

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.

LEGALITY OF DETENTIONS AND CRITERIA FOR THE USE OF FORCE BY SECURITY FORCES
(LEGALIDAD DE LAS DETENCIONES Y CRITERIOS PARA EL USO DE LA FUERZA PÚBLICA)

CASE: *Amparo Directo en Revisión 3153/2014*

REPORTING JUSTICE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: June 10, 2015

KEY WORDS: Legality of detentions, requirements for a valid detention, rights of the defendant during the detention, criteria for the use of force by security forces.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 3153/2014*, Plenary, Arturo Zaldívar Lelo de Larrea, J., decision of June 10, 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-emplematicas/sentencia/2022-01/ADR%203153-2014.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 3153/2014*, Mexico.

SUMMARY OF THE *AMPARO DIRECTO EN REVISIÓN* 3153/2014

BACKGROUND: The federal police implemented a fixed and mobile undercover surveillance service on a street of Mexico City, because two citizens had previously reported extortion calls in which they were indicated the day they should pay the amount of the extortion. Minutes after the operation began, a male individual arrived at the location on a motorcycle and approached the victims who arrived in a van, so he could receive a portfolio type backpack that contained the amount demanded inside. In that moment elements of the police approached and detained the man ETM *in flagrante delicto*. A criminal judge sentenced ETM for the crime of aggravated extortion. ETM appealed the decision of the criminal judge. The criminal court chamber, which heard the appeal, sentenced ETM for extortion with threats against honor. ETM requested the *amparo* because, according to his version, during the detention he was beaten and mistreated. The collegiate court that heard the matter denied the *amparo* to ETM since there was no evidence that ETM was beaten by the police, as they used the force strictly necessary to detain him. Given the adverse decision, ETM filed a *recurso de revisión* which was heard by the Mexico's Supreme Court (this Court).

ISSUE PRESENTED TO THE COURT: Whether the interpretation of the collegiate circuit court that heard the matter was correct in stating that the right of every person not to be mistreated when in detention or under detention, established in article 19, last paragraph of the Constitution, admits the use of force strictly necessary to secure a person that has committed a crime and tries to escape.

HOLDING: The *amparo* was denied for the following reasons. The detention by the Federal Police was legal because they acted under an *in flagrante delicto* situation where ETM was caught in the act of the crime of extortion when the victims delivered a bag to him that contained the money requested through an extortion call. The injuries ETM refers to, and which were duly certified, were a result of the detention and nothing more. To find torture, the intentionality, seriousness and purpose of the arresting agents for an ulterior motive must be clear. The use of force by the police was strictly necessary to secure ETM who committed a crime *in flagrante*

delicto and attempted to escape (legal and justified detention), and therefore it cannot be considered that there was mistreatment in ETM's detention.

VOTE: The First Chamber decided this matter unanimously with five votes of the justices María del Carmen Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo and Alfredo Gutiérrez Ortiz Mena.

The vote may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=168077>

EXTRACT OF THE *AMPARO DIRECTO EN REVISIÓN* 3153/2014

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 10, 2015, issues the following decision.

BACKGROUND

- p.6-7 On May 23, 2013, the federal police implemented an undercover fixed and mobile police surveillance service on a street in Mexico City, because two citizens had previously reported extortion calls in which the day to pay the amount of the extortion had been indicated to them. Minutes after the operation began a male individual arrived on a motorcycle and approached the victims who arrived in a van, so they could deliver a portfolio type backpack to him that contained the amount demanded inside. At that moment police officers approached and detained the man ETM who had in his possession the money delivered by the victims, as well as other personal objects and who was transferred to the prosecutor's office.
- p.6 On October 14, 2013, a Mexico City criminal judge issued a decision against ETM, considering him criminally liable for committing the crime of aggravated extortion (having committed the crime by telephone), established and sanctioned in article 236, first and fifth paragraphs of the Criminal Code for the Federal District.
- p.7 ETM filed a *recurso de apelación* before a criminal appeals court in Mexico City. The criminal court chamber amended the decision of the criminal judge in two aspects: a) to sentence ETM for the crime of extortion with threat to honor, without changing the penalties imposed; and, b) the harm was considered repaired with the recovery of the money that the victims had delivered as payment for the extortion.
- p.8-9 Given the adverse decision, the defendant filed an *amparo directo* against the decision of the criminal court chamber. In his *amparo* lawsuit, ETM indicated, basically, that his constitutional rights were violated because he was beaten by the police when he was taken to the prosecutor's office.
- p.10-12 The collegiate court that heard the matter considered ETM's arguments invalid since the detention occurred *in flagrante delicto* – at the time he received the backpack that contained the money of the extortion victims – and therefore he was transferred without

delay to the prosecutor's office. The collegiate court also indicated that there was no evidence that ETM was beaten by the police, since they used the force strictly necessary to detain him. Therefore, the collegiate court decided to deny the *amparo* to ETM.

p.20 Given the denial of the *amparo*, ETM filed a *recurso de revisión*, which was heard by this Court.

STUDY OF THE MERITS

The constitutional examination developed by this Court consists of determining whether the collegiate court's interpretation was correct in stating that the right of every person to not be mistreated while in detention or under arrest, established in article 19, last paragraph of the Constitution, admits the use of force by security forces strictly necessary to secure a person that has committed a crime and that tries to escape, the study of which will address the following points: (I) the legality of the detentions under the parameter of use of force by security forces; and (II) application of that standard to the specific case.

