

This overview contains the cover page, the summary, 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.

**ENFORCEABILITY OF URGENT ACTIONS OF THE COMMITTEE ON ENFORCED  
DISAPPEARANCES  
(OBLIGATORIEDAD DE LAS ACCIONES URGENTES DEL COMITÉ CONTRA LA  
DESAPARICIÓN FORZADA)**

**CASE:** *Amparo en Revisión* 1077/2019

**REPORTING JUDGE:** Alfredo Gutiérrez Ortiz Mena

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

**DATE OF THE DECISION:** June 16, 2021

**KEY WORDS:** Enforced disappearance, enforceability/binding nature of urgent actions, right to be searched for, right to truth, right of access to justice, right to an effective remedy, diversity perspective, obligation to investigate.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisions* 1077/2019, First Chamber, Alfredo Gutiérrez Ortiz Mena, J. Decision of June 16, 2021, 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/2022-05/AR%201077-2019.pdf>

**SUGGESTED CITATION FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, Extract of the *Amparo en Revisión* 1077/2019, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 1077/2019

**BACKGROUND:** After the arrest of her 16-year-old son by a group of civilians and police for alleged complicity in a robbery, Ms. J went to the Public Prosecutor's office of Veracruz to report his disappearance. The Assistant Prosecutor of a Regional Prosecutor's Office of Veracruz (the Prosecutor's Office) oversaw the investigation. Given the absence of results and the omissions by the Prosecutor's Office, Ms. J, along with other relatives of persons disappeared in police raids, submitted an individual communication to the United Nations Committee on Enforced Disappearances (CED), which issued various urgent actions and requests to the Mexican State regarding the investigation and search. Ms. J filed an amparo lawsuit for the failure to implement, coordinate and carry out a diligent, exhaustive, impartial, and serious investigation, to establish the whereabouts of her son and ensure the prosecution of the crimes and related perpetrators; and for the failure to implement the urgent actions. A District Court in Veracruz granted the amparo to the plaintiff and ordered the Assistant Prosecutor to adhere to the investigation standards and conclude it effectively, finding the son's whereabouts. Both Ms. J and the Prosecutor filed a *recurso de revisión*, which was taken up by Mexico's Supreme Court of Justice of the Nation (this Court) in exercise of its authority to assert jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether the urgent actions issued by the CED, based on the International Convention for the Protection of all Persons from Enforced Disappearance, are enforceable and whether their observance by the authorities of the Mexican State, in their various jurisdictions, should be supervised judicially and constitutionally.

**HOLDING:** The amparo was granted to Ms. J and her son against the failure of the responsible authorities to address the urgent actions issued by the CED, essentially for the following reasons. This Court determined that an urgent action is issued by the CED with the purpose of requesting the State to take the necessary measures for the prompt finding of a disappeared person. These actions, their observance and judicial supervision give specific content to the State's obligation to guarantee the right of persons not to be subjected to enforced disappearance, as well as to search for and locate a disappeared person. Therefore, the urgent actions, their enforceability,

as well as their judicial and constitutional supervision, are part of the right to an effective remedy and the right of access to justice. Consequently, the responsible authorities must follow the precise search and investigation guidelines contained in such urgent actions.

**VOTE:** The First Chamber decided this case unanimously with the five votes of Justices Norma Lucía Piña Hernández (reserved her right to formulate a concurring opinion), Ana Margarita Ríos Farjat, Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena, and Juan Luis González Alcántara Carrancá.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=266541>

## **EXTRACT FROM THE *AMPARO EN REVISION* 1077/2019**

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice of the Nation (this Court), in session of June 16, 2021, issues the following decision.

### **BACKGROUND**

p.2 On December 11, 2013, at approximately 2:00 p.m., the young man E, 16 years old, was at his place of work, located in a neighborhood of the city of Veracruz when a group of civilians and police arrived, who entered the business and detained him; they put him in a van and informed the owner and manager of the business that the reason for his detention was that he had been indicated as an accomplice to a robbery. The current whereabouts of E are unknown.

Upon learning these facts, his mother, Ms. J, went to various authorities to obtain information about the whereabouts of her son. She got no response from any of them. Later, she reported his disappearance to the Public Prosecutor's Office (MP), but the authority refused to file the complaint because she had to wait 72 hours.

