

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.

**TWITTER: BLOCKING OF A USER BY A PUBLIC SERVANT
(TWITTER: BLOQUEO A UN USUARIO POR PARTE DE UN SERVIDOR PÚBLICO)**

CASE: *Amparo en Revisión 1005/2018*

REPORTING JUSTICE: Eduardo Medina Mora I.

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

DATE OF THE DECISION: March 20, 2019

KEY WORDS: right to freedom of expression, right of access to information, right to privacy, public figure, public servant, journalist, social networks, Twitter.

CITATION OF THE DECISION: Supreme Court, *Amparo en Revisión 1005/2018*, Second Chamber, Eduardo Medina Mora I., J., decision of March 20, 2019, 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/AR1005-2018.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of the Mexico's Supreme Court of Justice, Excerpt of the *Amparo en Revisión 1005/2018*, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 1005/2018

BACKGROUND: A journalist noticed that the attorney general of the State of Veracruz had blocked him from the social network Twitter, of which both were users, preventing him from having access to the public and general interest information the attorney general shared in his account. The journalist filed an *amparo indirecto* lawsuit against the block, which was granted by a district judge. The attorney general filed a *recurso de revisión* which was heard by the Supreme Court.

ISSUE PRESENTED TO THE COURT: Whether a public servant can block a citizen in the social network Twitter, and whether the right to privacy of public servants or the right of access to information should prevail.

HOLDING: The *amparo* decision was upheld. The blocking of the citizen from the account of the attorney general of Veracruz in the social network Twitter violated the affected party's right of access to information because the account contained information on the activities the public servant carried out as attorney general. In this case, the right of access to information prevailed over the right to privacy, since the information contained in the attorney general's Twitter account was of public interest and any other user could access it. The *Amparo* was granted to the citizen so he would be given access to the attorney general's account on Twitter, removing the blocking restrictions imposed on him.

VOTE: The Second Chamber of Mexico's Supreme Court of Justice decided this case with the unanimous vote of the four justices Alberto Pérez Dayán, Eduardo Medina Mora I., José Fernando Franco González Salas (issued his vote with reservations) and Javier Laynez Potisek (reserved the right to issue a concurring opinion) and Alfredo Gutiérrez Ortiz Mena (reserved the right to issue a concurring opinion). Justice José Ramón Cossío Díaz was absent.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=246865>

EXTRACT OF THE *AMPARO EN REVISIÓN* 1005/2018

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 20, 2019, issues the following decision.

BACKGROUND

p.4-5 A journalist for various media outlets in which he covers topics related to insecurity, human rights, disappearances and clandestine graves, uses the social network Twitter as a work tool, since it allows him to disseminate the articles he drafts and maintain contact with the authorities of the State of Veracruz.

p.5 On October 6, 2017, the citizen noticed that the attorney general of the State of Veracruz, had blocked him in the social network Twitter, preventing him from having access to the information that the attorney general shares as an authority in his personal account, information which is public and of general interest.

The citizen filed an *amparo* lawsuit against the above.

p.7 The District Judge decided to grant the *amparo* to the affected party.

p.9 The attorney general of the State Veracruz filed a *recurso de revisión* against that decision.

STUDY OF ADMISSIBILITY

I. The attorney general's blocking of the citizen in the social network Twitter is an act of authority

p.13 To access the *amparo* trial, the act or omission must be issued by an authority, which is any entity that exercises decision-making powers that are attributed to it by law, such powers constituting an administrative capacity, whose exercise cannot be waved since the source of that faculty is public in nature.

p13 According to the Organic Law of the Attorney General's Office of the State of Veracruz de Ignacio de la Llave, the attorney general's office is a body granted legal capacity and its

own patrimony, having autonomy (technical, budgetary, managerial and of rule issuance) according to which it will systematize the information under its safekeeping.

- p.14 In addition, according to that law, the attorney general of the State of Veracruz has the responsibility of promoting social communication and disseminating information of public interest linked to the activities carried out in the performance of his position. For this purpose, he will establish the rules and the channels of communication with the citizenry through digital platforms or social networks.
- p.15 Consequently, the private citizen has a correlated right to demand performance of that obligation.

The laws do not obligate the attorney general to have an account in the social network Twitter in order to interact with citizens. However, if the attorney general decided to communicate with the citizenry through his personal account (by sharing through that medium information related to the performance of his job), it is clear that, given the type of information shared, the attorney general voluntarily assumed the normative consequences.

- p.16 It should be noted that the attorney general not only disseminated personal information in his account, but also content on the functions and activities resulting from his job.

