



**Suprema Corte**  
de Justicia de la Nación



**DERECHOS**  
**HUMANOS**

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.

**INTERDICTION: DISPROPORTIONAL RESTRICTION ON THE LEGAL CAPACITY OF PERSONS WITH DISABILITIES**  
**(INTERDICCIÓN: RESTRICCIÓN DESPROPORCIONAL A LA CAPACIDAD JURÍDICA DE LAS PERSONAS CON DISCAPACIDAD)**

**CASE:** *Amparo en Revisión* 1368/2015

**REPORTING JUDGE:** Alfredo Gutiérrez Ortiz Mena

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

**DATE OF DECISION:** March 13, 2019

**KEY WORDS:** Human dignity, right to equality and non-discrimination, right to legal capacity, right to personal autonomy, right to live independently, model of best interpretation possible of will and preferences, system of support and safeguards, Convention on the Rights of Persons with Disabilities, status of interdiction, persons with disabilities.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión* 1368/2015 First Chamber, Alfredo Gutiérrez Ortiz Mena J., decision of March 13, 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/2020-01/AR%201368-2015%20p%C3%BAblica.pdf>

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## SUMMARY OF THE *AMPARO EN REVISIÓN* 1368/2015

**BACKGROUND:** In 1995, a family judge of the Federal District declared “Ernesto” in a state of interdiction and appointed his mother, “Luisa”, as definitive guardian. When “Luisa” died she named “Ernesto” as her sole and universal heir of a piece of property. Subsequently, different guardians were appointed for “Ernesto”, both provisional and definitive. In 2012, “Ernesto” married “Martha” and, based on his request, the family judge removed the person who was guardian of “Ernesto” and designated “Martha” as his guardian. The former guardian and the Local Guardians Council in the Miguel Hidalgo Delegation (Local Guardians Council) appealed this ruling. While such appeals were being resolved, in 2013 “Ernesto” requested that the family judge recognize certain rights in exercise of his autonomy, but the judge denied the request until it could be filed by his legal representative. “Ernesto” filed an *amparo indirecto*. When the appeals filed by the guardian and Local Guardians Council were resolved, the court ordered the appointment of a provisional guardian from the list of aids of the Superior Court of Justice of the Federal District, against which “Ernesto” filed his first expansion of the *amparo* claim. In parallel, during the processing of his mother’s will, “Ernesto” requested the award of the property he inherited, and the recognition of other rights in exercise of his autonomy. The judge determined that she could not respond to his request until a decision is presented showing that “Ernesto’s” state of interdiction had been revoked. “Ernesto” filed a second expansion of the *amparo* against this ruling. The district judge in the Federal District that heard the *amparo* granted it only against the appeal decision that designated a provisional guardian, since he considered that “Ernesto’s” opinion had not been heard. “Ernesto” filed a motion for review against this decision which the First Chamber of Mexico’s Supreme Court of Justice heard upon resuming its original jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether the concept of interdiction is constitutional in accordance with the right to legal capacity, to live independently and to equality, and to determine the scope of the obligation of the authorities to establish adequate and effective safeguards.

**HOLDING:** The appealed decision was revoked and the *amparo* was granted for essentially the following reasons. Disability refers to the barriers and social attitudes that impede persons with deficiencies from full and effective participation in society on equal terms. The state of interdiction concept is not in accordance with the Convention on the Rights of Persons with Disabilities and cannot be interpreted to be in accordance because it violates the right to equality and non-discrimination. In this regard, the state of interdiction is a disproportionate restriction on the right to legal capacity, and therefore it does not pass the strict scrutiny test because it is a distinction based on a suspect classification – disability. Furthermore, the concept is excessively inclusive, since it limits legal capacity entirely, regardless of the specific support and safeguards that each type of disability requires. Interdiction is also not compatible with the right to an independent life and to be included in the community because it is a model that completely substitutes the will of a person, instead of pursuing the best interpretation possible of a person’s will and preferences. Therefore, it was determined that the concept of state of interdiction must be declared unconstitutional; the family judge was ordered to cancel the state of interdiction declared against “Ernesto” and was instructed to issue a new ruling establishing the safeguards and necessary support so that “Ernesto” could fully exercise his legal capacity.