I. Legality of detentions under the parameter of use of force by security forces

p.20-21 Article 16 of the Constitution establishes the premises and requirements under which a person can be detained: a) arrest warrant; b) in the act; and c) an emergency. Article 7 of the American Convention on Human Rights protects the right of every person to personal freedom and security and contains specific guarantees that protect the right to not be detained illegally or arbitrarily, to know the reasons for the detention and the charges filed against the persons detained, to judicial control of the detention and to challenge the legality of the detention.

p.22 In addition, the U.N. Human Rights Committee has indicated that article 9 of the International Covenant on Civil and Political Rights proclaims that personal freedom refers to the absence of physical confinement, not to a general freedom of action; while personal security refers to protection from physical or psychological injuries or to physical and moral integrity. This is relevant because, in the context of the rules governing detentions, the right to personal freedom is profoundly linked to guaranteeing the physical and psychological integrity of the person detained. Furthermore, the Inter-American Court of

Human Rights has indicated that any use of force that is not strictly necessary due to the behavior of the person detained constitutes a threat to human dignity.

p.24-25 For the detention of a person to be valid it must comply with the following requirements: i) it must be justified in the causes and conditions established in advance by the Constitution and the law; ii) it cannot be arbitrary; iii) the authorities must inform the person detained, at the moment of detention, the reasons for it and notify him without delay of the charges against him; iv) the person detained must be taken before the competent authority that verifies the legality of the detention; and v) as a guarantee of reparation, his freedom must be ordered if the detention was illegal or arbitrary, which will be done by the authority that immediately qualifies the legality of the detention. This means that an *amparo directo en revisión* would not be valid, because in these cases the detention of the affected party results from the various determinations issued in the proceeding – court order of pretrial detention, decisions of first and second instance – and therefore it would only have the effect of declaring the unlawfulness of the detention and the evidence derived from it.

In addition to the above, other rights and guarantees must also be respected during the detention of the defendant: a) the use of force strictly necessary must be carried out with full respect for the human rights of the detainee; b) the officers authorized to carry out the detention must be duly identified; c) the reasons for the detention must be explained, which include not only the general legal basis but also elements such as the unlawful act and the identity of the victim; d) it must be clearly established which agents are responsible for the detention of the detainee; e) the personal integrity or the injuries of the person detained must be verified; and f) the information on the complete and immediate handing over of the detainee to the prosecuting authority must be recorded in a document.

In addition, the use of force by the security forces must be for legitimate, necessary, appropriate and proportional purposes.

p.29 **II. Application of the standard of legality of detentions under the parameter of the use of force by the security forces in this specific case.**

In this case, the detention by the Federal Police was legal because they acted under the premise of *in flagrante delicto*, catching ETM in the act of the crime of extortion when the

victims delivered a bag to him that contained the money requested through an extortion call.

With the accusation of the victim, the police officers present at the time the crime was committed had the duty to act – to detain a person that was presumed to be committing a crime – with justifiable grounds, in spite of the allegations of ETM that they detained him somewhere else and that he never committed any crime.

p.29-30, 34 Elsewhere, the aggrieved party has indicated that during the detention he was beaten and held more than two hours before being turned over to the prosecutor's office. Thus, the detention is alleged to have been arbitrary and therefore it must be determined whether the detention was legitimate and if it was carried out with full respect for the rights to freedom and personal integrity. An arbitrary detention is understood as one carried out with methods contrary to or incompatible with human rights. In this case, the police officers acted according to the admissible legal parameters of the use of force by security forces. In addition, as evidenced in the court record, the police officers used only the force necessary to meet the legitimate end (detention) considering that ETM resisted his arrest upon attempting to escape the police.

p.35 The injuries ETM refers to, and that were duly certified, were the result of his detention. They did not result from any other purpose such as the use of torture, where the intentionality, seriousness and purpose of the arresting officers for an ulterior motive would have to be clear, and therefore the explanation provided by the officers is consistent and credible.

p.35-36 Similarly, other rights and guarantees were respected during the detention of the defendant, in view of the following: the force strictly necessary was used with full respect for the human rights of ETM; the officers authorized to carry out the detention were identified; at the time of the detention the reasons for the detention were explained, based on the charges, such as the illegal act and the identity of the presumed victim; it was clearly established which agents were responsible for detaining the detainee ; three medical reviews were done and the medical certificates were issued on the personal integrity or injuries of ETM; a complete report on his turning over to the prosecutor was immediately presented to the prosecutor's office; and, the detainee was immediately

turned over to the prosecutor's office – the delay of two hours in reaching the prosecutor's office was explained and justified.

p.36-37 In conclusion, in this case we have a detention carried out legally and legitimately, not arbitrarily; it was recorded that the rights of the detainee were respected by the police officers who detained him making use of the force strictly necessary to achieve his capture.

Thus, this Court concludes that the interpretation by the collegiate court with respect to article 19, last paragraph of the Constitution is correct, since the use of force by the police was strictly necessary to capture ETM who committed a crime *in flagrante delicto* and attempted to escape (legal and justified detention), and therefore it cannot be considered that there was mistreatment in the detention of ETM that violated the mentioned constitutional provision to his detriment.

DECISION

p.38-39 Since the *recurso de revisión* is found groundless, the decision of the Collegiate Circuit Court is upheld and the *amparo* is denied to ETM.