



Suprema Corte
de Justicia de la Nación



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RECREATIONAL MARIJUANA CONSUMPTION **(CONSUMO LÚDICO DE MARIHUANA)**

CASE: *Amparo en Revisión 237/2014*

REPORTING JUDGE: Arturo Zaldívar Lelo de Larrea

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

DATE OF DECISION: November 4, 2015

KEY WORDS: Right to free development of personality, marijuana, cannabis, recreational use, leisure use, proportionality test, COFEPRIS, General Health Law.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 237/2014*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of November 4, 2015, Mexico.

The full text of the decision may be consulted at the following link:

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-01/AR%20237-2014%20v.%20p%C3%BAblica%20PDF.pdf>

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SUMMARY OF THE *AMPARO EN REVISIÓN* 237/2014

BACKGROUND: Four persons (the affected parties) requested in writing from the Federal Commission for Protection from Sanitary Risks (COFEPRIS) an authorization that would permit personal and regular consumption with merely leisure or recreational purposes of marijuana, and the exercise of the correlative rights to its personal consumption, such as the planting, cultivation, harvesting, preparation, conditioning, possession, transportation, employment and use; excluding commercial acts, such as the distribution, sale and transfer. The COFEPRIS denied the authorization considering that according to various articles of the General Health Law (Ley General de Salud, LGS), carrying out any act related to the component substances of marijuana was prohibited in Mexico. The affected parties filed an *amparo indirecto* against this denial, which was denied by a district judge in Mexico City. The affected parties then filed a motion for review, which the First Chamber of the Mexico's Supreme Court of Justice (this Court) heard since the requirements to exercise its original jurisdiction were met.

ISSUE PRESENTED TO THE COURT: Whether the system of administrative prohibitions related to personal consumption of marijuana regulated in the LGS is constitutional or if, on the contrary, it unjustifiably limits the human right to the free development of personality.

HOLDING: The appealed decision was revoked and the *amparo* was granted, essentially for the following reasons. It was considered that the articles of LGS that make up the system of prohibitions related to the personal consumption of marijuana affect the *prima facie* content of the human right to the free development of personality since they constitute a legal obstacle that impedes those affected from exercising the right to decide what type of recreational or leisure activities they wish to engage in, and at the same time impedes lawfully engaging in all the actions or activities necessary to be able to materialize that election through the personal consumption of marijuana. Nevertheless, this Court determined that the free development of personality is not an absolute right, and therefore it could be limited in order to pursue another constitutionally valid purpose. In this regard, through a proportionality test, it was examined whether there was a justification from the constitutional point of view for such articles limiting the

content of the mentioned right. Through the proportionality test this Court concluded the following. The system of administrative prohibitions related to the personal consumption of marijuana pursues two constitutionally valid purposes: the protection of health and the protection of public order. Furthermore, it was considered that, according to the existing evidence, this system constituted an appropriate means for protecting health and public order. However, it was considered that the system of prohibitions was not a necessary measure, since there were alternative measures equally suitable for protecting health and public order that affected the right to free development of personality to a lesser degree. It was also considered that the system, as it was regulated, was disproportional, because it generated a minimum protection of health and public order compared with the intense intervention in the right of persons to freely decide what leisure activities they wish to engage in. Therefore, this Court held unconstitutional the system of administrative prohibitions regulated in the challenged articles and COFEPRIS was ordered to grant the authorization for those affected to engage in all the activities related to personal consumption with recreational purposes of marijuana, without any of those acts resulting in administrative or criminal sanctions of any kind. This was based on considering that the challenged regulations unjustifiably limit the fundamental right to the free development of personality.

VOTE: The First Chamber ruled on this matter by a majority of four votes of judges Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz (reserved the right to formulate concurring vote) and Alfredo Gutiérrez Ortiz Mena (reserved the right to formulate concurring vote). Judge Jorge Mario Pardo Rebolledo voted against (reserved the right to formulate an individual vote).