**VOTE:** The First Chamber decided this matter by five unanimous votes of judges Norma Lucía Piña Hernández (reserved the right to issue a concurring vote), Luis María Aguilar Morales (reserved the right to issue a concurring vote), Jorge Mario Pardo Rebolledo (reserved the right to issue a concurring vote), Alfredo Gutiérrez Ortiz Mena and Juan Luis González Alcántara Carrancá.

The votes can be consulted at the following link:

<http://www2.scjn.gob.mx/ConstulaTematica/PaginasPub/DetallePub.aspx?AsuntoID=190473>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 1368/2015

- p. 1 Mexico City. The First Chamber of Mexico’s Supreme Court of Justice (this Court), in session of March 13, 2019, issues the following decision.

### **BACKGROUND**

The facts will be grouped into two subsection due to the procedural complexity and wide range of facts.

#### **I. Declaration of state of interdiction**

- p. 1-2 In a voluntary jurisdiction proceeding, “Luisa” filed the declaration of interdiction of her children “Ernesto” and “Sofia” and requested that the legitimate guardianship be declared in her favor. A family judge in the Federal District declared a state of interdiction for “Ernesto” and “Sofia” through decision of August 14, 1995. In turn, their mother “Luisa” was declared as definitive guardian and their brothers “Ramiro” and “Hector” as stewards.

- p. 2 In 2008 the mother and guardian died. “Ernesto” lived with his half sister “Flor”, who subsequently also died. After that date, “Fernanda”, daughter of “Flor” and niece of “Ernesto” assisted “Ernesto”.

Later, based on a writ presented by the steward “Hector”, “Patricia” (also niece of “Ernesto”) was designated as guardian.

- p. 2-3 In 2012, “Ernesto” married “Martha” who filed an ancillary proceeding in which she requested the separation of “Patricia” from the position of guardian (it should be mentioned that in 2016 the marriage of “Ernesto” and “Martha” was declared null and void). The family judge, through an interlocutory decision, removed “Patricia” from her position as guardian and appointed “Martha” as guardian.

- p. 3 The president of the Local Guardians Council in Miguel Hidalgo Delegation (the Guardians Council), and “Patricia” filed appeals of the above ruling.

While those appeals were pending, in 2013 “Ernesto” filed, in his own right, a writ before the family judge in which he requested: the judicial recognition of his place of residence, as well as his right to live there; to live independently and to choose the persons with whom he wished to live; to dispose of his income and manage the expenses of his independent life; the provision by the judge of reasonable accommodations and the

necessary support in making decisions in order to be able to live independently, and that the judge refrain from ordering or subjecting him to living in a particular residence and with a particular person.

- p. 4 The judge issued a ruling in which he determined not to resolve “Ernesto’s” request until the petition was filed by his legal representative. “Ernesto” filed an *amparo indirecto* against this ruling.

While the ruling on the *amparo* was pending, the family chamber that heard the appeals issued a decision modifying the interlocutory decision, requiring the judge to designate a provisional guardian from the list of assistants of the Superior Court of Justice of the Federal District [Tribunal Superior de Justicia del Distrito Federal (TSJ)], instead of “Martha”. “Ernesto” filed his first expansion of the original *amparo* against this ruling.

## II. Probate Proceedings

Upon “Luisa’s” death, “Fernanda”, as executor, challenged the testamentary succession. “Luisa” appointed her children “Ernesto” and “Sofia” as heirs of her entire estate and, by request of “Hector”, brother and steward of “Ernesto”, “Patricia” was appointed as definitive guardian, who had already been appointed in that position in the voluntary jurisdiction.

