

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.

**FREEDOM OF EXPRESSION: DEFINITION OF JOURNALIST FOR PURPOSES OF INVESTIGATING CRIMES AGAINST THEM IN THE FEDERAL COURTS
(LIBERTAD DE EXPRESIÓN: DEFINICIÓN DE PERIODISTA PARA EFECTOS DE QUE SE INVESTIGUEN DELITOS CONTRA ESTOS EN EL FUERO FEDERAL)**

CASE: *Amparo en Revisión 1422/2015*

REPORTING JUSTICE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: March 1, 2017

KEY WORDS: Protection of journalists, freedom of expression, criteria for determining if a person is a journalist.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 1422/2015*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of March 1, 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-emblematicas/sentencia/2022-01/AR1422-2015.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo en Revisión 1422/2015*, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 1422/2015

BACKGROUND: EAC was detained and transferred to offices of a municipal government where he was physically assaulted by the police, the local Public Security Director and the Mayor, because he was documenting a road accident that involved a minor who drove a van owned by the mayor's brother. The Federal Prosecutor [*Ministerio Público Federal*] (MPF) assigned to the Special Investigative Unit for Crimes against Freedom of Expression initiated an investigation, which resulted in the arrest and holding of some agents of the municipal police for criminal prosecution. The police challenged this decision, arguing that the case could not be decided at the federal level because it did not meet the requirements for federal authorities to hear state crimes. The Circuit Court [*Tribunal Unitario de Circuito*] (TUC) ruled against the police. In spite of this, EAC initiated an *amparo* lawsuit claiming that the crimes had not been reclassified by those who had initiated the criminal process as crimes of torture and wrongful imprisonment. The TUC deemed that it had not been demonstrated that the federal authorities should hear the case and that it had not been proven that EAC was a journalist. EAC filed a *recurso de revisión* and requested this Supreme Court (this Court) to hear the case.

ISSUE PRESENTED TO THE COURT: Whether the determination of the TUC that it had not been proven that EAC was a journalist because it was not shown that he worked in a media outlet was correct.

HOLDING: The *amparo* was granted essentially for the following reasons. It was decided that the decision on who is a journalist must be made in terms of function, and therefore it was enough to prove that the person is dedicated to informing society of public events on a regular basis. Thus, this Court granted the *amparo* filed by EAC, indicating that it was correct for the federal authorities to hear the case.

VOTE: The First Chamber decided this case with the unanimous vote of the five justices Norma Lucía Piña Hernández, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo and Alfredo Gutiérrez Ortiz Mena.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=191296>

EXTRACT OF THE *AMPARO EN REVISIÓN* 1422/2015

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 1, 2017, issued the following decision.

BACKGROUND

p.2-3 On January 1, 2014, at approximately 2:00 p.m., EAC received a call from APC, asking him to report that the van owned by the brother of the Mayor of Seyé, Yucatán, driven by the minor AC, had hit the wall of APC's house. This was to ensure there would be a record of the damages suffered by the property and the driver of the car would be held accountable for the damages caused.

p.3 EAC arrived at the place of the events around 8:00 p.m. and began to take photographs of the van, the damages caused by it, and of the mayor, who left the area once he learned of EAC's presence. Moments later, several officers of the municipal police arrived, questioning EAC's presence and asking him to leave. Since he did not comply with their request, EAC was assaulted and arrested by the police officers, to subsequently be transferred to the Treasury office of the Municipal Palace. Once there, EAC was physically assaulted by the Mayor, the Public Security Director and some municipal police officers.

As a result of the above events, on February 26, 2014, the MPF initiated a preliminary investigation. It was assigned to a district judge in Yucatán.

On May 29, 2014, the trial court judge issued an arrest warrant and order for trial against JMCA, FATC, FCP, ADC and AVP, the officers of the Municipal Police accused of assaulting EAC, for probable cause in committing the crimes of abuse of power and assault.

p.3-4 The public defender of the accused challenged the trial court determination arguing that the federal authorities could not hear the case since it involved state crimes.

p.4 The TUC issued a final decision on September 25, 2014. In that decision, the TUC changed the challenged decision only regarding the suspension of the political rights of the defendants. EAC decided to file an *amparo* lawsuit against the TUC decision arguing

that the Circuit Court had the power and the duty to reclassify the crimes of abuse of power and assault as crimes of wrongful imprisonment and torture.

- p.5 EAC asserted that there was no cause for his detention, since he had not committed any crime or administrative infraction. Although the arresting officers argued that the cause of the detention was to “calm down” the detainee, this did not constitute a constitutionally valid cause, since the true purpose of the detention was to punish the appellant for practicing journalism. Therefore, the authority did not have to prove the crime of abuse of power but of torture.