Therefore, if he blocks the account of one of his followers, he is violating his obligation to disseminate information relative to his activities. Consequently, he is restricting the right of access to information of the blocked user. This situation constitutes an action of authority for purposes of the *amparo* trial.

II. Non-existence of a personal and direct grievance

- p.17 The account of the attorney general is used for communicating both personal information and information on his activities as a public official. By sharing the latter type of information through this medium, the attorney general tacitly decided to use his personal account in Twitter to daily inform society of his activities as a public servant. Given that this

information is relevant, the means of dissemination must be accessible to all citizens, including the affected journalist.

- p.17-18 When the attorney general blocked the affected journalist from access to the account, he prevented him from learning relevant social information. Therefore, his right of access to information was personally and directly violated, since his right to seek information on the work of a public servant is being restricted.

STUDY OF THE MERITS

I. Right of access to information

- p.18 This Supreme Court has established that the right to information is immersed in the right to the freedom of thought and expression, as it includes the freedom to seek, receive and disseminate information and ideas of all kinds, without considering borders, whether verbally, in writing or in print or artistic, or by any other procedure chosen.

Article 6 of the Constitution establishes that all information in possession of any authority is public and may only be reserved temporarily for reasons of public interest in the terms established in the laws.

- p.23 Access to information constitutes an essential tool for materializing the principle of accountability as well as transparency in public administration and improving the quality of democracy.

“If there is an elemental principle in the functioning of the contemporary public administration, it is that of publicity and transparency, resulting from the relationship between the citizen’s right to have access to administrative information and the consequent obligation of the public administration bodies to inform and, in some cases, to publish information of general interest”.

II. Right to privacy

- p.26 The Supreme Court has defined as private that which is not public life. It is the sphere preserved from the action and knowledge of others; what we wish to share only with those we choose; the activities of people in the private sphere related to the home and family.

p.27 The notion of privacy is related to the sphere of people's lives where they can freely express their identity, whether in their relations with others or individually. Privacy is linked with other rights.

People have the right to enjoy a sphere of projection of their existence that remains reserved from the invasion and gaze of others. This sphere concerns only them and provides them with adequate conditions for displaying their individuality, for the development of their autonomy and their freedom. People have the right to keep from others (or share only with their closest circle) certain manifestations or dimensions of their existence (conduct, data, information, objects) and the corresponding right to not have others invade them without their consent.

a) Elements of the right to privacy

p.29 The Inter-American Court of Human Rights has reached conclusions in various cases from which it can be established that the right to privacy has two elements:

i) The right of the person to keep his personal sphere (which includes his family life, his domicile or his correspondence, among other issues) beyond interference or intrusion by unrelated persons.

ii) The right to reserve certain aspects of his private life and control the dissemination of personal information to the public.

p.30 Although the authorities are obligated to guarantee the right to privacy of all persons, this right is not absolute; it can be restricted provided that this is not done abusively, arbitrarily or disproportionately.

When the right to privacy collides with the right to information, it is important to consider the activities or actions the persons involved in that conflict carry out. The greater the public exposure of these persons, the more their right to privacy is reduced, and therefore the perspective for the analysis of this conflict is different depending on the nature of the public interest their activities or actions have.

b) Concept of public figure

p.31 The First Chamber has defined public or well-known figures as those who, as a result of social, family, artistic or athletic circumstances, or because they have disseminated facts and events of their private life or any other analogous situation, have projection or notoriety in a community and, therefore, voluntarily submit themselves to the risk that their activities or their private life will be subject to greater dissemination, as well as the opinion and criticism of others, including those that can be irritating, uncomfortable or hurtful.

The concept of public figure contemplates public servants or officials. This is logical since their activities are relevant to society because their work is related to the management of the functions of the State. Therefore, the community has interest in these being handled adequately.

c) Right to privacy of public servants

p.32 Given the interest that the activities and functions of public servants have for the community, their right to privacy is more tenuous than the rest of society, since they are subject to greater social scrutiny, not only because of their official activities or the exercise of their functions, but also with respect to those aspects of their private life that can be linked to the performance of their function and, therefore, to the public interest.

The Supreme Court has held that there is information that relates to aspects that are desirable for citizens to know, such as the activities public servants carry out as part of their work.

p.34 Nevertheless, the simple fact of being a public servant does not imply that all your activities or circumstances are of interest to society. In each case it would have to be analyzed whether the activity or circumstance involves a public interest. If so, the acts would be more exposed to social scrutiny.

d) Spheres of privacy of information in the digital era

p.35 In the context of the digital era, three spheres of privacy of information can be distinguished:

- i) Strictly private information, which includes that which the issuer wishes to be private, with a single, specific recipient. Text messages and emails are in this category.
- ii) Semi-private or semi-public information, which would be all that information that the issuer decides to show to a recipient or person of his choice, and therefore it would not be individualized, such that the recipients would not have the right to make it public or disseminate it in a sphere that is not the one the issuer has chosen. In this case the recipients would not have the power of disposition of this information (for example, the public content in social networks).
- iii) Public information which would include any publication that has no restriction on access.