The votes formulated may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTermatica/PaginasPub/DetallePub.aspx?AsuntoID=164118>

EXTRACT OF THE *AMPARO EN REVISIÓN* 237/2014

- p. 1 Mexico City. The First Chamber of the Mexico's Supreme Court of Justice, (this Court), in session of November 4, 2015, issues the following decision.

BACKGROUND

- p. 2 On May 31, 2013, four persons (the affected parties) requested in writing from the Federal Commission for Protection from Sanitary Risks (COFEPRIS) the issuance of an authorization that would allow them to engage in the personal and regular consumption with merely leisure or recreational purposes of the narcotic cannabis and the psychotropic THC, jointly known as "marijuana".

They also requested an authorization to exercise the rights related to "personal consumption" of marijuana, such as the planting, cultivation, harvesting, preparation, conditioning, possession, transportation, employment, use and, in general, any act related to the leisure and personal consumption of marijuana, expressly excluding commercial acts, such as the distribution, sale and transfer thereof.

- p. 3 On June 13, 2013, the Executive Director of Regulation of Narcotics, Psychotropics and Chemical Substances of the COFEPRIS informed the petitioners that at this time the authorization requested could not be issued since pursuant to articles 235 and 237 – with respect to the narcotic "cannabis sativa" – and 245, 247 and 248 – with respect to the psychotropic "THC" – all of the General Health Law (LGS), engaging in any act related to those substances was prohibited throughout national territory.

On July 5, 2013, the affected parties filed an *amparo indirecto* against the denial of their request, alleging the unconstitutionality of articles 235, last paragraph, 237, 245, section I, 247, last paragraph, and 248, all of the LGS.

- p. 7 On August 20, 2013, a federal district judge in Mexico City issued a final decision denying the constitutional protection of the affected parties.
- p. 10 Disagreeing with the *amparo* decision, the affected parties filed an appeal for review (*recurso de revisión*).

- p. 16-17 The appeal was sent to a federal collegiate court of Mexico City which ruled that it lacked jurisdiction to hear the *amparo en revisión*, since it was a case where there was still a constitutionality problem with respect to the challenged articles, over which there was no court precedent, and therefore the original jurisdiction of this Court to hear this matter was activated.

STUDY OF THE MERITS

- p. 20 The affected parties originally claimed in their *amparo* the unconstitutionality of various articles of LGS, considering that they establish a “prohibitionist policy” with respect to the individual consumption of marijuana, which unduly limits, among other things, the fundamental rights to personal identity, one’s own image, free development of personality and self-determination, all in relation to the principle of human dignity.

According to the affected parties, the prohibition on the consumption of marijuana implied the suppression of behaviors that confer on the individual a specific difference according to his or her singularity, which restriction is not justified since the imposition of a single standard for a healthy life is not admissible in a liberal State that bases its existence on the recognition of human singularity and independence. Thus, in synthesis, they argued that the prohibition on consuming marijuana is based on a prejudice based on moral values and not on scientific studies, revealing that the State has not acted with ethical neutrality.

- p. 21 This Court notes that the grievances asserted by the affected parties, particularly those that altogether are directed to challenging the decision of the district judge considering the challenged regulations to be constitutional, are essentially grounded and sufficient to revoke the appealed decision and grant the constitutional protection based on the understanding that they unjustifiably limit the fundamental right to the free development of personality.

I. Regulatory framework on the control of narcotics and psychotropics in the LGS

- p. 27 This Court understands that the challenged regulations function as a “system of administrative prohibitions” that forms part of the regulatory framework in the LGS on the

control of narcotics and psychotropics, which constitute a legal obstacle to be able to lawfully engage in all the actions necessary to engage in the personal consumption of marijuana.

