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**USE OF SECURITY FORCES AND ITS REGULATION  
IN THE LAWS OF THE STATE OF MEXICO  
(USO DE LA FUERZA PÚBLICA Y SU REGULACIÓN  
DENTRO DE LAS LEYES DEL ESTADO DE MÉXICO)**

**CASE:** *Acción de Inconstitucionalidad 25/2016*

**REPORTING JUSTICE:** Alberto Pérez Dayán

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

**DATE OF THE DECISION:** March 27, 2017

**KEY WORDS:** right to freedom of expression, right to freedom of assembly, principle of legality, right to legal security, use of law enforcement, proportionality in the use of law enforcement, use of firearms or lethal weapons, state security bodies, training and equipping members of public security, accountability, principles of absolute necessity, proportionality and last resort, powers of the Congress of the Union to legislate on torture and cruel and inhuman treatment, powers of the Congress of the Union to legislate on criminal laws in relation to adolescents.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Acción de Inconstitucionalidad 25/2016*, Plenary, Alberto Pérez Dayán, J., decision of March 27, 2017, 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/AI25-2016.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center of Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Acción de Inconstitucionalidad 25/2016*, Mexico.

## SUMMARY OF THE *ACCIÓN DE INCONSTITUCIONALIDAD 25/2016*

**BACKGROUND:** A group of representatives of the Congress of the State of Mexico, the Human Rights Commission of the State of Mexico (CODHEM) and the National Human Rights Commission (CNDH), filed at the same time an action of unconstitutionality against the Law Regulating the Use of Security Forces in the State of Mexico (the Law) for violating certain human rights recognized in the Political Constitution of the United Mexican States (CPEUM), as well as several international treaties. The lawsuits indicated that the law invaded the sphere of powers of the Congress of the Union and violated the rights to legality, legal security and freedom of assembly and expression. They also claimed that it violated the principles of dignified treatment of adolescents and elderly persons in detention centers and social reintegration and reinsertion institutions, and the principles of absolute necessity, proportionality and last resort. Finally, they argued that the security forces were not adequately trained and equipped, and sanctions were not applied in the case of excessive use of force. The plaintiffs indicated the Congress and Government of the State of Mexico as issuing and enacting authorities. The representatives requested the invalidity of the Law in general, the CNDH requested the invalidity of articles 3, sections II, III and XII, 12, sections II, subsection b), III, subsections a) and b), 14, 15, 16, 19, section VII, 24, 25, 26, 33, section II, 34, sections II and IV, 39 and 40 and the CODHEM challenged the validity of articles 14, 15, 16, 24, 25 and 40 of the law. The three lawsuits were joined in the Mexico's Supreme Court of Justice (this Court).

**ISSUE PRESENTED TO THE COURT:** Whether various articles of the Law are constitutional or violate various articles of the CPEUM and the international treaties signed by the Mexican State.

**HOLDING:** The action of unconstitutionality was partially granted and it was dismissed with respect to one of the parties for the following reasons. After studying the standing of the petitioners, this Court concluded that the percentage of the representatives of the Congress of the State of Mexico was insufficient to initiate such action and, therefore, it dismissed their action

of unconstitutionality. Subsequently, it was considered that the use of security forces must always be governed by principles of: a) legality; b) absolute necessity; c) proportionality; and d) accountability. Based on this, it was determined that the Law's definition of real aggression (against which law enforcement may use force) did not violate the principles of legality and legal security since the definition is not ambiguous and the Law's text must always be interpreted to protect the individual. On the other hand, this Court determined that the Law does violate the principles of absolute necessity, proportionality and last resort, since the margin of discretion for the use of arms as a first option is arbitrary, when it must be subject to a legal limit with indispensable standards in Human Rights. With respect to the rights to freedom of assembly and expression, this Court considered that meetings and protests enjoy a special scope of protection and the challenged Law does not violate those rights since it does not improperly limit their exercise nor permit an indiscriminate use of force against them. The normative provisions regarding the treatment of adolescents inside the criminal justice system were declared unconstitutional because it was considered that they are exclusive powers of the Congress of the Union and the State of Mexico cannot legislate on them. This Court also disagreed with the claims regarding the absence of sanctions for the excessive use of force since there is a chapter in the Law with a procedure to carry out in those situations. Finally, with respect to the training of public security officials, this Court declared the law constitutional because all police officers of the country, including those of the State of Mexico, must have prior training to be able to join the force.