On December 14, 2013, the MP initiated a preliminary investigation for the crime of physical deprivation of liberty against E. This investigation was carried out by the Assistant Prosecutor of the Regional Prosecutor's Office of the Central Zone of Veracruz (Assistant Prosecutor).

p.2-3 In view of the absence of results and the omissions by the MP, Ms. J, along with other relatives of disappeared persons in police raids carried out in the Formando Hogar neighborhood, submitted a communique to the United Nations Committee on Enforced Disappearances (CED) requesting interim measures and urgent actions. In accordance with Article 30 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), on February 12, 2016, the CED filed the case with several urgent actions, in which it requested the Mexican State to:

- a) Immediately conduct a comprehensive search and serious, thorough, and impartial investigation to establish the whereabouts of the young men D, K, L, J, E and H; all co-petitioners of the urgent measures;
  - b) Ensure that the inquiries consider the context in which the disappearances occurred. In particular, observe indications of the possible participation of police and military elements who may have been involved;
  - c) Investigate the disappearances with full independence and impartiality of the investigating bodies, gathering the necessary forensic and expert evidence, as well as the statements of witnesses and family members;
  - d) Carry out all actions aimed at fully identifying the remains found in the graves located in Veracruz as well as those found by the search teams to determine the existence of a relationship with any of the disappeared persons; and
- p.3-4 e) Inform the Committee, if it is unable to confirm the whereabouts of the disappeared persons, of the actions taken to locate them and the outcome thereof. In addition, report on the actions taken to ensure the full participation of relatives and persons close to them.
- p.4 Since then, the Mexican State has submitted reports to the CED on three occasions, in which it claimed to have carried out various procedures.

Given the limited results of the investigation, Ms. J requested a certified copy of the procedures that made up the preliminary investigation; she did not receive a response.

- p.4,5 On May 1, 2017, the UNCED requested the Mexican State to immediately design and implement a comprehensive investigation and search strategy; report to the relatives on the strategy undertaken; inform them in a timely and accessible manner about the inquiries and give them copies of the procedures carried out; ensure the investigation of the possible participation of the police and the Veracruz Investigation Agency in the disappearance and guarantee that exhumations and procedures for identifying the bodies be governed by international standards.

- p.5-6 On October 19, 2017, Ms. J, in her own right and on behalf of her son E, filed an amparo lawsuit in the District Courts in the State of Veracruz, for the failure to implement, coordinate and carry out a diligent, exhaustive, impartial and serious investigation, aimed at locating E, and to prosecute the crimes and those responsible for his disappearance; and the failure to implement the urgent measures and actions issued by the UNCED.
- p.8,9 On May 15, 2018, the judge issued a decision in which she granted the *amparo* to the plaintiffs and ordered the MP to adhere to the investigation standards and conclude it effectively, finding the whereabouts of E. Dissatisfied with the decision, Ms. J and the MP filed a *recurso de revisión*.
- p.10 On August 28, 2018, Ms. J asked this Court to take jurisdiction, which was assumed by the president of this Court on January 15, 2020.

## STUDY OF THE MERITS

### **I. Determination of the enforceability of implementing the urgent actions declared by the CED**

- p.42 Are the Mexican authorities, within the scope of their respective jurisdictions, obligated to implement the urgent actions declared by the CED, in exercise of the powers conferred by the ICPPED?

#### **a) Right of every person not to be subjected to enforced disappearance**

- p.51 From the legislation and precedents that form the parameter of constitutional regularity of the right not to be subjected to enforced disappearance, it can be observed that this concept implies the participation of the State, through its agents or any person or group that acts with their acquiescence, support, collaboration and authorization, among other legally determinable forms of participation, regardless of the degree and intensity of such participation, in any form of deprivation of liberty (even detentions legal in form may result in enforced disappearances when they have certain characteristics) followed by the refusal to recognize this deprivation of liberty or the concealment of the fate or

whereabouts of the disappeared person who is thus removed from the protection of the law.

p.51-52 Finding the disappeared person and identifying and punishing those responsible gives content and substance to the specific duties of preventing, investigating, punishing and remedying human rights violations, duties established in the first article of our Constitution and which commit the Mexican State to a diligent, exhaustive and continuous search and an impartial and effective investigation into the fate or whereabouts of the disappeared person and the identity of the perpetrators, who must face the legal consequences that correspond to their criminal acts. These obligations are even more critical at the slightest hint that state agents or groups are complicit or acquiescent in the disappearance. This Court points out that, since enforced disappearance is composed of more than one action, it may be committed with the involvement of one or more persons, either by direct perpetration, whether wholly or partially or partially with distribution of functions, and even by indirect perpetration, according to the applicable criminal legislation.

p.2 This Court considers that the enforced disappearance of persons is a serious violation of human rights, which exhibits the inability of the State to guarantee the right to integrity, security, liberty and dignity of the persons subject to its jurisdiction, whose parameter of constitutional regularity contains not only the obligation to punish those responsible and assign them the legal consequences proportional to the magnitude of their violation, but the urgent obligation to search for the disappeared person with all the available institutional force and with all the institutional coordination necessary to achieve that task.