- p. 5 At this point in the probate proceeding, “Ernesto” lived with “Fernanda”, who was acting as executor. Thus, after multiple procedures, “Patricia”, as definitive guardian of “Ernesto”, accepted the appointment of heir and, a few days later, the judge hearing the probate proceeding recognized “Ernesto” as sole and universal heir of the succession. Later, in his own right, “Ernesto” authorized certain persons to receive notifications and requested certified copies of all the documents in the testamentary succession. The judge ruled that, as long as “Ernesto” has a disability, he would rule according to the law, until the filing was presented by his guardian.
- p. 5-6 Finally, “Ernesto”, in his own right, requested the awarding of the property of which he was the sole and universal heir, but the judge determined that the prior ruling must prevail until the ruling revoking the state of interdiction of “Ernesto” is exhibited. “Ernesto” filed his second expansion of the original *amparo* against this ruling.

- p. 9 The district judge of the Federal District who heard the matter granted the *amparo* to “Ernesto” but only against the decision of October 22, 2013, considering that the ruling of the appeals filed by the Guardians Council and “Patricia”, designated one of the persons registered on the TSJ lists as guardian, without considering any opinion “Ernesto” may have had in that respect.
- p. 35 With respect to other acts and authorities, the district judge determined that the *amparo* was invalid because, given that “Ernesto’s” level of mental retardation does not prevent him from understanding the situations in which he was involved, “Ernesto” could have challenged the application of certain articles of the Civil Code for the Federal District (Civil Code) once he was declared interdicted, and those rules had to be challenged 15 days after their first act of application.
- Furthermore, in relation to the constitutionality of articles 1313, 1316 and 1341 of the Civil Code, the district judge considered that there was never an act of application and therefore the claim was invalid.
- p. 10 “Ernesto” filed a motion for review on which this Court decided to resume its original jurisdiction.

### **STUDY OF THE MERITS**

- p. 40 First the grievances that “Ernesto” asserts against the dismissal declared by the district judge will be examined.
- I. Study of grievances**
- p. 41-42 This Court considers that the argument of the district judge that “Ernesto” was duly represented by his guardian and had knowledge of the challenged acts, through his legal representative, who was authorized to file the *amparo* against the actions that caused harm to him is not consistent with the Convention on the Rights of Persons with Disability (CRPD), since it adopts an interpretation based on the model of substitution of the will.
- p. 42 The interdiction process implies interference in a person’s possibilities for action and therefore presumes a limitation on his or her fundamental rights, and therefore it can never be admitted, under the social and human rights model, that the right to a hearing of the person with disabilities is satisfied by the manifestations of his or her guardian, as the district judge asserts.

- p. 43 In this case, the case records do not show that it had been explained to “Ernesto”, in accessible language and taking into account his disability, the legal consequences of the judicial process in which he was involved, nor is there any record of his opinion in this respect.
- p. 44 Therefore, it must be concluded that, as “Ernesto” argues in his grievances, they cannot be considered acts consented to and, thus, the dismissal declared should be lifted.
- p. 44-45 The *amparo* judge failed to issue a ruling in an accessible format, notwithstanding “Ernesto’s” express petition in the *amparo* claim. Accessibility is one of the principles on which the CRPD is based, an essential preliminary condition for the enjoyment of all the rights on equal terms as other persons and that must be guaranteed with special care by judges.
- p. 45 According to the social and rights model, disability is the result of the interaction between persons with deficiencies and the barriers of the environment that prevent their full and effective participation in society on equal terms with others. From this perspective, the environmental barriers are what do not satisfy the needs of persons with disabilities and not their deficiency; in other words, the environment can be a facilitator or impose other types of barriers.
- One very important aspect for the full participation of persons with disabilities in society, on equal terms, is cognitive accessibility. Cognitive accessibility consists of the right to understand the information provided by the environment, to master the communication we maintain with it and to be able to easily do the activities carried out in it, without discrimination for reasons of age, language, emotional state or cognitive ability.
- p. 46 The general design of the system of justice is not conceived to be accessible to persons with disabilities, so the judge must make the necessary adjustments so that it is. If the information is only provided – if provided at all – using a specialized language (inaccessible to the interested party), the disability becomes a fact, product of the interrelationship of the deficiency with the environmental barrier. Seen this way, the system of justice itself can become a barrier.