**VOTE:** The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=196624>

## **EXTRACT OF THE ACCIÓN DE INCONSTITUCIONALIDAD 25/2016**

p.1 Mexico City. The Plenary of Mexico's Supreme Court of Justice (this Court), in session of March 27, 2017, issues the following decision.

### **BACKGROUND**

- p.1-2 By official notice presented April 8, 2016 before the Judicial Certification and Correspondence Office of this Court, various representatives of the LIX Legislature of the State of Mexico filed an action of unconstitutionality against the Law Regulating the Use of Security Forces in the State of Mexico (the Law), published by Decree in the Official Gazette of the State of Mexico on March 18, 2016, indicating the Congress and Governor of the state as issuing authorities and enactors of the aforementioned norms.
- p.2 Furthermore, by official notices filed April 18, 2016 before this Court, LRGP as President of the CNDH and BFDC as President of the CODHEM filed, respectively, actions of unconstitutionality against the Law, indicating the Executive and Legislative Branches of the state as issuing and enacting authorities.
- p.2-3 The representatives requested the invalidity of the law in general. The CNDH requested the invalidity of articles 3, sections II, III and XII, 12, sections II, subsection b), III, subsections a) and b), 14, 15, 16, 19, section VII, 24, 25, 26, 33, section II, 34, sections II and IV, 39 and 40 and the CODHEM challenged the validity of articles 14, 15, 16, 24, 25 and 40 of the Law.
- p.6 The representatives considered some articles of the CPEUM and the CADH could be violated.
- p.9-10 The CNDH considered some articles of the CPEUM, of the CADH and of the International Covenant on Civil and Political Rights, violated.
- p.11-12 Finally the CODHEM considered as violated some articles of the CPEUM, of the Universal Declaration of Human Rights, of the American Declaration of the Rights and Duties of Men, of the International Covenant on Civil and Political Rights, of the CADH, of the Convention on the Rights of the Child, of the Inter-American Convention to Prevent Torture, of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, of the Body of

Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, as well as of the Standard Minimum Rules for the Treatment of Prisoners.

- p.14 The chief justice of this Court ordered the formation and registration of the files relative to these actions of unconstitutionality and declared their joinder because they coincide with respect to the challenged legislative decree.

## STUDY OF THE MERITS

### I. Violation of the human rights of legality and legal security [Use of law enforcement and firearms].

- p.56 This Court considers that law enforcement officers perform an important function in the protection of society from violence, the fulfillment of the measures adopted by the administration of justice and the safeguarding of people's rights.
- p.57 For that reason, there must be a clear legal framework that governs the work of the police force and its margin of discretion must be limited with a focus on human rights, especially in the case of the use of the police force and lethal weapons.
- p.59 Therefore, all the actions of the public security agents must be based on the law and carried out in accordance with it. That is why it is of fundamental importance that the internal legislation, to the extent possible, provide a clear legal framework for the authorization and use of force and lethal weapons. Such framework must respect four principles: a) legality; b) absolute necessity; c) proportionality; and d) accountability.
- p.59-60 According to the Inter-American Court of Human Rights, the *principle of legality* indicates that the use of force must be directed toward achieving a legitimate end, and there must be a regulatory framework that contemplates the form of acting in these cases. Therefore, it is considered that it is only possible to limit rights – and also use force – when a legitimate end is pursued, which can only be to save the life of a person or protect them from serious injury.
- p.61 These requirements are violated if force is used without the legislation authorizing it or if its use is based on a law that does not comply with constitutional order.
- p.61-62 For the Inter-American Commission on Human Rights (CIDH), the *principle of absolute necessity* limits offensive and defensive security measures to those strictly necessary for

complying with the legitimate orders issued by the competent authority in the case of violent or criminal acts that put at risk the life or personal integrity of any inhabitant.

