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**VALIDITY OF THE EVIDENCE IN CASES OF UNJUSTIFIED DELAY  
IN TURNING OVER THE DETAINEE  
(VALIDEZ DE LAS PRUEBAS EN CASOS QUE SE PRESENTA DEMORA INJUSTIFICADA  
EN LA PUESTA A DISPOSICIÓN DEL DETENIDO)**

**CASE:** *Amparo Directo en Revisión 2397/2014*

**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 due process, rights of the detainee, delay in turning over to the authority, weighing of the evidence, obligations of the public prosecutor, evaluation of the police report, evaluation of the statement at prosecution of the detainee

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 2397/2014*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., 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-embematicas/sentencia/2022-01/ADR2397-2014.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center of Constitutional Studies of Mexico's Supreme Court of Justice, *Excerpt of the Amparo Directo en Revisión 2397/2014*, Mexico.

## SUMMARY OF THE *AMPARO DIRECTO EN REVISIÓN* 2397/2014

**BACKGROUND:** In Merida, PGAC and MFSP were found struggling in public for a transparent nylon bag. Two officers of the Ministry of Public Security of Yucatán (*Secretaría de Seguridad Pública de Yucatán*) (SSPY) noticed the struggle and, once the two persons detected their presence, they threw the bag to the ground and tried to run away. The police intercepted them and noted that MFSP had injuries on his left forearm and was inebriated. MFSP indicated that PGAC had injured him with a knife, so the police interrogated PGAC and asked him to show the content of his pockets. PGAC took rice paper and a box with cannabis herb out of his pants pockets. Then the police reviewed the bag the men were struggling over and they realized it had the same kind of herb, and a few meters from there they located a knife. In response to the questions of the police, both individuals indicated that the plastic bag was theirs and that the knife belonged to PGAC. After the police called an ambulance which gave medical attention to MFSP, they took the men to the SSPY, where the doctor examined them, dressed the wounds and determined that both were inebriated and high on cannabis. The doctor issued three medical certificates. Finally, PGAC was turned over to the prosecutor 15 hours after his detention. The Federal public prosecutor initiated a preliminary investigation, which concluded with the filing of criminal charges against MFSP and PGAC for committing a crime against health, through drug dealing, for simple possession of cannabis. The district court that heard the matter issued a decision acquitting PGAC. The public prosecutor filed an appeal against this decision. The unitary court that heard the matter revoked the decision and sentenced PGAC to 10 months in prison and a fine, in response to which PGAC filed an *amparo* lawsuit. The collegiate court denied the *amparo* and PGAC filed a *recurso de revisión*, which was heard by Mexico's Supreme Court of Justice (this Court).

**ISSUE PRESENTED TO THE COURT:** Determine the impact on the evidence in a criminal case of the constitutional violation resulting from the unjustified delay in turning the detainee over to the public prosecutor, regarding to (a) the validity of the report prepared by the police in relation to the detention and (b) the validity of the statement at prosecution of the detainee.

**HOLDING:** This Court decided to revoke the appealed decision, essentially for the following reasons. The fundamental right of immediacy in turning the detainee over is violated when, without reasonable motives that prevent taking the detainee before the competent authority responsible for determining his legal situation, the person continues in the custody of his arresting officers. However, the unjustified prolongation of this delay is not, in all cases, reason for declaring the police report unlawful. The police report and the detention of a person are two factually and substantively independent actions. The detention takes place first, which must be subject to the constitutional premises, and then the police must immediately turn the detainee over to the public prosecutor. Therefore, the constitutional violation for unjustified delay or deferral in turning the detainee over to the public prosecutor does not have the scope of affecting the lawfulness of the police report, concerning the specification of the circumstances that motivated their involvement, the form in which the capture was made and the securing of evidence related to the *flagrante delicto*. On the other hand, when regardless of whether the detention was made in accordance with the constitutional parameters, the police take investigative actions not controlled by the public prosecutor to generate or collect incriminating evidence related to the crime that motivated the detention, those elements of the report should not be considered in weighing the evidence; rather they must be excluded given their obvious unlawfulness. The invalidation of the statement at prosecution of the detainee, because of an unjustified delay in turning him over to the public prosecutor, is only applicable when it involves a confession in which the accused accepts that he is responsible for committing the crime.

