



**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.

**LEGITIMATE INTEREST OF CHILDREN IN THE DEFENSE OF THE ENVIRONMENT  
(INTERÉS LEGÍTIMO DE LA NIÑEZ EN LA DEFENSA DEL MEDIO AMBIENTE)**

**CASE:** *Amparo en Revisión 659/2017*

**REPORTING JUDGE:** Margarita Beatriz Luna Ramos

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

**DATE OF THE DECISION:** March 14, 2018

**KEY WORDS:** right to a healthy environment, right to access to justice, rights of children and adolescents, principle of the best interest of the child, legitimate interest, interest in the amparo proceeding, childhood, mangroves, economic, social, cultural and environmental rights.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 659/2017*, Second Chamber, Margarita Beatriz Luna Ramos, J., decision of March 14, 2018, 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/2021-10/AR%20659-2017.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en Revisión 659/2017*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 659/2017

**BACKGROUND:** 113 children filed an *amparo indirecto* lawsuit against the construction of a project in Cancún and the permits granted by the federal environmental authorities and those of the state of Quintana Roo, because it was causing the destruction of a mangrove zone. They argued that the construction violated their right to an adequate environment for their development and wellbeing. A federal judge there discontinued the proceeding for lack of legitimate interest, since they did not prove the impact on the environment and how their legal sphere is affected, nor did they demonstrate with appropriate evidence that they were inhabitants of the city. Eighteen children filed a *recursos de revisión* against the judge's decision which Mexico's Supreme Court of Justice (this Court) heard through the exercise of its power to assert jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether in an *amparo indirecto*, filed by children, it is solely up to them to prove they have a legitimate interest to challenge acts presumptively violating their human right to a healthy environment; or whether the judge is authorized or obligated, through a specific requirement or *ex officio*, to seek the means necessary to analyze such situation.

**HOLDING:** The appealed decision was revoked for essentially the following reasons. This Court noted that to evidence a legitimate interest the existence must be recognized of a constitutional norm that protects a diffuse interest in benefit of a specific class; that this diffuse interest is affected, individually or collectively, and that the person belongs to that class. In addition, upon analyzing the admission of an *amparo indirecto* claim, the impact from the act of authority must be identified, and with that, the type of interest in question. If this is not clear, the claim must be admitted, requiring the person to try to clarify it during the trial, even up to the issuance of the decision. It was also noted that the principle of the best interest of the child implies that the matters where their interests are affected entail a stricter scrutiny to determine the constitutionality of the measures. In this case, the judge failed to request and process evidence

or take the necessary measures that would demonstrate the legitimate interest the children claimed they have. Therefore, this Court ordered the proceeding to be reinstated, so the federal judge could request the children to prove they live in the city of Cancún; this is in order that they may demonstrate their legitimate interest to file the *amparo* lawsuit and the claim can be processed.

**VOTE:** The Second Chamber decided this matter by a majority of three votes of the judges Margarita Beatriz Luna Ramos, Javier Laynez Potisek and José Fernando Franco González Salas. The judges Alberto Pérez Dayán and Eduardo Medina Mora I. voted against.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=219066>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 659/2017

p. 1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 14, 2018, issues the following decision.

### BACKGROUND

- p. 1-2 113 children filed an *amparo* claim, on August 27, 2015, against multiple environmental authorities, for the issuance of the authorization ruling of the Environmental Impact Statement granted by the Environmental Impact and Risk Office [*Dirección General de Impacto y Riesgo Ambiental*] (DGIRA), dated July 28, 2005, in favor of "FONATUR", with respect to a project in Cancún, Quintana Roo, as well as any other ruling, permit or authorization that has been issued and that permitted the destruction of mangrove.
- p. 9-10 A district judge located in the same city discontinued the proceeding on September 23, 2016, for lack of legitimate interest, upon considering that there was no evidence of an impact on a healthy environment or a legally relevant harm that this generated in the sphere of the rights of the children.
- p. 10-11 18 children filed *recursos de revisión* on October 10 and 11, 2016. In addition, FONATUR presented a *revisión adhesiva* on December 9, 2016. A collegiate court with the same residence was to hear the matter.
- p. 11 On November 29, 2016, the guardian of one of the children requested this Court to exercise its power to assert jurisdiction. On June 21, 2017, that power was exercised and the case file was turned over.