- p.62 This means that force must be used as a last resort and, if necessary, it should be a gradual use of force – the minimum necessary.
- p. 66-67 The *principle of proportionality* is used to find a balance between the benefits of the use of force and the possible consequences and damages that can be caused by its use. Thus, proportionality prohibits the use of such force when the damage inflicted is greater than the benefits achieved. In summary, proportionality implies that the ends do not justify the means. Police officers cannot pursue their objectives, as legitimate as they may be, at any cost.
- p.67 In that context, it is essential that the legal framework establish absolute limits on the use of force, both to prevent its unmeasured use, and to ensure that members of the police force have clarity with respect to the degree of force they may use.
- p.68 The *principle of accountability* establishes that officers must be held accountable for conduct that violates a person’s human rights, in order for them to have legitimacy in the eyes of the public when making use of force and the other powers that have been conferred to them.
- This implies that not only the officers must be held accountable and may be subject to liability for their acts or omissions in performing their duties, but also their superiors who issued orders with respect to the use of force and firearms, or who were responsible for planning and preparing the public security operations.
- p.69-70 In broad strokes, an effective accountability system should cover the following areas: (I) criminal investigation; (II) disciplinary investigation; (II) civil or administrative proceedings to repair any damage -which includes compensation, rehabilitation, restitution and guarantees of non-repetition -; and (IV) the constant review or supervision of the institutional functioning.

**a) Constitutionality of article 3, section III, of the Law [real aggression]**

- p.75 The plaintiffs argue that the definition of “real aggression” (to which officers may respond with force), understood in the Law as “the conduct of a person physically displayed in actions that put legal interests in danger” is obscure, since it does not specify what is meant by the physical actions “that put legal interests in danger”, nor is it clear what the physical display

of the conduct consists of since, under this premise, any action or omission could be considered a real aggression.

- p.76 This Court considers that article 3 section III is not contrary to the principles of legal security or legality, since the definition of real aggression should be interpreted systematically with the general principles derived from the Law, in consonance with the second paragraph of article 1, which requires that the text of the law be interpreted according to the Constitution and the international treaties, favoring at all times the broadest protection of the rights of individuals.
- p.79 In this regard, the normative definition of real aggression contains the following elements: (I) the conduct of the person physically displayed; and (II) in actions that put legal interests in danger. To clarify the linguistic meaning of the norm, the physical display of the conduct refers to the existence of the corporal movement of the person, while the actions that put legal interests in danger are all those carried out to harm legally protected interests. Furthermore, although it is not in the actual definition of the word, when the Law indicates that the aggression is real, it implies that it cannot be hypothetical, fictional or future, but must be actual, existing.
- p.82 With respect to the use of lethal weapons, this Court considers that even in the presence of real aggression, the officers responsible for implementing the law are required to use non-violent means before resorting to the use of force, and therefore they may only use force when other means are ineffective or somehow do not guarantee the protection of the legal interest that is being harmed.
- p.84 Considering the above, once it has been objectively verified that the use of force is the only way to protect the legal interest harmed by the real aggression, the principles of absolute necessity and proportionality require that the level of force used be gradual, so that it is the minimum necessary to safeguard that legal interest.
- p.86 To comply with the above, the police officers must be trained to distinguish between the different options of force that they may use and determine when it is necessary to apply one or the other, so they can react seriously, appropriately, proportionally and efficiently to the

external stimuli that are the object of their activity. This requirement is met by the challenged Law.

- p.86-87 Furthermore, any use of force is subject to an element of time, which implies that it must stop once the legitimate objective has been reached or when it can no longer be reached.
- p.87 Regarding the use of firearms or lethal weapons, the actions that police officers may take to make use of them in the presence of real aggression, must have a differentiated and more restrictive regime than the use of force in general, which must be considered always.
- p.88 According to the UN, security bodies must give a warning prior to the use of lethal arms, which is part of their obligation to use non-violent and verbal means first.
- p.90 In that regard, while article 3, section VI, of the Law establishes that lethal arms are understood as the “object or instrument used by the elements of the public security institutions facing a threat or aggression that may cause serious injury or death”, for the use of these arms, the public security officers have the duty of: (I) identifying themselves as public security officers; (II) giving a clear warning of the intention to use firearms – unless giving that warning puts the officers in danger, creates a risk of death or serious harm to other people, or it would obviously be inadequate-; and (III) if possible, using the firearms in the least lethal manner, according to the circumstances of the case.
- p.91 Finally, those authorities, when confronting situations that put their life or others’ lives at risk, must act according to the mentioned parameters for the identification and levels of the use of force and lethal arms.

## **II. Violation of the principles of absolute necessity, proportionality and last resort**

- p.96-97 The petitioning parties consider that article 40 of the Law, which establishes that the use of force must be the last resort, permits it "to be used as first option, provided the premises and conditions established in this Law and other applicable legal provisions are met". Therefore, they indicate that the norm violates the principles of absolute necessity, proportionality and last resort, since it authorizes the use of force indiscriminately, including firearms, if the



authority considers that it must be the first option, which puts at risk the rights of personal integrity and life.