**VOTE:** The First Chamber decided this matter by a majority consisting in four votes of the Justices Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz and Alfredo Gutiérrez Ortiz Mena. The 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=166573>

## **EXTRACT OF THE *AMPARO DIRECTO EN REVISIÓN* 2397/2014**

- p.1 Mexico City. Decision of the First Chamber of Mexico's Supreme Court of Justice (this Court) corresponding to November 26<sup>th</sup>, 2014.

### **BACKGROUND**

At 22:50 hours on October 19, 2012, in Merida, two officers of the Ministry of Public Security of the State of Yucatan (SSPY) noticed that two men were struggling in a public area for a transparent nylon bag.

- p.2 When they became aware of the presence of the officers, MFSP threw the bag on the ground and tried to run away. The police intercepted them and noted that one of the individuals (MFSP) had injuries on the left forearm and was inebriated.

MFSP stated that the other man had injured him with a knife when struggling for the nylon bag. The police questioned PGAC and asked him to show them what was in his pants pockets. PGAC took out rice paper and a metal box that contained a dry herb with a penetrating odor inside. Upon reviewing the nylon bag, the officers found that it contained the same kind of herb and that it was probably cannabis. A few meters from the place, the officers found a knife with a wooden handle.

When they questioned them about the nylon bag and the weapon, both men indicated the plastic bag was theirs and the knife belonged to PGAC.

- p.3-4 The officers called for an ambulance to provide medical attention to MFSP and after they gave him first aid, both persons were taken to the SSPY. The resident doctor examined the detainees, provided the necessary assistance to MFSP and determined that the two men were inebriated and high on cannabis. Three medical certificates were issued from the medical evaluation done of PGAC by the medical personnel of the SSPY, which they finalized at 00:02 hours of October 20, 2012.
- p.3 Finally, at 14:00 hours of October 20, 2012, PGAC was turned over to the prosecutor's office, more than 15 hours after his detention by the police officers. The Federal Public Prosecutor (FPP) initiated a preliminary investigation, which was concluded with the filing

of criminal charges against MFSP and PGAC, for committing the crime against health of drug dealing, for simple possession of cannabis.

In the trial, the district judge in Yucatan determined that PGAC was not criminally liable for the crime of drug dealing.

- p.4 The FPP filed an appeal against the acquittal. The circuit court that heard the matter determined that PGAC was criminally liable for committing a crime against health of drug dealing, and therefore revoked the trial decision and established a penalty of 10 months in prison and the payment of a fine.
- p.5-6 The federal public defender of PGAC filed an *amparo directo* lawsuit against the circuit court decision. In essence, PGAC considered that such decision violated his fundamental right to be immediately turned over to the prosecutor's office. The collegiate court in criminal and administrative matters, which heard the *amparo* lawsuit, determined that while there was an unjustified prolongation in turning PGAC over, this was not enough to declare the unlawfulness of the evidence obtained during the preliminary investigation, and therefore it denied the *amparo* to PGAC.
- p.8-9 To challenge the collegiate court decision, PGAC filed a *recurso de revisión*. According to PGAC, the collegiate court incorrectly interpreted articles 1 and 16 of the Constitution, violating the principle of the immediate turning over to the public prosecutor of persons detained in the act of a crime. Finally, the *recurso de revisión* was sent to this Supreme Court for its resolution.

### STUDY OF THE MERITS

- p.16 In the *Amparo Directo* 14/2011, the First Chamber of this Court determined that all detentions must be preceded by an authorization issued by a judge, after analyzing if the request of the public prosecutor to apprehend an individual complies with the formalities required by the Constitution. However, this is not possible when the exceptional circumstances set forth in article 16 of the Constitution are present.
- p.18 Furthermore, in that precedent it was indicated that in case of flagrante delicto, for a detention to be considered valid, in formal and material correspondence with the rules that

govern police actions, the constitutional concept must be followed and one of the following circumstances must occur: (i) the authority can apprehend the apparent perpetrator of the crime if he directly observes that the action is being committed in that precise instant; in other words, in the *iter criminis*; or, (ii) the authority may initiate the prosecution of the apparent perpetrator of the crime in order to apprehend him if, through objective elements, it is possible to identify him and corroborate that, just at the immediately previous moment, he was committing the crime.