One of the measures for making cognitive accessibility in the justice system a reality is to issue rulings in an accessible format, in the cases in which persons with disabilities are

involved and according to the disabilities involved. An accessible format implies the supplying of information easy to understand and, if necessary, the acceptance of a support person who communicates the wishes of the interested party. These types of rulings are accommodations to the proceeding: they are a means for guaranteeing the accessibility of the judicial process, of the judicial rulings and in general all the procedural acts.

- p. 48 In view of the above, this Court wishes to emphasize the obligation of the judge to make the necessary accommodations to facilitate the understanding of the information and the legal consequences of the judicial procedures in which persons with disabilities participate, in simple language, through accessible formats and with the necessary support, so they may state their arguments in a way that their right to a hearing is fully respected: it is a form of respecting the right to access to justice, and the right to equality and non-discrimination.
- p. 48-49 Regarding the incorrect specification of the challenged acts, it should be understood that “Ernesto” challenges the interdiction regime of the Civil Code, not just in articles 23 and 450 section II, but understanding this concept as a regulatory system that is reflected in other guardianship provisions – such as article 537.

## **II. Study of the grounds for violation**

- p. 49 This Chamber considers that the grounds for violation in which “Ernesto” considers that articles 1313 and 1341 of the Civil Code, and article 859 of the Civil Procedures Code for the Federal District (the Procedural Code), violate his capacity to inherit, to own property, to control his own economic affairs, to live independently in the community, to choose his place of residence and to request the distribution of the estate, part from a mistaken premise.
- p. 50 This is because the capacity to inherit that, as a general rule, all persons have, can be restricted for certain persons due to certain impediments, which are listed in article 131, and there is no reference to persons with disabilities.
- p. 51 Furthermore, this Court has already stated in various precedents that in the social model of disability the priority is the dignity of persons with disabilities, and therefore every law



must recognize at all times that persons with disabilities have rights with full legal capacity on equal terms with other persons.

p. 53 Therefore, disabilities should not be understood as an illness, because that assumption has huge implications on how we conceive and regulate matters related to disability and, in turn, has profound consequences in the legal sphere.

This Court observes that every rule that touches on the topic of persons with disabilities must always be analyzed from the perspective of principles of equality and non-discrimination.

p. 54 Thus, the purpose of the CRPD must be kept in mind and the legal solution that enacts it always chosen. The constitutional and conventional regularity of the concept of the status of interdiction must be analyzed from this perspective.

p. 54-55 It must be considered that discriminatory rules do not admit a compatible interpretation, since if a rule is discriminatory, the compatible interpretation does not repair the discrimination which perpetuates its constant impact.

p. 55-56 While in the *Amparo en Revisión* 159/2013 it was considered that the state of interdiction admitted a compatible interpretation, a new reflection based on the evolution of human rights and seeking an interpretation that enacts the CRDP – particularly article 12 – this Court determines that the concept of state of interdiction is not compatible with the CRPD and does not admit a compatible interpretation since it violates the right to equality and non-discrimination, among other rights.

p. 56 This Court has determined that when a rule makes a distinction based on a suspect classification, which is to say a prohibited factor of discrimination, the legislative measure must be given strict scrutiny.

p. 57 The articles of the Civil Code that establish the state of interdiction and the elimination of legal capacity, clearly make a distinction based on disability. Therefore, it must be proven that the distinction based on disability that the interdiction regime establishes has a constitutionally imperative objective.

p. 58 Historically, the purpose of the state of interdiction was to protect persons with disabilities. Although protection can generally have a constitutionally valid purpose, the state of interdiction is premised on a paternalistic, welfare-based notion of substitution of will that

does not recognize human rights: instead of seeking that persons with disabilities make their own decisions, it is designed for a guardian to make the legal decisions of the person with disabilities.

It is possible to infer from articles 23 and 450, section II, of the Civil Code that once the disability of a person is materially proven, then that person can be declared in a state of interdiction, which implies the person is incompetent and the exercise of rights must be restricted.