- p.97 This Court coincides with the arguments of the plaintiffs and considers the claims valid, since this norm breaks the teleology of the Law, and therefore the part of article 40 that mentions “however, it may be used as first option, provided the premises and conditions established in this Law and other applicable legal provisions are met” must be invalidated.

That decision is reached considering that this fragment of the Law contradicts and therefore threatens the principles of absolute necessity and proportionality contained in article 6 of the Law, by expressly including the permission to use force as the first measure that can be resorted to by the public safety officers.

- p.98 Strict observance of the principles for the use of force constitutes an unconditional legal limit that cannot be disregarded by the legal system, since it subjects the authorities to compliance with indispensable standards of human rights that prevent arbitrariness and the unnecessary loss of life of individuals or serious violations of personal integrity.

### **III. Violation of the human rights of freedom of assembly and expression**

- p.101 This Court has indicated that democratic societies only exist where pluralism is protected and safeguarded, as well as the free flow of ideas and respect for others and for the actions of others, even when it may seem irrelevant, uncomfortable or contemptible to the majority. This is the cornerstone that governs social life and demands greater tolerance and maximum protection from the State.
- p.103 Given the above, the use of force in the context of meetings or protests has a specific and restrictive dimension, that distinguishes it from other spheres of application of the maintenance of public order.
- p.104-105 According to the basic principles for the use of force, the States must act based on the presumption of the lawfulness of the public protests or marches and that they do not constitute a threat to public order. Thus, breaking up a protest can only be justified based on the duty to protect individuals.

p.105 This requires that the management of the security operatives be planned carefully and in detail by people with specific experience and training for this type of situation and it must be done under clear protocols of action.

p.108 Consequently, firearms must be excluded from the devices used for the control of social protests, as a measure to prevent lethal violence and the occurrence of deaths in contexts of social protests.

#### **a) Constitutionality of article 16 of the Law**

According to the plaintiffs, article 16 of the Law, which establishes that “the determination to make use of force, in the case of violent and illegal assemblies, protests or meetings will be made by the commander responsible for the operation, under his strict responsibility, and he must immediately inform his superior of that determination for the relevant purposes”, is unconstitutional because it: a) does not specify what should be understood for “violent or illegal” protests or meetings, and therefore the authority has the discretion to make that qualification; and b) it does not establish the levels of use of force that can be applied in these cases, nor the type of arms authorized for those purposes.

p.112 In the judgment of this Court, it is not necessary to declare the challenged article unconstitutional, since it must be interpreted systematically with the general principles that are derived from the Law in consonance with the provisions of the second paragraph of article 1, which requires that such interpretation be made in conformity with the Constitution and the international treaties, favoring at all times the broadest protection of individuals.

p.115-116 On this basis, if there are doubts about whether a meeting or protest is illegal, the principle favoring the right of assembly must be applied *-favor libertatis-*, and the mere suspicion or simple possibility that there may be premises of illegality is not sufficient to justify their modulation or prohibition.

p.116 In summary, this Court considers that this norm does not violate the human right of assembly, because it does not permit an indiscriminate use of force, nor establish excessive limitations on the exercise of that fundamental right.

#### **IV. Invasion of the sphere of powers of the Congress of the Union to legislate on torture and cruel and inhuman treatment**

p.134 The plaintiffs consider that article 12, section III, subsections a) and b) of the Law violates the principle of legality and public safety, since it defines torture and cruel, inhuman or degrading treatment for purposes of the Law, in spite of the fact that the legislative power over those types of crimes corresponds exclusively to the Congress of the Union.

p.139 This court coincides with the arguments given by the affected parties and declares the total invalidity of the above cited provision.

p.134 This is so because according to the CPEUM, the Congress of the Union is the only one authorized to issue legislation on the crimes of torture, cruel, inhuman or degrading treatment and, by exclusion, the states do not have this power. In addition, the authorities may only do what they are expressly authorized to do by the norm, and therefore the challenged article is not duly grounded in law.