### STUDY OF THE MERITS

- p. 13 This matter involves a *recurso de revisión* filed against the resolution issued in an *amparo indirecto* lawsuit, in which the violation was claimed of the rights recognized by articles 4, paragraphs five and nine, 14 and 16 of the Federal Constitution, 3 and 12 of the Convention on the Rights of the Child, 38, 39, 48, 49, subsection B, of the General Law on the Rights of Children and Adolescents, in essence for the destruction of mangroves of the Laguna Nichupté, in Quintana Roo.

p. 26 In this matter the problem to clarify is whether in an *amparo indirecto* lawsuit filed by children, is it solely up to them to prove they have a legitimate interest to challenge acts they say violated their human right to enjoy a healthy environment and, if they do not demonstrate it the suit is discontinued or whether, on the contrary, if the judge is authorized or obligated, whether through a specific requirement toward these minors or ex officio, to seek the means necessary to analyze such question.

One of the grievances is well-founded and sufficient to revoke the appealed decision, specifically in relation to the fact that the Judge, based on the greater interest of the child, must collect and process ex officio the evidence or take the measures necessary to permit minors to demonstrate whether they have the legitimate interest they say they have.

### **I. Concept of legitimate interest**

The Plenary of this Court ruled on the classification of interest –which is based on the level of impact or intensity of relationship with the legal sphere of the person–, upon resolving the *Contradicción de Tesis* 111/2013, from which the concepts of interest are obtained, which are:

p. 26-27 Simple interest implies the recognition of legitimation for any individual for the sole fact of being a member of the community, while legal interest is what has been identified with holding a subjective right, which means the possibility of making or wanting a particular circumstance and the possibility of requiring others to respect it. In other words, a simple interest is concerning all members of society, and therefore the degree of intensity in the legal sphere is not qualified as personal or direct, and constitutes the premise contrary to a legal interest, in which the impact on the legal sphere refers to a specific quality: the holding of a subjective right.

p. 27 A legitimate interest implies a link between a person and a claim, such that the annulment of the act that is challenged produces a positive benefit or effect in their legal sphere, whether current or future but certain; in other words, it is an actual and real interest, not hypothetical, since the latter would refer to a simple interest. Therefore, for a legitimate interest to exist, the existence of an impact on a certain legal sphere must exist,

appreciated under a parameter of reasonability, and not just a simple possibility, and therefore, a possible constitutional protection decision would imply obtaining a particular benefit, an immediate result of the ruling.

Thus, a legitimate interest consists of a differentiated and broader category, but also does not involve a generic interest of the society as occurs with a simple interest, which means it is not the generalization of a popular action, but of access to the competent courts given possible legal injuries to legally relevant interests and, therefore, protected.

- p. 30 For its part, the Second Chamber of this Court has held, in the *Amparo en Revisión* 553/2012, that this concept presumes the existence of a legal protection of the interest on which the petitioner's claim is supported, which alleges the impact of a subjective right the petitioner holds. It added that it presumes that the necessary legal protection corresponds to the petitioner's "special situation in the legal order", which is to say a norm that establishes a diffuse interest in benefit of a class, identified and identifiable, which obligates the petitioner to demonstrate he belongs to it.

## II. How to evidence legitimate interest

- p. 32 To prove legitimate interest it must be shown that: a) there is a constitutional norm establishing or protecting a diffuse interest in benefit of a particular class; b) the challenged act violates that diffuse interest, whether individually or collectively; and, c) the petitioner belongs to that class. This is because if the legitimate interest presumes a legal impact on the petitioners, they must demonstrate that they belong to the specific group that suffered or is suffering the harm that is claimed in the *amparo* lawsuit.
- p. 34 Regarding the elements constituting this procedural concept, for purposes of the validity of the *amparo* lawsuit, it has been said that affected parties must convincingly prove the interest, legal or legitimate, they have and not infer it based on presumptions; this means that they must show they belong to the group whose diffuse interest is protected by a constitutional norm, and is said to be affected by the challenged act; in other words, they must demonstrate belonging to the specific group that suffered or is suffering the harm that is alleged in the *amparo* claim.

### III. Powers of the judge to determine the validity of the *amparo* claim

As provided in the Amparo Law, once the claim is filed, the *amparo* judge is obligated to study it to determine if it is appropriate to formulate an instruction to clarify it, admit it for processing or dismiss it outright for invalidity if a cause of invalidity is manifest and unquestionable.

- p. 35 A manifest reason should be understood to mean that additional demonstration is not required, since it is clearly and directly seen from the claim and its annexes. Unquestionable invalidity exists when there is certainty and full evidence.