- p. 58-59 In the judgment of this Court, the concept of the state of interdiction is a disproportionate restriction on the right to legal capacity and represents an undue interference that is not compatible with the CRPD. This disproportion is reflected in the repercussion it has on other rights, since the recognition of legal capacity is inextricably linked to the enjoyment of many other human rights, and therefore it is concluded that the importance of the purpose pursued does not correspond with the harmful effects that the interdiction produces on other rights.
- p. 59 The elimination of legal capacity presumes a complete substitution of the will of the person with disability, since the article itself mentions that persons with disabilities may only exercise their rights through their representatives. Furthermore, the measure is excessively inclusive and does not contextualize the right with respect to the support and safeguards that the person needs to exercise his or her legal capacity, instead putting the accent on the deficiency and not on the barriers in the environment for the full exercise of all the rights.
- p. 60 Therefore, to deny or limit legal capacity violates the right to equal recognition as a person before the law and constitutes a violation of articles 5 and 12 of the CRPD, as well as article 1 of the Constitution.
- p. 61 Legal capacity consists of both the capacity to hold rights and obligations (capacity of enjoyment) and the capacity to exercise those rights and obligations (capacity of exercise).

Mental capacity refers to the aptitude of a person to make decisions that, naturally, vary from one person to another and can be different for a particular person in function of many

factors, such as environmental and social. The fact that a person has a disability or a deficiency should never be a reason for denying that person legal capacity or any right.

- p. 61-62 It is a common error that mental capacity and legal capacity are confused. Thus, when it is considered that a person has a “deficient” aptitude for making decisions – often because of a cognitive or psychosocial disability – his or her legal capacity is removed through the state of interdiction. However, contrary to the position of the substitution of the will, the CRPD expressly and unquestionably recognizes the right to legal capacity of all persons with disability, without any exception: it does not distinguish among disabilities.
- p. 62 For this Court the right of legal capacity is not a question of intelligence in the decisions that are adopted, nor should it be linked to mental conditions. It is based simply on the recognition of the will of every human being as a central element of the system of rights.
- p. 62-63 Furthermore, this Court affirms that there are different modes or manners of exercising that capacity and, therefore, access to the support needed to exercise their legal capacity and to make decisions should be provided. This assumes that each type of disability requires specific measures in view of the particular condition and personal requirements of each person, so that such persons can fully exercise their autonomy and all their rights.
- p. 63 Providing support is a mechanism established in the CRPD to enforce the rights of persons with disabilities, to guarantee their autonomy in the activities of daily life and to strengthen the exercise of legal capacity, and therefore the lack of support increases the risk of segregation and institutionalization.
- p. 64 Thus, the system of support should be designed according to the specific needs and circumstances of each person, and can be composed of a person, a family, professionals in the area, objects, instruments, products and, in general, any other support that facilitates the full exercise of the rights of persons with disabilities on equal terms with others.
- p. 65 As indicated by the Special Rapporteur on the Rights of Persons with Disabilities (the Rapporteur), the support system should comply with four essential elements which may vary in function of the differences in the conditions and types of accommodations and

services to provide such support. These four elements are: availability, accessibility, acceptability and possibility of choice and control.

Regarding availability, it is indicated that there should be accommodations and support services adequate and in sufficient quantity for all persons with disabilities.

- p. 66 With respect to accessibility, the accommodations and support services should be accessible to all persons with disabilities, especially the most disfavored, without discrimination, and the conditions for having access to the support should be reasonable, proportional and transparent.

Acceptability means that the States adopt all appropriate measures to ensure that the support programs incorporate a focus based on rights, are provided voluntarily and respect the rights and dignity of the persons with disabilities. The support should be appropriate from the cultural point of view, take into account gender aspects, deficiencies and needs throughout the life cycle, be designed in a way that respects the intimacy of the users and be of good quality.

Finally, States should design accommodations and support services to ensure that persons with disabilities have choice and direct control, and can plan and direct their own support through various measures.

- p. 66-67 The purpose of the safeguards is to ensure that the measures for exercising legal capacity respect the rights, the will and the preferences of the person with disabilities, and that there is no improper conflict of interest. The safeguards should be subject to periodic exams by a competent and impartial authority or judicial body.

- p. 67 This Court understands that any person that has knowledge of an improper influence or conflict of interest may report it to the judge, which constitutes a safeguard.