The TUC issued a decision on December 12, 2014. The TUC considered that the federal judge did not prove the jurisdiction established in article 10 of the Federal Criminal Procedures Code establishing that federal judges may hear state crimes committed against a journalist that affect the right to information or the freedom of expression or press. It was also deemed that the victim’s status as a journalist was not accredited just by his statement, since he did not exhibit any document that proves so.

- p.6 EAC filed a *recurso de revisión*. In the brief submitted, the petitioner argued that the appealed decision violates the standards of freedom of expression by requiring proof of being a journalist. EAC stated that the right to freedom of expression includes the dissemination of information, as well as the search for and reception of information through any means, and therefore journalism constitutes the primary and principal manifestation of the freedom of expression. Consequently, journalism cannot be limited to persons registered in a particular professional association, since it is related to the freedom of expression inherent to being human. Therefore, the definition of journalist should be considered from a functional perspective, and include people who regularly observe, describe, document and analyze events.

- p.6-7 On January 15, 2015, EAC requested this Court to exercise its power to assert jurisdiction. In a decision of September 9, 2015, this Court decided to assert jurisdiction over the case.

STUDY OF THE MERITS

p.8 EAC argues that a constitutionality question survives because the TUC decision violates the standards of freedom of expression established by the Constitution and international treaties. This Court decision could set a standard for investigators and judges to determine whether the victim of the crime who claims to engage in journalism is in fact a journalist.

This Court considers that being a journalist is determined functionally, without requiring proof of belonging to a media outlet, for which it is sufficient to show that the person regularly informs society of public events. Thus, the MPF and the federal judges may hear state crimes when they are committed against journalists, and EAC has that status.

This Court will explain the reasons for its decision below.

p.8-9 As established above, the TUC considered the MPF could not assert jurisdiction over a state crime in terms of article 10 of the Federal Criminal Code, given that the victim did not exhibit any document that proved he was a journalist. That determination was challenged by EAC and this Court must decide if that requirement is in accordance with the right to freedom of expression.

p.9 To make that determination, the following will be analyzed: i) the content of the right to freedom of expression, ii) the relevance of journalism in the exercise of the freedom of expression, iii) criteria for determining who is a journalist, and iv) the resolution of this particular case.

I. The right to freedom of expression

The right to the free expression of ideas is protected in articles 6 and 7 of the Constitution, as well as articles 13 of the American Convention on Human Rights and 19 of the International Covenant on Civil and Political Rights.

p.9-10 According to those provisions, all people enjoy the right to freedom of expression, the exercise of which may only be restricted through a subsequent liability claim when the rights or reputations of others are affected.

p.10 This Court has specified two dimensions of the right to free expression based on its political or individual importance. In its social or political dimension, it constitutes a core

component for the adequate functioning of a representative democracy; and in its individual dimension, it ensures essential spaces for individual self-expression.

- p.12 In this regard, the First Chamber of this Court explained in the *Amparo Directo en Revisión* 2044/2008 that the freedom of expression also constitutes a functional element that determines the quality of democratic life in a country. The *Amparo Directo* 3/2011 of the First Chamber of this Court indicated that the freedom of expression has a structural relationship with the functioning of the democratic system, since a free and informed citizenry is essential for deliberating on matters that concern everyone and its enhanced guarantee is necessary for an effective control of public administration.

In the *Amparo Directo* 6/2009, the First Chamber of this Court said that it was held that the protection of free speech related to matters of public interest is especially relevant for the freedom of expression to fully perform its strategic functions in the formation of public opinion, within the structural system of representative democracy. Similarly, the *Amparo Directo* 28/2010 of the First Chamber of this Court stated that freedom of expression's purpose is to guarantee the free development of public communications that permit the free circulation of ideas and value judgments inherent in the principle of legitimate democracy.

- p.12-13 In summary, the political dimension of the freedom of expression has numerous functions, which include maintaining channels open for dissent and political change; it is conceived as a counterweight to political power, since public opinion represents citizen scrutiny of state actions; and it contributes to the formation of public opinion on political matters and the consolidation of a duly informed electorate.

II. Journalism and freedom of expression

- p.13 Within this political dimension, the role of journalism fills one of the most important manifestations of the freedom of expression. In this regard, the Advisory Opinion OC-5/85 of the Inter-American Court of Human Rights emphasized that journalism is the main and primary manifestation of the freedom of expression. Its special link to freedom of

expression means that, in contrast to other professions, journalism cannot be seen merely as a public service.