- p. 27-28 On the one hand, the last paragraphs of articles 235 and 247 establish that the authorization for carrying out acts related to narcotics or psychotropic substances is conditioned on them having exclusively “medical and/or scientific” purposes, without including the possibility that marijuana can be used for “leisure or recreational” purposes. And on the other hand, articles 237 and 245, in relation to article 248, establish an express prohibition through which the Ministry of Health is categorically prohibited from issuing the corresponding authorizations the affected parties requested in relation to marijuana to be able to exercise their right to the free development of personality.

II. Analysis of the impact of the challenged legislative measure on the *prima facie* content of the free development of personality

- p. 33 This Court has understood that the free development of personality is a fundamental right that arises from the right to dignity, which in turn is established in article 1 of the Constitution and is implicit in the international human rights treaties signed by our country. In this respect, in the *Amparo Directo* 6/2008, the Plenary of this Court held that “individuals, whoever they are, have the right to freely and autonomously choose their life project, how they will achieve the goals and objectives that, for them, are relevant”.

In that case, it was also explained that the right to the free development of personality permits “the achievement of the life project that a human being, as an autonomous being, has for him or herself”, such that it presumes “the recognition by the State of the natural power of all persons to be individually how they want to be, without force, or unjustified controls or impediments by others, in order to achieve the goals and objectives set. In other words, it is the human person who decides the meaning of his or her own existence, according to his or her values, ideas, expectations, likes, etc.”.

- p. 36 In this case, it seems clear that the right to the free development of personality is a right whose contours should be developed in court decisions.

p. 40 In that regard, the precedents show a jurisprudential line in which this Court has recognized that the right to free development of personality covers in principle a large variety of actions and decisions connected directly with the exercise of individual autonomy.

Now, in this case the first question that must be resolved is if the decisions and the actions that the affected parties indicate are protected *prima facie* by the right in question.

p. 41 The election of any recreational or leisure activity is a decision that undoubtedly belongs to the sphere of personal autonomy which must be protected by the Constitution. It has been indicated that the decision to smoke marijuana can have different purposes, among which include “the relief of stress, the intensification of perceptions or the desire for new personal and spiritual experiences”. Thus, since they are “mental experiences”, they are among the most personal and intimate that someone can experience, such that the decision of an adult individual to “affect” his or her personality in this manner for recreational or leisure purposes is protected *prima facie* by the right to its free development.

p. 41-42 Having explained the regulatory framework and the *prima facie* content of the right to free development of personality, this Court concludes that the articles of the LGS identified as challenged acts do impact the *prima facie* content of the fundamental right, since they constitute a legal obstacle that prevents the affected parties from exercising the right to decide what type of recreational or leisure activities they wish to engage in, and at the same time prevents lawfully carrying out all the actions or activities necessary to be able to materialize that election through the personal consumption of marijuana: planting, cultivation, harvesting, preparation, conditioning, possession, transportation, etc.

Notwithstanding the above, the free development of personality is not an absolute right, such that it can be limited for the purpose of pursuing another constitutionally valid objective.

p. 43 Thus, for the interventions carried out under a limit on the free development of personality to be constitutional, they must have certain characteristics: the legislative measure must

be suitable to protect the rights of third parties and/or public order; and it should not unnecessarily and disproportionately limit this fundamental right. In other words, the measure analyzed has to overcome a proportionality test in the broad sense.