In addition, the judicial control that must be kept with respect to the right to personal freedom in the case of flagrante delicto, requires the review to be especially careful, since the discovery of a situation of illegality triggers the legally appropriate reproach and demand for liability. Therefore, the judge will have to weigh whether the arresting authority had enough information to clearly identify the person accused and evaluate the possible margin of error based on the accuracy and precision of the information contributed by the accusation, when it is informal.

p.22-23 The mandate to immediately turn over the detainee is violated when there are no reasonable motives that prevent the detainee from being turned over to the competent authority responsible for determining his legal situation and he continues in the custody of his arresting officers. Thus, there will only be reasonable motives when they have their origin in factual, real and provable impediments that are also compatible with the powers strictly granted to the arresting authorities.

p.23 In this regard, the police cannot hold a person for more time than is strictly necessary for his transfer to the public prosecutor so the latter may carry out the necessary procedures to determine his legal situation. In other words, the police cannot hold an individual to obtain a confession or to continue with the investigation on their own.

p.25 In the *Amparo Directo en Revisión* 3229/2012, the First Chamber of this Court indicated that in terms of article 21 of the Constitution, the investigation of crimes corresponds to the public prosecutor and to the police, who will act under the direction and control of the former, in the exercise of this function. This means that, when the police *motu proprio*, without the direction and control of the public prosecutor, under the pretext of searching

for the truth or the proper collection of probatory material, produce and introduce to the criminal process elements of evidence that do not comply with the formal constitutional requirements, they must be declared invalid. Consequently, the evidence obtained strictly as a result of a detention *in flagrante delicto* cannot be invalidated by subsequent acts, such as obtaining evidence directly from the unjustified delay, unless it can be shown that there were flaws in the detention of the accused that result in its unconstitutionality. Therefore, only the evidence that has been obtained without the authorization of the public prosecutor and results directly from the unjustified delay can be invalidated.

**I. Determine whether the unjustified prolongation of the delay in turning over the accused to the public prosecutor causes the unlawfulness of the report prepared by the police in relation to the detention**

p.31 The police report related to the detention of a person accused of committing a crime has particular importance in the cases of detention *in flagrante delicto*. This is because it is the document on which the criminal accusation can be based. In the report, the police describe not only the circumstances of time and place in which the detention of the suspect takes place, but also the detailed description of the circumstances that motivated the detention and of the evidence found. Thus, the police report is an important element for the prosecutor, and therefore must be subject to strict judicial scrutiny.

In addition, the police report in relation to the detention of a person is relevant for the legal consequences derived from its content: (a) the document is prepared by public officials, responsible for public security, through which they present to the public prosecutor a person who is detained; and (b) the document contains the description of the particular circumstances that led to the detention, how the officers became aware of the facts, the conditions in which the detention was made and the findings of evidence.

p.32 The constitutional violation by unjustified delay or deferment of turning the detainee over to the public prosecutor does not affect the lawfulness of the police report, concerning the specification of the circumstances that motivated their involvement, the form in which the capture was made and the securing of evidence related to the *flagrante delicto*.



p.33 In this regard, the police report is not evidence that should be declared unlawful even when the judicial authority considers there was an unjustified delay in presenting the defendant before the public prosecutor after he was detained under the constitutional premise of *in flagrante delicto*, given the following:

**A. Autonomy of the *in flagrante delicto* detention and the unjustified delay of turning the detainee over to the public prosecutor**

p.33-34 The first premise that should be considered is that the violation of the immediacy of turning the accused over does not generate the unlawfulness of the detention. For this it is important to have in mind that two autonomous factual circumstances are involved that must be analyzed in that context. If the detention of the accused is based on an arrest warrant, *flagrante delicto* or an emergency, there is no valid legal reason for the detention to be declared illegal.

p.36-37 It is possible to assert the invalidity of the police report if it has a direct origin in the declaration of unlawfulness of the detention. However, this cannot occur in reverse. If the detention is illegal, no legal validity can be given to any evidence on which it is attempted to sustain it, such as the report prepared by the arresting officers in relation to circumstances under which the capture was made. But when there is a detention that conforms to the constitutional premises that justify the legality of the impact on the human right to personal freedom, there is no legal reason to declare the unlawfulness of the police report with regard to the description of the factual circumstances in which the defendant was detained under the premise of *in flagrante delicto*.

p.37 This is because when the police detain someone under the constitutional premise of *in flagrante delicto*, they must immediately present the detainee to the Public Prosecutor, so the proper authority can determine the legal situation of the person detained. In other words, two actions are involved that, although they have a causal and successive relationship, maintain factual and substantive independence. First the detention takes place, which must be subject to the constitutional premises, including those applicable to



*in flagrante delicto*, and then the police must comply with the constitutional requirement to immediately turn the detainee over to the Public Prosecutor.