Following the case law of the Inter-American Court of Human Rights, this Court has emphasized in a number of decisions the role of the media as public opinion builders. The *Amparo Directo en Revisión 2044/2008* of the First Chamber of this Court identified the following three fundamental issues regarding the media: (i) they play an essential role for the implementation of the social function of the freedom of expression; (ii) they are among the basic builders of public opinion in current democracies; and (iii) the conditions allowing them to house the most diverse information and opinions must be ensured.

p.14 In this regard, based on several references of comparative law, the First Chamber of this Court held in the *Amparo Directo 28/2010* that the freedoms of expression and information reach their highest level when those rights are exercised by professional journalists through the institutionalized vehicle of formation of public opinion, which is the press, understood in its broadest sense.

In the *Amparo Directo 3/2011*, the First Chamber of this Court also indicated that the journalist is an intermediary in the informative process that is responsible for issuing opinions on current events, as well as investigating the information existing in the social sphere, preparing it based on truthfulness, and returning it to the society from which the news has been extracted. In this regard, journalists must have a certain autonomy and independence that impact the quality of the opinions they express and of the information transferred to the public.

Journalists perform a fundamental role in the production of information, contributing to preserving pluralism and reinforcing opportunities to form an unmanipulated public opinion. Thus, journalists are the main providers in this “marketplace of ideas”, contributing different positions to the public and strengthening the public debate.

In the *Amparo Directo 6/2009*, the First Chamber of this Court explained that the circulation of information and public debate is powerfully limited by civil or criminal lawsuits against journalists, for their own acts or those of others.

- p.16 That is why journalists must be granted adequate conditions for disseminating the most diverse information, since they represent a great force for building public opinion in democracies today.
- p.18 On June 25, 2012, the “Decree adding the second paragraph of section XXI of article 73 of the Federal Constitution” was published, which establishes that: The federal authorities may hear state jurisdiction crimes when they are related to federal crimes or crimes against journalists, persons or facilities that affect, limit or diminish the right to information or the freedoms of expression or press.
- p.18-19 As a result of this reform, on May 3, 2013, article 10 of the Federal Criminal Procedures Code was amended to grant jurisdiction to federal judges to decide state jurisdiction crimes committed against journalists, persons or facilities that affect, limit or diminish the right to information, expression or press. The statement of purpose of the reform indicated that the country’s environment of insecurity makes journalism a highly risky profession. It also stated that the institutional weakness of state powers made it impossible for them to give proper attention to crimes committed against journalists.
- p.19 To address the above, the lawmaker considered that, although article 10 of the Code establishes the power to hear state crimes related to federal crimes, it was necessary to give federal judges jurisdiction to hear state crimes since they could threaten the freedom of expression and go unprosecuted given the above mentioned context. Thus, section IV was added to article 50 of the Organic Law of the Federal Judicial Branch.

III. Criteria for determining who is a journalist

- p.20 The *Acción de Inconstitucionalidad 87/2015* the Plenary of this Court analyzed whether the requirements of “permanency” and “credentials” for the exercise of the journalist role established in the Law for Protection of Defenders of Human Rights and Journalists of the State of Quintana Roo violated the right to freedom of expression. In this respect, the Plenary of this Court decided that the consideration of permanency, as a feature in the performance of the journalistic role, is constitutional, but does not define who is a journalist. In other words, credentials may contribute to determining who is a journalist,

but cannot be considered a necessary requirement in that profession. Requiring journalists to show a credential of the media outlet in which they work to have access to incidents of public interest is contrary to the freedom of expression. The above conclusions were based on the decisions and recommendations issued by different international human rights organizations.

p.21 In that regard, this Court considered that any definition of the term journalist must bear in mind the context of insecurity faced by the media in undertaking their activity and be intended to permit access to the protection mechanisms the laws offer to those who exercise their right to freedom of expression through journalism.

Thus, the definition of the beneficiaries of the journalist protection mechanisms must incorporate all those who, in any way, fulfill the function of informing society of public interest events. Similarly, the definition must cover the different and changing modes with which journalism is practiced. For these reasons a definition of journalist based on the activities and roles they perform is justified.

p.23 In addition to the activities of journalism, the characteristics of those who practice them and the means through which the information is disseminated have been discussed. Thus, international organizations and this Court, rather than seek to define what constitutes a journalist, have resorted to negative definitions; they have determined what conditions are not necessary to “demonstrate” someone is a journalist. Although this list is not exhaustive, it has been indicated, for example, that it is not necessary that the activity be carried out in a particular media outlet, or that it be an exclusive activity, or that the journalist prove belonging to a media outlet, or an association of journalists.