#### **V. Violation of the constitutional principles of dignified treatment of adolescents and the elderly in detention centers and social reintegration and reinsertion institutions**

p.150-151 The plaintiffs argued that article 24 of the Law violates human rights because it authorizes the use of force, including the use of arms, in detention centers, social reinsertion centers and adolescent social reintegration institutions. This is without having a specific differentiation for the treatment of the inmates, which does not address the special situation of adolescents, nor complies with the creation of a comprehensive system of justice for minors, violating their safety and integrity, as well as harming their rights to social reinsertion.

p.152-153 With respect to article 25, the plaintiffs argued that the sanctions authorized in the Law for both adults and adolescents, such as the use of straightjackets, leg cuffs and handcuffs for subjection of hands and ankles, are unnecessary and do not favor social and family reintegration, and may also create psychological impacts and impacts on the free development of personality.

p.155-156 The plaintiffs also indicated that article 26 of the Law violates the principle of legality given that its content establishes discretionary parameters so that each detention and social reinsertion center creates its own models and methods for treating people. In addition, the article does not limit the periods of application of these methods and models, leaving them open, which contradicts the principle of proportionality.

p.161 This Court studied the 3 articles together, determining that they must be declared unconstitutional and entirely invalidated as contrary to article 73 section XXI, subsection c) of the CPEUM, referring to the exclusive power of the Congress of the Union to legislate on the criminal laws referring to adolescents, which makes it impossible for the State of Mexico to legislate on the matter.

#### **VI. Absence of sanctions for the case of excessive use of force**

p.162 The petitioners indicate that the Law does not contemplate the sanctions that must be applied to the officers responsible for complying with the Law and who in exercise of the use of force violate people's rights, which is contrary to human rights.

p.163-164 In the judgment of this Court, this concept of invalidity is groundless because there is a chapter of the Law (chapter XV) that does address sanctions.

Although the Law does not contemplate the specific sanctions that should be imposed on the public officers that engage in the abusive or excessive use of force, it does establish the procedure in those cases, stating: (I) that an investigation of the facts must be carried out by the respective security institution; and (II) that the results of the investigation must be sent to the respective control bodies in order to determine the administrative, civil or criminal liabilities and the sanctions set forth in the Security Law of the State of Mexico and the Law of Liabilities of Public Officials of the State and Municipalities, which shall be imposed, when applicable, on the members of the public security institutions.

#### **VII. Absence of safeguards necessary for the training of the public security officers**

p.164 According to the arguments of the plaintiffs, the challenged Law should have established that, before its entrance into force, all the public security officers have been trained, educated

and certified on the use of force and firearms, to comply with the principle of legality protected in the Federal Constitution.

p.171-172 In the judgment of this Court, this argument is unconvincing since there is not a total absence of training, but rather the entrance into force of the new law is subject to a reasonable period and the security bodies of the country must be duly prepared for joining the force, and therefore it is considered that they are trained in advance.

p.166 In this regard, the CPEUM establishes that public security is a function of the Federal Government, the states and the municipalities, which make up the National Public Security System, and that it is subject to minimum conditions including, among others, that no person may join the public security institutions if he has not been duly certified and registered in the system.

p.168-169 In that context, the Congress of the Union issued the regulatory law of the mentioned constitutional provision, which is the General Law of the National Public Security System, whose article 7 establishes as an obligation of the Federal Government, the Federal District and the states and municipalities, in the scope of their respective competencies, to guarantee their compliance with and contribution to the effective coordination of the System. This norm also provides that the Federal Government and the states will establish and operate academies and institutes that will be responsible for applying the professionalization programs to which the police institutions will be subject.

p.171 The above implies that the officers of the security bodies are trained for the performance and exercise of their functions prior to their incorporation into service, and that their specialization and ongoing training must be supervised by the bodies of the system, in accordance with the regulatory law of the mentioned constitutional mandate and other regulations derived therefrom.

## DECISION

p.171-172 The actions of unconstitutionality 27/2016 and 28/2016, filed respectively by the CNDH and the CODHEM, are partially valid and grounded and the action of unconstitutionality 25/2016

filed by the members of the LIX Legislature of the Free and Sovereign State of Mexico is dismissed.

p.173 This action of unconstitutionality is rejected with respect to the challenge of articles 3, sections II, V and XII, 12, section II, subsection b), 14, 15, 19, section VII, 33, section II, and 34, sections II and IV, of the Law.

The validity of articles 3, section III, 16 and 39 of the Law is recognized and the legislative omissions consisting of the absence of sanctions for the case of excessive use of force and the safeguards necessary for the training of the officers of the public security institutions, attributed to the Law, are found groundless.

Finally, articles 12, section III, subsections a) and b), 24, 25, 26 and 40 in the drafting "however, it may be used as first option, provided the premises and conditions established in this law and other applicable legal provisions are complied with" were declared invalid.