III. The interaction of the rights to information and to privacy

The Supreme Court has held that fundamental rights are not absolute and their exercise is subject to limits. The field of action related to these concepts is delineated by the existence of other constitutional rights or purposes that also merit protection and effectiveness. This is so given that there are rights and freedoms that may collide in their daily exercise. This is the case of the right to information and the right to privacy and, in general, the so-called personality rights.

p.36 Political debate and public discussion of matters of general interest constitute one of the pillars on which the functioning of the democratic system rests, and thus are considered part of a specially valued discourse that, as one of its principal effects, “leads to the reinforced protection of the right of access to information on public matters”.

The right to information related to access to issues referring to the public function and state management enjoy reinforced guarantees, and therefore the authorities must ensure their maximization.

p.37 The First Chamber has held that the level of protection of debate and access to information of public interest can cause certain interferences with the right to privacy, particularly of public servants, as public figures, since they, being engaged in public activities or given the role they perform in a democratic society, are exposed to more vigorous control of their activities and manifestations than individuals without any public projection.

This situation does not imply that public figures do not have a right to privacy; rather, their status – derived from the type of activities they carry out – puts them in a threshold of protection different from private persons. However, this diminishment in their right to privacy cannot go beyond the core matter thereof, and such limitation must be proportional to the rest of the constitutional rights and principles it is intended to favor in each specific case.

p.39 The right to privacy of public figures and particularly of public servants is limited by the right to information and the democratic principles that underlie this right to information. It can even be asserted that the social control to which they are subject is not limited exclusively to their public manifestations or actions but can also extend to their private activities.

However, in order not to violate the essential core of the right to privacy, especially regarding the activities carried out in the private sphere, it is necessary to evaluate and weigh the different constitutional provisions in conflict and, in all cases, analyze whether the restriction in question is justified to favor the public interest or concern. In other words, whether it involves relevant information for the discussion of the common matters that interest everyone.

**a) The exercise of these rights on the internet and in social networks
(specifically in the social network Twitter)**

p.41 The levels of interconnection that the social networks generate have acted as a means for expanding the right to the freedom of expression.

p.42 Twitter cannot be considered just a platform that promotes and strengthens the freedom of expression of the users. Its work in promoting democratic values such as in the

dissemination of content of interest to society – which includes governmental information – as well as the debate of matters of public interest must also be recognized.

p.42-43 Various freedoms have been strengthened thanks to the opportunities of easy access, expansion and immediacy that the internet and the social networks provide. However, it must be recognized that abuses may also be committed in those virtual mediums. Therefore, the interactions in the digital community cannot be outside the Law and the State will have to intervene in cases in which rights of the users of the network are violated. Since the issue involves two fundamental rights in collision, this intervention must be made pursuant to case law parameters referring to permissible restrictions. In addition, in the case of the exercise of rights on the internet, the Second Chamber established the principle that the flow of information online must be restricted as little as possible, which means only in exceptional circumstances and to protect other human rights.

p.44 If a public servant uses a private account in social media to report on his activities as public servant, then the analysis to determine if his blocking of the account of another user is or is not restrictive of the right of access to information must consider how the public official is currently using his account. It also must be considered that the social networks, and specifically Twitter, are channels to both receive and obtain information.

IV. Study of the specific case

p.45 In this case, in May of 2011, the citizen created the account for personal purposes. This is several years before he became attorney general. However, once he was appointed attorney general, he has been reporting his activities as public servant through that account.

By including tweets related to his activities as a public servant, he voluntarily decided to place himself at a level of publicity and scrutiny different from a private person. For this reason, it was the official himself who freely decided to extract his account from the private sphere to transfer it to the public sphere, with all the contents that preexisted in it.

This conclusion is reached, to begin with, by the simple fact that the account is described in relation to his job: “Attorney General of the State of Veracruz, father, husband and

constant seeker of justice”; but also because the account disseminates information referring to his activities as attorney general, including attendance at work meetings and public events related to his job.

In this regard, the threshold of protection of the right to privacy that private persons and their respective accounts in social networks enjoy is affected by the choice of the attorney general himself upon deciding to use his Twitter account as a channel of communication with society.

