and health, among others). This implies a review of the personal characteristics of an alleged victim of torture or cruel, inhuman, or degrading treatment, as these must be taken into account when determining whether personal integrity was violated.

### **B) Timeliness of reporting acts of torture**

- p.32 The violation of the human right to personal integrity by the commission of acts of torture against persons who are in the custody of the State authorities generates serious consequences; this requires torture to be investigated as: (a) a crime in the strict sense and (b) a violation of the human rights of the person subjected to criminal proceedings.
- p.32-33 The investigation of the accusation of torture may not be conditioned on circumstances of temporality or opportunity to allege it, or even the existence of evidence consistent with acts of torture . As a violation of human rights it is not subject to conditions of preclusion.

The violation of the human right to personal integrity must be investigated by the State as soon as the complaint is known or when there are well-founded grounds for believing that an act of torture has been committed . This is not subject to a discretionary decision of the State authorities but must be immediately observed based on legal norms of international and domestic sources. Torture should be investigated because it is conduct classified as a crime.

- p.34 The use of torture to obtain elements to accuse a person of a crime not only affects the personal integrity of the alleged victim of the torture but also violates the human right to freedom, through illegal or arbitrary detentions and to an adequate and timely defense, among other types of harmful impacts that may be generated.
- p.36 The core, objective and ultimate aim of the prohibition of torture and other cruel, inhuman, or degrading treatment is the protection of a broader fundamental right: personal integrity (physical, mental, and moral), derived from human dignity. It is therefore an absolutely fundamental right enjoyed by all people simply because they are human beings. Thus conditions of timeliness cannot be imposed for making an accusation of torture.
- p.37 The complaint of human rights violations allegedly committed against a person subject to criminal proceedings has no conditions of preclusion, and therefore can be alleged at any stage of judicial proceedings. Otherwise, the court would be allowed to dismiss the complaint of torture submitted beyond a time limit or procedural stage, which would be contrary to the third paragraph of article 1 of the Constitution, which requires all State authorities to prevent, investigate, punish, and remedy human rights violations, including acts of torture.
- p.41 Since the allegation of torture of a person involved in a criminal proceeding cannot be subject to preclusion, it must be dealt with regardless of when it is asserted or whether a case has been prepared. This implies that the complaint or indication of torture, in the context of any type of criminal procedure, triggers the obligation of the authority who is hearing the case at that moment to investigate. This includes both administrative authorities — agents of public security forces and the Prosecutor's Office — as well as judicial authorities of first or second instance, who, during the proceedings, become aware

of a complaint or have reason to believe that an act of torture has been committed against the accused. It also includes the constitutional control bodies that, when hearing an *amparo indirecto* or *directo*, have information on an act of torture.

p.41-42 The standard defined by the Inter-American Court of Human Rights requires the State to initiate an investigation *ex officio* and immediately when there are indications of acts of torture, even if they have not been reported to the authorities, and especially in the case of a complaint. This implies that torture can be alleged at any time.

### **C) Torture as a violation of human rights of the defendant in criminal proceedings**

p.44-45 In the *Amparo en Revision 703/2012*, the First Chamber of this Court established guidelines for authorities before whom an allegation of torture is made taken from the parameters set by the Inter-American Court of Human Rights and based on the Inter-American Convention against Torture, which establishes the duty of the State to investigate when a complaint is filed or there are indications that an act of torture has been committed within its jurisdiction.

p.46 In view of the foregoing, when any authority learns that a person claims to have suffered torture or when it has information to that effect, it must immediately and *ex officio* give notice to the Prosecutor's Office to initiate an investigation, the purpose of which is to determine the origin and nature of the impact on the personal integrity of the person who alleges torture and identify and prosecute the persons responsible.

p.47-54 For the reparation of a violation of the right not to be tortured, it must be specified whether the failure of the judicial authorities to investigate a complaint of torture during the procedure constitutes a procedural violation. In the Contradictory Decisions Case 315/2014, the First Chamber of this Court indicated that the right to due process requires the fulfillment of the essential procedural formalities, which altogether form the "right to a hearing". When the essential procedural formalities are violated, the defendant cannot fully exercise his fundamental right of defense and an *amparo directo* proceeding is appropriate. Therefore, if the prohibition of torture and other cruel, inhuman or degrading treatment protects the fundamental right to personal integrity (physical, mental and/or moral), and the violation of that right in relation to criminal proceedings is established,



there is a violation of the procedural laws established in section VIII of article 173 of the Amparo Law.

p.55-56 Furthermore, since torture is a violation of human rights from which information or elements can be obtained that can subsequently be used to support a criminal charge against the person identified as an alleged victim of torture, there is a clear link between the violation of human rights and due process.

p.57-58 Compliance with the mandatory parameters imposed by the international or national legal framework, in the case of complaints or indications of torture, requires the judicial authority hearing the criminal proceedings, after giving notice to the Prosecutor's Office so it may investigate the act as a crime, to carry out an informal analysis of the material elements available so far in the proceeding, to determine if there are elements suggesting that torture occurred.

p.58 When there is sufficient evidence to presume the existence of torture, it is unnecessary to open an additional investigation in the criminal process itself, and therefore when deciding the legal situation of the defendant it must be analyzed whether such human rights violation had an impact on the generation, introduction or presentation of evidence incorporated in the criminal case, because if it did, the rules for excluding illegal evidence must be applied.