When the police do not immediately turn over the detainee caught *in flagrante delicto* to the public prosecutor, this does not mean that the person was detained illegally.

p.37-38 In this case, if the detention complied with the constitutional parameters there is no legal reason its declaration of constitutional validity should be affected. The unjustified delay in turning over the detainee to the public prosecutor is a successive factual condition and independent of the detention. The probatory validity of the police report presented by those who detained the defendant should be analyzed under this material fragmentation of the police actions. Thus, actions that violate the human right to freedom occur in a particular moment and produce legal effects or consequences from when they occur, but not prior to their occurrence.

### **B. Standard of probatory exclusion applicable to the violation of the immediacy of turning over the detainee**

p.41 When the defendant is detained in accordance with the constitutional parameters for *in flagrante delicto*, the qualification of legality of the detention must survive, despite the violation of the immediacy of turning over the detainee. This is because the reasons for the detention of the defendant may be constitutionally valid, as well as the finding, collection and immediate securing of the evidence the police found at the exact time of the detention.

In contrast, when apart from a constitutionally proper detention of the defendant, the police engage in investigative actions without the control of the public prosecutor to generate or collect evidence of incrimination related to the crime that resulted in the detention, then the report that the police agents present must be weighed taking into account two substantial elements:

p.42 a) The description of the circumstances that motivated the intervention of the police and those in which the detention of the defendant occurred, as well as the list of objects and

evidence seized, may be weighed, provided the person was detained in accordance with the constitutional requirements.

b) In contrast to the above, all references to circumstances and evidence obtained by the police derived directly from the unjustified delay in turning over the detainee, collected for purposes of carrying out a police investigation not directed and controlled by the public prosecutor, should not be subject to consideration in weighing the evidence; rather, given their obvious unlawfulness, they will have to be excluded.

p.42-43 Under exceptional circumstances, which will increase the level of legal scrutiny, it may be valid for the judicial authority to consider the police report as a piece of evidence that can be weighed in spite of a delay in turning over the detainee and the collection by the police of information, data, evidence or proof decisive for supporting the charging and sentencing of the defendant. In this case, the evidence escapes the standard of probatory exclusion.

p.43 This exception to the probatory exclusion results from causes defined by this Court that legally justify the prolongation of the detention. These causes include delay that is the result of a reasonable, actual and provable impediment that does not involve any overreach beyond the constitutional and legal powers of the arresting authority, such as the distance between the place of detention and the place for turning the detainee over.

p.43-44 This hypothesis, in terms of the duty of the State to promote, respect, protect and guarantee human rights, such as the personal freedom of its citizens, is limited to those cases in which it is convincingly shown that the police, immediately and by any means, informed the public prosecutor of the detention of the defendant and the existence of provable factual reasons for being unable to present him with the same celerity in the Prosecutor's office. This is in view of the need to intervene immediately to safeguard a legal interest, which may be of equal or greater value than the personal freedom of the detainee, as happens with the personal life and liberty of the victims of kidnapping; or also when there is a possibility that another crime may be committed; as well as when the intervention of the police may be necessary to detain others who may have been responsible for the crime, whether they are in material pursuit or in direct confrontation. This does not mean that in these situations the right of immediacy in turning over is

nullified, since once the conditions causing the urgency of the intervention of the police have ceased, such as the rescue of the victim, or the police agents are able to have one group undertake the urgent need for intervention while another group takes charge of the detainees, then the police authority must comply with the constitutional imperative of immediately delivering the persons that have been detained to the public prosecutor.

### **C. Invalidation of the probatory value of the statement at prosecution of the accused for the unjustified detention of the detainee**

p.45 It arises from the unjustified detention of the detainee, is only applicable in the case of a confession in which the defendant accepts he is responsible for committing the crime attributed to him, regardless of the degree of incrimination.