**b) Justice and truth: The right to be searched for**

p.53 The district judge observed an erratic investigation inconsistent with the urgency of locating Ms. J's son and finding those responsible for his disappearance, despite the existence of available evidence that should have led to precise and efficient lines of investigation. Given this finding, the judge granted the *amparo* and ordered that the investigation adhere to national and international due diligence standards to prevent and

investigate human rights violations and to search for disappeared persons, privileging the locating of E alive.

- p.55-56 This Court reaffirms that the responsible authorities must fully abide by these orders to redirect the course of an investigation that is not sufficiently diligent, but warns the responsible authorities that they must exhaustively explore the lines of investigation resulting from the proceedings carried out, conducted based on the content and scope of the right that every person subject to the jurisdiction of the State has not to be a victim of enforced disappearance and to be searched for. The responsible authorities must always protect and guarantee the integrity of the investigation of enforced disappearance as a crime, as well as its results, undertaking the search for E promptly, with due diligence and making use of all available institutional means, without compromising the quality of the evidence and requesting the judicial authorizations necessary to process the actions that require them.
- p.56 The Inter-American Court of Human Rights, in the cases of Alvarado Espinoza and Rosendo Radilla, both against Mexico, ruled that in the event of enforced disappearance, the obligation to investigate entails the duty to direct the efforts of the State apparatus to unravel the structures that allowed these violations, their causes, their beneficiaries and their consequences, and not just to discover, prosecute and punish the immediate perpetrators, adopting a comprehensive view of the events that takes into account the background and context in which they occurred.
- p.57 This Court confirms the judge's decision that the responsible authorities consider, within their investigations and their search efforts, the situation of violence in Veracruz, the extent of disappearances in the country and particularly in that state, the identification of a specific pattern in these events and the characteristics of the police raids deployed on the day on which the disappearance of E occurred.
- p.59-60 From a three-dimensional perspective of access to justice, it will not be enough to obtain just any response from the legal system; it is necessary that this response be the product of a thorough and impartial investigation, conducted on the basis of the presumption of life



of the disappeared person, committed to finding him or her and to the criminal prosecution of those responsible. This conception of access to justice highlights the importance of the participation of victims in the investigation and search processes, as well as their right to know its progress in a timely, respectful, and dignified manner.

- p.60-61 It is crucial that the victims' claims to justice and the information they provide be sufficiently considered in these proceedings, which must be oriented toward the locating of the victims alive, the determination of the truth, and the pursuit, capture, prosecution, and punishment of those responsible for the acts, as essential components of the normative scope of the right to access to justice when it comes to enforced disappearance of persons.
- p.61 The search, the finding of the fate or whereabouts of the disappeared person and the determination of the responsibilities associated with that disappearance also constitute the victims' right to truth. The attempt of the victim of a human rights violation to find the "truth" as a State response is an essential component of the validity and legitimacy of justice. In fact, the right to know is recognized by the international *corpus iuris* as a fundamental right.
- p.62 Effective investigation requires the development of rational avenues of investigation, a thorough analysis of the facts, and extensive collection of evidence, including expert opinions on the various components, background, and consequences of the disappearance, as well as on the necessary and efficient elements for the search.
- p.64 Procedures and investigations whose objective are the determination of the fate or whereabouts of a person reported missing must be based on a presumption of life, be deep, exhaustive, and diligent, allow the participation of victims in the search for their loved ones, and give satisfactory, convincing, and dignifying results.
- p.68 It is true that the MP is responsible for investigating crimes and prosecuting them, but this Court does not find any impediment in trying to establish the fate of a person reported missing, with due consideration and participation of the victims, to show the State's commitment to the rights to truth, justice, and reparation.

- p.70 For this Court, it is clear that the search and its results constitute the essential core of the right not to suffer enforced disappearance and give content and substance to the duties of preventing, investigating, and remedying human rights violations and their correlative rights to truth, justice and reparation.
- p.70-71 Therefore, this Court concludes that there is a right to be searched for. That is, the right of every disappeared person and his or her loved ones to have all authorities, within the scope of their respective jurisdictions, with all available resources and institutional means, and in complete coordination, execute without delay –even *ex officio*– in an impartial, dignifying, diligent, exhaustive, and ongoing manner, without stigmatization, with a differential approach and allowing the participation of the victims without reservation, all actions necessary to determine the fate or whereabouts of the person reported missing, under the presumption that he or she is alive, unless there is evidence to the contrary; in the latter case, the right to search includes the obligation of the State to develop and implement all the mechanisms and instruments required to find, identify and preserve the remains of the victims in conditions of dignity until they are handed over to their loved ones.
- p.71 By differential approach, this Court refers to the introduction of a perspective of diversity in the processes of searching for persons and in the attention and consideration of those who seek them. The diversity perspective is the paradigm according to which the differentiated causes, consequences, and impacts of the disappearance of persons due to exclusion factors that determine the form and patterns of disappearance are analyzed, as well as the way in which indirect victims deal with this violation.