Thus, being a public figure and particularly a public servant, his right to privacy is “blurred” in order to favor the right to information. This is so because the issues of general interest, such as those related to the performance of his governmental duties, are subject to a strong level of scrutiny by the media and society.

p.46 Blocking the access of a citizen to contents published there represents an improper restriction on his right of access to information.

In this case, the attorney general does not express sufficient reasons for considering that his Twitter account could be classified as a private account, or even less that the information contained there is reserved, whose dissemination violates his right to privacy, nor that he has found abusive behavior by the affected party.

Given that fact, the account must be considered of general interest, protected by the right of access to information, which may only be restricted according to the parameters of constitutional regularity consisting of: 1) being established in the law, 2) pursuing a legitimate end and 3) being appropriate, necessary and proportional.

Although the account does not contain information on human rights, forced disappearances or clandestine graves, the sole fact that the affected party is a citizen, means he is guaranteed access to the information contained in that account. The affected party, as part of a community, is interested in the activities carried out by public servants, such as the attorney general.

p.47 In addition, the affected party is a journalist, and therefore he is granted reinforced guarantees in the investigation, search for and obtainment of all types of information that he may report as it is of interest to society.

p.48 It should be mentioned that there is a possibility of finding abusive behavior derived from the nature of this social network, given that it permits bilateral communication and the exchange of messages, opinions and publications among the users.

Therefore, it is possible that abusive behaviors can result in a justified measure of restriction or blocking, but for this to be valid those expressions or conduct must be excluded from constitutional protection in terms of the parameters of the case law that govern the issue.

Comments that express severe, provocative or shocking criticisms that may be indecent, scandalous, disturbing, concerning or cause some form of harassment, discomfort or offense should never be considered abusive behavior of the users of the network.

V. Analysis of the conflict between the rights to privacy and access to information under the case law parameters governing the issue

a) The information contained in the account must be of general interest to society

In this matter, the requirement is met based on the following reasons: first, the Twitter account in question belongs to a public servant, who not only currently holds the position of attorney general, but also has earned public notoriety in that State. Second, the content disseminated through that account refers to, among other things, the public activities that the attorney general carries out daily in fulfillment of his public position.

p.48-49 The information contained in and disseminated through the Twitter account of the attorney general has public relevance or general interest in that it can contribute to the debate in a democratic society by projecting the activities and expressions of this public figure.

b) The prevalence of the right to information over the right to privacy must be proportional and justified.

p.49 In this case, the right to information must prevail over the right to privacy. The public servant's blocking of the account of the journalist implied an improper restriction on the right of access to information of the journalist.

This blocking was not based on the pursuit of a constitutionally legitimate end since, although the attorney general argued that the information published in his Twitter account was personal and belonged to the sphere of his private life, the reality is that the information disseminated there is of public interest. This is so because any other user can have access to it.

It is also not possible to argue that the order to unblock the affected party is a disproportional measure that unjustifiably affects the right to privacy of the public servant. In principle, because he himself voluntarily placed himself in that position of greater public scrutiny and decided to use this digital medium as a channel of communication with the citizenry. He did not prove the need to safeguard the information disseminated in his Twitter account from the interference of society. This is added to the significant national and international case law establishing that the notoriety of public figures generates for them a threshold of protection of the personality rights less extensive than for private individuals, without that reduction representing a disproportionate limitation on their right to privacy.

c) The publicity of the Twitter account of the attorney general is justified.

p.49-50 The information disseminated through the Twitter account of the attorney general is visible not only to the users of the social network, but to any person with access to the internet, since that account has an open configuration that permits anyone to visualize its content. It was the holder of the account himself who set up the open privacy and determined that everything disseminated there can be accessed by the public. This public servant could have set up a closed account, which he did not do.

At no time was abusive behavior by the journalist that could justify blocking his account alleged. Nor was it argued that the access by the journalist to the content of the account would violate the core of the right to privacy of the public servant. The obligation of the

attorney general to unblock the affected party is not disproportionate nor unduly affects his rights.

Finally, it is important to mention that the attorney general and his Twitter account acquired public notoriety. The first, by undertaking a public position. The second, by being voluntarily used by its holder to disseminate information referring to the performance of his job. By doing so, he established a channel of communication between a public servant and the citizenry.

In this regard, the challenged action of the authority violates the journalist's right of access to information, because the Twitter account contains information on the activities that the attorney general carries out. Given that this information is of public interest, it is subject to greater scrutiny by society.

DECISION

p.50-51 Given the impact, the Supreme Court confirmed the decision and, consequently, to fully restore the affected party in the enjoyment of his right of access to information, his access to the attorney general's Twitter account must be permitted.