III. Proportionality analysis in the broad sense of the challenged legislative measure

- p. 48 The purpose of the regulatory framework for the control of narcotics and psychotropic substances established in the LGS is the protection of health and public order, since from a systematic interpretation of the law, as well as of the different processes of reforming the law, it can be seen that the lawmaker had the intention of procuring the health of consumers of drugs and protecting society from the pernicious consequences of the consumption of drugs, given that it has been considered that this activity has harmful effects on both the consumer and on society in general.
- p. 48-49 In this respect, this Court understands that both purposes are constitutionally valid. On the one hand, it is clear that the protection of health is an objective that the State can legitimately pursue, since it is a fundamental right recognized in article 4 of the Constitution, in which it is expressly established that every person has the right to health protection. In this regard, we should not lose sight of the fact that this right has both an individual or personal and a public or social projection.
- p. 49 With respect to the protection of the health of individuals, this Court has established in multiple precedents that the right to health translates into obtaining a determined general wellbeing composed of the physical, mental, emotional and social state of the person, from which another fundamental right is derived, consisting on the right to physical-psychological integrity. Thus, it is evident that the State has a constitutional interest in procuring for individuals an adequate state of health and wellbeing.
- p. 49-50 On the other hand, the social or public facet of the right to health consists of the duty of the State to address health problems that affect society in general, and to establish the mechanisms so that all persons have access to health services. In this regard, it can be said that the LGS identifies the consumption of marijuana as a public health problem.

- p. 50 In close relationship to the protection of public health is the protection of public order. While it is complicated to define what this constitutional principle consists of, it is a concept that refers to the wellbeing of society in general. If it is understood in this way, there is no doubt that the public order includes the pursuit of collective social objectives through legislative decisions or public policies. Furthermore, it has to be indicated that the Constitution recognizes as a legitimate interest of the State the protection of the social conglomerate.
- p. 50-51 In contrast, the prohibition of the consumption of marijuana for the mere moral self-degradation it implies, would not pursue a legitimate purpose. However, the Constitution does not impose an ideal of human excellence. It permits that each individual chooses his or her own life plan and adopts the model of personal virtue he or she considers valid, as long as it does not affect others. Thus, the impacts on social performance caused by marijuana – for example, a decrease in work productivity and the so-called “anti-motivational syndrome” – cannot be considered as valid reasons for intervening in the right to free development of personality. Furthermore, neither the law now analyzed, nor the legislative processes that have reformed it, show the intention of the lawmaker to promote a particular model of personal virtue.
- p. 54 Regarding the rational connection of the measure, if the consumption of marijuana does not cause damages or harm to health or society in general, the prohibition analyzed will not be a suitable measure to protect those constitutional purposes. As can be seen, the rational connection test thus requires the corroboration of the existence of an empirical relationship between the consumption of marijuana and certain states of things that can be characterized as damages or harm to health or to society.

Now, if the literature is examined that has analyzed the effects of recreational consumption of marijuana, at least the following states of things can be identified that are normally considered associated with the recreational consumption of marijuana: impacts on health; generation of dependence, propensity to use “harder” drugs; and inducement to committing other crimes.

It should also be specified that to overcome the rational connection test it is sufficient that such impacts exist, regardless of the degree or entity they have. In that regard, for the prohibition on the consumption of marijuana to have a constitutional justification from the point of view of the suitability of the measure, it is necessary to demonstrate that it affects health and public order, even when such affect is minimal.

- p. 55-56 In general terms, the studies coincide that from the evidence currently existing the consumption of marijuana in adult persons does not presume a significant health risk, unless it is used chronically and excessively. The scientific literature distinguishes the temporary alterations from the chronic ones. Thus, while the former only occur while the intoxication of the body lasts, the latter persist even when the consumer is not intoxicated.
- p. 56 The temporary alterations occur as an immediate consequence of the consumption of marijuana. Thus, since these are effects that depend on the state of intoxication that the marijuana produces, the investigations indicate that they are reversible and do not represent a demonstrated risk to health.
- p. 56-57 On the other hand, the existence of chronic alterations as a consequence of consumption is very disputed in the specialized literature. The studies indicate that permanent implications are unlikely or minimal, that their persistence is uncertain and may even have their origin in a plurality of factors different from the consumption.
- p. 58-59 Nevertheless, the psychological damages that marijuana generates when its consumption initiates in adolescence must be noted. Several studies explain that there is greater probability of suffering schizophrenia and depression as an adult when the excessive consumption of marijuana initiates at an early age.
- p. 59 In this panorama, this Court observes that while the medical evidence shows that the consumption of marijuana can cause harm to health, these are impacts that can be qualified as non-serious, provided underaged consumers are not involved.