On this point, this Court insists that the search does not cease until there is certainty of the fate or whereabouts of the disappeared persons and it is confirmed that they are under the protection of the law or have been fully identified and handed over to their relatives in conditions of dignity and respect for their suffering.

### **c) Urgent actions and their enforceability**

p.72 When a person disappears, there is a real and immediate risk to a host of human rights (personal freedom and integrity, legal capacity, and even life) and the State must put in place the entire appropriate institutional apparatus to avoid the materialization of that risk with the priority of quickly finding the victim alive, as the mere fact of their prolonged isolation and coercive solitary confinement are in themselves forms of cruel and inhuman treatment, which generate harm to their liberty and integrity. The delay is particularly harmful to the victims; time becomes an aggravating factor of the risks and violations suffered.

Thus, in cases of the disappearance of persons, the general obligations to respect, protect, guarantee, and promote human rights are intensified. The Mexican State must react immediately and effectively and act with extreme or qualified due diligence to avoid irreparable harm.

p.73 This Court disagrees with the determination of the district judge denying the enforceability of the urgent actions issued by the CED, as part of its powers under the ICPED, and thus preventing the judicial and constitutional supervision of their observance by the responsible authorities.

p.75 The spirit of the ICPED is to prevent, investigate, punish, and remedy the enforced disappearance of persons, as well as to provide the latter with the broadest protection.

p.76, 80 The ICPED establishes a mechanism for monitoring and supervising compliance with the provisions of the treaty: the CED. With regard specifically to urgent actions, article 30 of the ICPED clearly establishes the power of the CED to issue them.

p.82-83 An urgent action is issued by the CED with the purpose of requesting the State to take the necessary measures for the prompt finding of a missing person. These actions, their observance and the judicial supervision of such observance give specific content to the State's obligation to guarantee the right of persons not to be subjected to enforced disappearance and to search for and locate a disappeared person. Therefore, in the opinion of this Court, urgent actions, their enforceability as well as their judicial and

constitutional supervision, are part of the right to an effective remedy and, therefore, of the normative scope of the right of access to justice.

p.84 Urgent actions against the enforced disappearance of persons are aimed at protecting the legal sphere of a person or persons perfectly delineated against a violation of human rights that can generate the worst effects if not acted on promptly. These actions, therefore, imply access to enhanced protection.

p.85 To assume that urgent actions do not establish obligations on the part of the responsible authorities, which may be constitutionally or judicially supervised, is to detract from the useful effect of the ICPPED, to unjustifiably diminish the sphere of protection of persons subject to the jurisdiction of the Mexican State and to contradict the determinations of the Mexican government, which not only adopted, ratified and incorporated the specific content of the treaty into its domestic legal regime, but has reiterated its commitment to the observance of urgent actions.

For the foregoing, this Court has no doubts regarding the enforceability of the urgent actions issued by the CED. The urgent actions issued for the benefit of E and others contain precise search and investigation guidelines clearly related to the jurisdictions of the responsible authorities. Therefore, the district judge should have ordered that they be fully observed so as not to violate E's rights to be searched for and have access to justice.

p.89 The authorities should develop rational avenues of investigation, carry out a careful analysis of the facts, and obtain and release evidence that leads to the finding of E alive, including opinions of experts on the various components, background, and consequences of the disappearance, as well as on the necessary and efficient elements for the search.

p.88 It is essential that the responsible authorities consider the influence of the context in which the events of disappearance occur to identify systematic patterns that have an impact on the solution of this case and other related ones, and to eventually produce State prevention policies based on that information.

p.89-90 The authorities will permit and encourage the participation of Ms. J in the search for her son and in the investigation into his disappearance; heed the information that she and

other witnesses she suggested provide on the possible whereabouts of E or on the circumstances surrounding his disappearance; admit all the evidence she offers, and inform her, in a timely manner and respecting the anguish and suffering she is experiencing, of the progress in the search for and location of her child.

- p.90 The authorities will protect, respect and guarantee J's right to the search, to truth and to justice, the content and scope of which are defined by this decision and, acting in coordination with other law enforcement agencies, will endeavor to locate E alive and carry out this search with qualified due diligence, thoroughness and promptness, as well as with respect and in conditions of dignity for the adolescent and his loved ones, especially his mother.

### **DECISION**

- p.91 This Court grants J and E the *amparo* against the failure of the responsible authorities to address the urgent actions issued by the CED. Thus, the authorities designated as responsible must fully abide by the urgent actions during the search for E, since their binding nature on the Mexican State is unquestionable.