While there are various causes for the invalidity of the *amparo* lawsuit, the exercise of the constitutional action by private parties who consider their fundamental rights to have been violated should not be limited or obstructed.

- p. 37 Therefore, the legislator established the possibility of dismissing the claim when any of the causes established in the Amparo Law materializes manifestly and unquestionably. That law lists a series of actions with respect to which there cannot be a ruling on the merits in relation to its constitutionality or unconstitutionality.

- p. 37-38 In that context, according to the provisions of articles 107, section I, first paragraph, of the Federal Constitution, in relation to article 5, section I, of the Amparo Law, the exercise of the constitutional action is solely reserved for those who suffer a relevant legal harm as the result of an act of authority, which is to say a direct or indirect impact that empowers its holder to go before the appropriate judicial body demanding that that transgression cease.

- p. 38 Thus, if there is no interest over the challenged act (legal or legitimate, not simple), the *amparo* lawsuit will be invalid pursuant to article 61, section XII, of the Amparo Law.

- p. 38-39 Therefore, in each matter the interest that applies according to the nature of the act must be analyzed, as a prerequisite for validity, in order to determine if in fact a legally relevant impact exists.

- p. 39 That interest must be evidenced either with direct proof or through logical inferences, for which it is essential to give an opportunity to those affected to argue the elements necessary to prove their claim; which reveals that, in principle the absence of interest in the challenged act does not constitute a reason for manifest or unquestionable invalidity, since those elements may be introduced even up to the constitutional hearing, in order to satisfy the prerequisite.
- p. 41 When resolving the *Contradicción de Tesis* 331/2016, the Second Chamber of this Court reached the conclusion that, upon deciding the *amparo* claim, the judge may verify if the situation of the petitioner in relation to the act of authority implies a harm or not and, furthermore, the type of impact, to determine if it implies a legitimate interest or a simple interest; thus, in the event that it is not feasible to determine these situations with clarity or it is possible that the petitioner holds that legitimate interest, the claim should be admitted so that, through the processing of the suit, the circumstances are clarified with certainty; but if from the facts and the reasons explained and/or proven in the claim it is clearly and unquestionably seen that the situation of the petitioner with regard to the act of authority implies a mere simple interest, then the judge may determine the manifest and unquestionable occurrence of the cause of invalidity and, therefore, dismiss the *amparo* claim.
- p. 44 In this case, the claim was filed by children who, according to the Judge, did not demonstrate with appropriate evidence that they inhabit or reside in the city of Cancún, Quintana Roo, and therefore he discontinued the proceeding, without taking into consideration that in this case there were various forms of proving legitimate interest; in other words, to verify that the children do live in that city, which could be corroborated, for example, through utility receipts of their parents or guardians, birth certificates of the children, school documents, etc.

However, the Judge failed to request this of them, notwithstanding that before admitting the claim, he requested them to verify other questions, such as the representative capacity of those who claimed to be their guardians, but he did not request that they provide valid



evidence to demonstrate their residence in the city in which the acts indicated as violating the right to a healthy environment were executed, which could also be proven with evidence collected ex officio, based on the group to which the petitioners belong as children.

- p. 45-48 The above is based on and with respect to the best interest of the child, since any damage caused to the environment by the challenged act will be affecting them; the Judge should carry out a more detailed scrutiny to determine the existence of a possibility, at least, that the petitioners evidenced the legitimate interest they assert they have, above all because they could be affected directly with the decision made, as the Plenary of this Court held in the *Acción de Inconstitucionalidad 8/2014* and the Second Chamber of this Court in the *Amparo en Revisión 203/2016*.
- p. 48 From the arguments explained, this Court concludes that the Judge should request the children to prove their residence in the city in which they asserted the challenged acts were executed, since it would only take the presentation of certain documents to demonstrate that they normally inhabit the city and, with that, prove their legitimate interest.

## DECISION

- p. 48-49 Therefore, the challenged decision is revoked and it is ordered to reinstate the proceeding, so the Judge may request them to prove the legitimate interest they claim, specifically so they may demonstrate their habitual residency in the city in which the acts are executed and, if it is considered that the request is complied with, with full jurisdiction process the claim and decide according to the law.
- p. 50-51 This Court considers it important to specify that it considers the criterion held in this final decision applicable only to this case, by virtue of the right that it is considered violated, which is the defense of a healthy environment, as a fundamental right that affects society in general.