Otherwise, when there is insufficient evidence to allow the judicial authority to determine that acts of torture were committed against the defendant, then the investigation must be carried out in the criminal proceedings themselves to answer that question. When such an investigation is omitted, that due process violation denies the defendant an adequate defense. Hence, when a failure to investigate is detected after the conclusion of the trial stage of the criminal proceedings, the procedure must be reinstated so that the omission is corrected and the legal situation of the accused can be resolved taking this circumstance into account.

p.59 The investigation will initially corroborate whether the torture actually took place; secondly, if a violation of the personal integrity of the defendant is established, it will then be necessary to determine whether such conduct, which violates human rights, had any

impact on the procedural stage at which it occurred; therefore, the legal situation of the defendant is determined based on the value that the authority has given to the evidence of torture, in respect to which the evidence exclusionary rules should apply.

p.60-61 Failure to investigate the existence of torture as a result of a complaint or the existence of indications that the violation of human rights occurred, results in the reinstatement of the proceeding as a remedy. Such a reinstatement does not have the scope to nullify, *per se*, the investigation or the evidence already released at trial. The reinstatement of the proceeding must be carried out up to the action immediately prior to the order for the closure of the investigation, in the case of the traditional procedural system.

p.61 This is to protect the balance between the fundamental right to an expeditious delivery of justice, which is enshrined in article 17 of the Constitution, and the fundamental right of the defendant not to be subjected to torture, as well as the corresponding fundamental rights of the victims of the crimes. The purpose of the reinstatement of the procedure is to take the necessary steps to determine the veracity of the complaint of acts of torture, through a diligent investigation and the expert examinations that determine the existence or not of the acts of torture. The justification for the reinstatement of the proceeding is to verify the existence of the alleged torture.

p.62 There is no reason for any other issue or question in the process to be affected, because if the allegation of torture is not proven, the proceeding will continue in its own terms. In the event that the existence of the alleged violation is proven, its substantiation will impact the evidentiary material, which will be subject to exclusion at the time of sentencing as appropriate. Not all the proceedings of the trial should be annulled, since that would invalidate all the actions carried out regardless of the outcome of the investigation into their relationship to the allegations of torture. This would affect the prompt delivery of justice, and could revictimize the persons who suffered the crime.

#### **D) Application of the evidence exclusionary rules in case of torture**

p.64 When considering torture as criminal, unlawful, and culpable conduct (a crime), the Prosecutor's Office must (a) prove that the victim was subject to the violation of their personal integrity and (b) verify, beyond a reasonable doubt, the criminal responsibility of

the torturer. However, when torture is analyzed as a violation of personal integrity, with repercussions on the human right to due process, it will be sufficient to show the existence of the impact on personal integrity to consider it proven, even if it is not possible at the moment to identify the torturer(s).

- p.66 Respect for the right to be tried by impartial courts and the right to an adequate defense are sought requires that evidence obtained irregularly (whether for contravening the constitutional or the legal order) must be considered invalid. Therefore, no evidence that violates the law should be admitted and if it has already been presented, all its probative value must be eliminated.
- p.67 Therefore, if the existence of torture has been established, either as a crime or as a violation of the human right to due process, any evidence that has been obtained directly from it or that derives from it, which includes statements, confessions, and all incriminating information resulting therefrom, must be excluded.
- p.68-69 In accordance with the foregoing, the interpretation of the collegiate court regarding the obligations of state authorities to prevent, investigate, punish, and remedy human rights violations due to acts of torture is incorrect. First, the collegiate court did not notify the Prosecutor's Office to initiate an investigation into the allegations of torture, with an aim to determine the veracity of the complaint and conduct the respective medical examinations. Furthermore, despite the fact that JOV argued in his claim the existence of the expert psychiatric opinions, from which it appears that he suffered bodily and psychological harm which caused him post-traumatic stress disorder, the collegiate court rejected the argument without taking into account that the complainant does not bear the burden of proof with respect to the facts classified as torture.
- p.69 Finally, the interpretation of the collegiate court is also incorrect regarding the effects of its decision, because having considered that the elements in the case were not sufficient to establish torture as a violation of personal integrity, instead of rejecting the allegation of torture, it should have granted the *amparo* to have the chamber order the reinstatement of the proceeding so that the judge could carry out an investigation in the terms specified in this decision.

## DECISION

p.102 The decision of the collegiate court is overturned and the case is returned to it, so that it may re-examine JOV's argument related to the existence of torture.