#### **1. Presumption of coercion as parameter that determines the probatory exclusion**

p.51 Regardless of whether the detention is lawful, the unjustified delay or deferral of turning over of a person that has been detained *in flagrante delicto* to the public prosecutor permits the presumption of coercion, as a minimum parameter in light of the recognition of the violation of his human rights.

The unjustified delay of the detention presumes, at least, the use of unnecessary and abusive force by the police agents against a detainee, even when the detention is constitutional, which implies a threat to human dignity. This means that a detention of this type has an impact on the integrity of a person. The authority's unjustified holding of the person detained permits the presumption that whoever is in this condition is deprived of communication and exposed to treatment that could result in injuries. A person arbitrarily held is in an aggravated situation of vulnerability, with which there is a certain risk that other rights may be affected, such as personal integrity, physical or psychological, and the dignified treatment that every person should receive. The delay in turning a detainee over could result in prolonged isolation and coercive isolation, which could be qualified as cruel and inhuman treatment and even torture.

p.53-54 Therefore, the prolonged and unjustified detention of a person can lead to the presumption of coercive acts that directly affect his free will. If a person admits to being responsible for

a crime after having been detained for a long time without a valid legal justification by his captors, such confession must be presumed to have been coerced and therefore, must be considered illegal evidence, which qualification requires its exclusion from the evidence against the defendant. Likewise, all the evidence generated or obtained for purposes of an illegal confession must be invalidated.

- p.54 The unjustified prolongation of the detention of the detainee does not necessarily imply the existence of torture; it only means there is a presumption of coercion of the detainee to induce him to self-incriminate. This qualification applies regardless of whether or not the detainee has actually been coerced, since it results from the violation of the principle of immediacy.
- p.56 It must be kept in mind that this parameter for weighing the statement at prosecution of the defendant, in a case in which the unjustified delay in turning over the detainee to the Public Prosecutor is demonstrated, should be different from what should be applied for the probatory exclusion of any statement that the defendant may have rendered without technical assistance of a defense attorney. In these cases, the confession rendered in the preliminary investigation stage by a person detained without the presence and assistance of a licensed attorney must be invalidated regardless of its content.
- p.59-60 In conclusion, when the police detain a person *in flagrante delicto*, but there is an unjustified delay in turning over the detainee to the public prosecutor, this constitutional violation does not have the scope of provoking the illegality of the police report and the statement at prosecution of the detainee, provided the following conditions are met: (a) the detention of the accused is lawful; (b) the police report refers exclusively to the circumstances in which the detention *in flagrante delicto* was carried out and, (c) the statement at prosecution of the detainee does not contain incriminating evidence.

## **II. The occurrence of the violation, in the case under study, of the right of the detainee to be immediately turned over to the public prosecutor**

- p.61 The analysis by the judicial body with respect to the violation of the fundamental right to be immediately turned over to the public prosecutor must be addressed from two

perspectives: with respect to the process and with respect to the results produced. Specifically, the evaluation of whether such right was violated or not obligates the court to analyze the evidence, piece by piece, to conclude whether or not it was a product of the improper delay in turning over the detainee and whether, therefore, they are illegal pieces of evidence.

The simple assertion of the collegiate court that the sentence was not based on evidence that had been obtained during the improper delay since there was no unlawfulness in the testimonies of the arresting officers is not enough. An effective protection of the fundamental right of the detainee to be immediately turned over requires the judicial authorities to carry out an exhaustive evaluation of the pieces of evidence presented in the proceeding, determining one by one whether or not it was produced in violation of the fundamental right alluded to.

In this particular case, there was no statement at prosecution or confession of the detainee, since upon being turned over to the authority he decided to exercise his right not to make a statement. Since there is no statement at prosecution of the detainee there is no need for its probatory exclusion.

## DECISION

p.62 This Court decides to declare the claims grounded, overturn the appealed decision and return the court record to the collegiate court so that, based on the interpretation explained of the fundamental right of the detainee to be turned over to the public prosecutor, all the evidence weighed in the trial can be analyzed to determine whether there was unlawful evidence or not, having in mind the violation of the fundamental right of the detainee to be immediately turned over to the public prosecutor, and a new *amparo* decision issued that carries out a new study of the legality of the challenged act.