Regarding the development of dependency, in the scientific literature there is a distinction between the abuse of and dependency on a substance. While abuse presumes the continuous use of drugs, dependency specifies that the consumption must satisfy

additional criteria, like the development of tolerance to the drug, abstinence syndrome and interference of the consumption with the development of other activities of the consumer. In this regard, regular consumers of marijuana do not necessarily qualify as drug dependent.

- p. 61 In relation to the propensity to use “harder” drugs, in general terms, it can be said that the available studies show that marijuana has a very low level of incidence in the consumption of other, more risky drugs.
- p. 62 In any case, it appears to be that the consumption of subsequent drugs is the result of various factors acting together, but not from the consumption of marijuana itself.
- p. 63-65 Regarding the inducement to commit other crimes, the evidence is very speculative, various studies have concluded that the consumption of marijuana is not a determining factor for committing crimes. From the evidence analyzed it is seen that the consumption of marijuana does not incentivize such commission. Although consumption and criminality are situations that are generally associated, this may be due to other social and contextual explanations, such that both phenomena may have the same causes as their origin. Furthermore, many addicts face the punitive system of the State precisely due to the existence of prohibitions on the consumption of marijuana. However, it was also determined that the use of marijuana does negatively affect the abilities to drive automotive vehicles which may increase the likelihood of accidents.
- p. 65 In conclusion, according to the above explanations, this Court concludes that there is evidence to consider that the consumption of marijuana in fact has various impacts on people’s health. In this regard, while in general terms it can be said that the harms are minor, this is not an obstacle to conclude that in the specific case the “system of administrative prohibitions” consisting of the challenged articles in fact is a suitable measure to protect people’s health.

Nevertheless, the evidence analyzed did not show that the consumption of marijuana influences the increase in criminality, since although the consumption is associated with anti-social or illegal consequences, these may be explained by other factors, such as the

social context of the consumer or the punitive system of the drug itself. On the other hand, the studies analyzed do allow for the conclusion that the consumption of marijuana by drivers is a factor that increases the likelihood of causing vehicular accidents, which means that the measure challenged only in this aspect is a suitable measure to protect the public order.

- p. 65-66 Having completed the rational connection test, now it should be analyzed if the “system of administrative prohibitions” challenged is a necessary legislative measure to protect health and public order or if, on the contrary, there are alternative measures equally appropriate that affect to a lesser degree the right to the free development of personality.
- p. 66 This scrutiny may be done comparing the measure challenged with those that the lawmaker considered adequate for similar situations or the alternatives that in comparative law have been designed to regulate the same phenomenon.
- p. 67 In this regard, the measure challenged can be compared to the regulation of substances that provoke damage similar to the consumption of marijuana, like tobacco and alcohol, and with regulatory systems of the consumption of marijuana that have been implemented in comparative law.
- p. 67 It is important to mention that both types of measures are referred to, only with the aim to identify the form that an alternative measure could adopt which could legitimately be compared to the measure adopted by the Mexican lawmaker in relation to marijuana consumption.
- p. 72 From the analysis of the above mentioned regulations a series of elements can be seen that could constitute an alternative measure to the absolute prohibition of the leisure and recreational consumption of marijuana as configured by the “system of administrative prohibitions” challenged by the affected parties: (i) limitations on the places of consumption; (ii) prohibition on driving vehicles or handling devices or hazardous substances under the effects of the substance; (iii) prohibitions on the advertising of the product, and (iv) restrictions on the age of those who can consume it. As can be observed, these are measures that seen together do not absolutely prohibit the consumption and,

instead, only limit engaging in the activities related to personal consumption of marijuana in circumscribed situations.

p. 72-73 Now, it is important to indicate that both the legalization of the consumption of marijuana in other countries, and the permission of the consumption of tobacco and alcohol in Mexico have been accompanied by educational and health policies. In this regard, various information campaigns have been implemented on the adverse effects to health of consumption of such substances, as well as social programs to address the damage to the health of those who have developed an addiction. In this respect, it can be said that these types of policies would also form part of an alternative measure to prohibition.

p. 75 This Court understands that the alternative measures examined are not only appropriate for preventing that the damages or impacts on health and public order indicated previously are produced, but they are also measures that are less restrictive on the free development of personality.