Thus, the so-called “best interest” should be substituted with the “best interpretation possible of the will and the preferences”, since under this paradigm personal autonomy and freedom are respected and, in general, all the rights on equal terms with other persons, and therefore the best interest does not consist of someone else deciding, but in procuring that the persons with disabilities have the maximum autonomy to make decisions for themselves over their life.

p. 68 This Court considers that the right to live independently and be included in the community means having the freedom to choose, and the capacity of control over the decisions that affect one's own life.

p. 69 In this regard, the choice of how, where and with whom to live is the central idea of the right to live independently and to be included in the community. Therefore, personal decisions are not limited to the place of residence, but cover all aspects of life of the person.

From this perspective, it is emphasized that interdiction is not compatible the right to an independent life and to be included in the community, since the right to an independent life is related to the recognition and exercise of legal capacity.

p. 69-70 The fact that the challenged rules do not recognize the existence of a multiplicity of functional diversities means that the message is transmitted that disability is a disease that can only be "treated" or "mitigated" through extreme measures such as the absolute restriction of the capacity to exercise one's rights.

p. 70 This form of seeing and conceiving disability implies treating persons with disabilities as mere objects of care and not as subjects of rights, since its premise is that the disability completely disqualifies the person, and accents the deficiency.

Instead of achieving the full inclusion of persons with disabilities, the state of interdiction, by establishing the absolute restriction of the capacity to exercise one's rights, makes persons with disabilities invisible and excludes them, since it does not allow them to act with autonomy and interact with other groups, persons and interests that make up society, and therefore reinforces the stigmas and stereotypes.

### **DECISION**

The *amparo* will be granted to "Ernesto" in order to delete articles 23 and 450, section II of the Civil Code from his legal sphere, with the following effect:

p. 71 The family judge shall void the interdiction declared through the decision of August 14, 1995, as well as all the court proceedings derived from the declaration of interdiction, and issue a ruling establishing the safeguards and support necessary so that "Ernesto" can fully exercise his legal capacity.

- p. 72-73 In that ruling, the judge will disregard the articles declared unconstitutional, as well as the provisions of the Procedural Code that regulate the procedure of interdiction, as incompatible with the social and human rights model.
- p. 73 In the proceeding, the judge shall make the accommodations to the proceeding necessary to guarantee “Ernesto’s” right of access to justice.
- p. 74 Regarding the measures or systems of support, the judge shall always consider the opinions and requests of “Ernesto”, so that it is he who determines what measures of support he needs, including – if he so wishes – the designation of one or more persons he trusts so that, with full respect for his personal wishes and preferences, they may assist him in different tasks.
- p. 75-76 In his ruling, the judge shall clearly establish the safeguards to ensure that “Ernesto”, any third party, or even the court itself, can allege a violation of “Ernesto’s” rights, so that the judge may take the measures to prevent or remedy the violations he was subject to and, if necessary, change the support.
- p. 76 The judge shall notify the Public Defender’s Office of the Federal District (the Public Defender) for purposes of providing free legal advice to “Ernesto” and “Ernesto” will be informed of the existence of this Public Defender in case he wishes to make use of their services.
- p. 76-77 The judge shall give notice to the Persons with disabilities Institute of Mexico City, and the System for the Full Development of the Family of Mexico City so, if they are requested by the interested party, those authorities may timely provide the information necessary to ensure that “Ernesto” will have access to the current programs for assistance, inclusion and wellbeing of persons with disabilities and for the determination of the measures of support and safeguarding.
- p. 78 In addition, the judge shall order that notice be given to the Civil Registry of the cessation of the state of interdiction, to cancel the inscription made on the birth certificate of “Ernesto”, in the understanding that both the inscription and the cancellation should be reserved.

To guarantee the full recognition of the legal capacity of “Ernesto”, the judge shall give notice to the National Council for the Development and Inclusion of Persons with

Disabilities so it may facilitate the institutional channels to ensure that “Ernesto” can demand before the competent authority the full enjoyment and exercise of his rights.

p. 78-79 Similarly, the judge shall give notice to the National Electoral Institute so that, if “Ernesto” does not already have a voter’s card and he wishes to, his voter’s card may be issued to him.