In this regard, it can be said that the challenged legislative measure prevents the consumption of marijuana in any circumstance when to achieve the purposes intended it could be limited to discouraging certain behavior or establishing prohibitions in more specific situations, such as driving vehicles or hazardous instruments under the effects of the substance, consuming it in public places or inducing third parties to also consume it.

p. 76-77 According to the above, the “system of administrative prohibitions” configured by the challenged articles constitutes an unnecessary measure, since there are alternative measures equally appropriate to protect health and public order that affect the right to the free development of personality to a lesser degree.

Therefore, this Court considers that the prohibition on the personal consumption of marijuana for purposes of leisure is unconstitutional since it does not overcome this step of the proportionality test.

IV. Analysis of strict proportionality of the challenged legislative measure

p. 80 In the strict proportionality analysis of the measure, it would only be justified to severely limit the *prima facie* content of the right to free development of personality if the damages

associated with the consumption of marijuana that the “system of administrative prohibitions” on the consumption of marijuana tries to prevent were also very serious. On the other hand, if the measure only succeeds in avoiding or preventing minor damages, then it is disproportionate that the lawmaker makes use of an absolute prohibition that severely affects the free development of personality.

p. 80-81 This Court considers that the “system of administrative prohibitions” causes a very intense impact on the right to free development of personality in comparison with the minimum degree of protection to health and the public order that is achieved with such measure. In spite of the fact that this Court recognizes that the lawmaker can limit the exercise of activities that presume impacts on the rights that our Constitution protects, in the case of the restriction on the free development of personality that the challenged measure involves, it is not found that such impacts are so serious as to merit an absolute prohibition on its consumption.

p. 81-82 Thus, in spite of the fact that the “system of administrative prohibitions” overcomes the first two steps of the proportionality test, by having established that it involves a measure that seeks to protect health and public order and it is appropriate for achieving such objectives, this Court considers that it is a measure that is not only unnecessary, since there are alternative means equally appropriate that affect the right to the free development of personality to a lesser degree, but also disproportionate strictly speaking, since it generates a minimum protection for health and public order for the intense intervention in the right of people to decide what leisure activities they wish to engage in. Therefore, this Court considers that the possibility of deciding responsibly if he or she wishes to experience the effects of that substance in spite of the harm that this activity may generate to a person, belongs to the strict sphere of individual autonomy protected by the right to free development of personality.

DECISION

p. 89-90 This Court considers that articles 235, last paragraph, 237, 245, section I, 247, last paragraph, and 248, all of the LGS, are unconstitutional, in the regulatory portions that

establish a prohibition on the Ministry of Health issuing authorizations for engaging in activities related to the personal consumption for leisure or recreational purposes – planting, cultivating, harvesting, preparing, possessing and transporting – of the narcotic “cannabis” and the psychotropic “THC”, together known as marijuana.

- p. 90 The precision is made that this declaration of unconstitutionality does not presume at all the authorization to engage in acts of commerce, supply or any other that refers to the sale and/or distribution of the aforementioned substances, in the understanding that the exercise of the right should not harm third parties.
- p. 90 Consequently, this Court revokes the appealed decision and grants the *amparo*, directing the Executive Director of Regulation of Narcotics, Psychotropics and Chemical Substances of COFEPRIS, the authority indicated as responsible in the *amparo*, to grant to the affected parties the authorization referred to in articles 235 and 247 of the LGS, with respect to the substances and for the effects referred to above, in the understanding that such authority may not use the regulatory portions whose unconstitutionality has been declared as a basis for issuing the respective ruling.