With respect to channels of communication, in its General Comment 34, the United Nations Human Rights Committee has recognized that a wide variety of people participate in journalism who publish on their own account in the press, on internet or in other media.

p.23-24 Furthermore, the Law for the Protection of Defenders of Human Rights and Journalists indicates that journalists may practice their craft in any public, community, private,

independent, university, experimental or any other means of communication and dissemination, including print, broadcast or digital transmission of words or images.

- p.24 Regarding the requirement of journalist “credentials” or belonging to a particular media outlet or association, it has been indicated that the practice of journalism can be independent or associated. In that regard, emphasis has been placed on the protection of the independence of the journalist, inasmuch as the free expression of ideas is not conceivable except within a plurality of sources.
- p.25 This means that the journalistic activity can be carried out by someone who is related to a media outlet or someone who operates independently. Moreover, protecting the freedom and independence of the journalist is very important for a democratic society.

In Advisory Opinion OC-5/85, the Inter-American Court of Human Rights unanimously determined that the compulsory licensing of journalists is incompatible with article 13 of the American Convention on Human Rights if it denies any person access to membership in a Journalists Association and thereby inhibits the full use of the news media as a means of expressing and imparting information.

- p.25-26 Furthermore, the Plenary of this Court decided in the *Acción de Inconstitucionalidad* 87/2015 that the requirement of showing a media credential to access public events constitutes a restriction on the exercise of the freedom of expression in its dimension of access to information. Such a requirement would deny access, even when the public interest exists, to those without media credentials. The “credential” therefore limits the exercise of the freedom of expression in its dimension of access to information, by limiting the possibility of covering, reporting on or issuing an opinion with respect to a particular act that could be of public interest to a certain kind of journalist.
- p.26 Thus, for this Court, a system of credentialing the journalist will only be valid when its purpose is to grant greater security and access to their activity. So, there must be proper regulation that cannot result in discriminatory practices in which an authority can arbitrarily determine who can cover a particular public event or news.

p.27 Finally, regarding how long a person should be engaged in the role to be considered a journalist, the Report of the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicated that citizens should be included in the definition of journalist when they perform that function “for a time”. In this regard, the U.N. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions considered those who regularly engage in obtaining information and its dissemination to the public through mass media to be journalists. Likewise, the Joint Declaration on Freedom of Expression and Responses to Conflict Situations included a similar element when indicating that protection should be given to anyone who regularly or professionally engages in the collection and dissemination of information to the public via any means of communication.

p.28 When deciding the *Acción de Inconstitucionalidad 87/2015*, the Plenary of this Court considered that the requirement of “permanency” to identify a journalist, established in the Law for the Protection of Defenders of Human Rights and Journalists of Quintana Roo, should be understood as “stability, constancy, perseverance or immutability” in carrying out the activities described by the Law.

Thus, no international instrument or organization considers the requirement of permanency to mean performing journalistic roles for an indefinite time. On the contrary, their criteria qualify the mentioned requirement to suggest that it only requires a regularity or habituality in the practice of journalistic activities.

The First Chamber of this Court considered that material parameters must be established to determine who is recognized as a journalist for purposes related to the protection of human rights and access to security mechanisms. In this regard, any definition must be functional, based on the activities encompassed by the journalistic role.

p.28-29 Thus, a journalist is any person who disseminates information with social relevance, regardless of the kind of media (radio, television or internet blogs), whether associated with a particular media outlet, or exercising the profession independently, or carrying out that activity regularly or permanently, etc. What matters, in the judgment of this Court, is

that the journalist has the possibility of accessing the rights protection mechanisms when he or she is a victim of a crime for performing functions of informing the public.

IV. Resolution of the case

p.29 This Court considers it essential to establish that the norms that provide protection to journalists are interrelated, thereby creating a system. Thus, article 73 of the Constitution, through its reform; the repealed Federal Criminal Procedures Code and the National Criminal Procedures Code that substituted it; as well as the Law for the Protection of Defenders of Human Rights and Journalists serve as a frame of reference for each other. Indeed, while such provisions seek, within their respective spheres of application, to grant and generate a special protection for journalists, they do not seek that purpose independently from one another. In fact, the definition of “journalist” in the Law for the Protection of Defenders of Human Rights and Journalists was used by the lawmaker to discuss the reform of article 10 of the Federal Criminal Procedures Code.

These provisions are clearly complementary. Thus, the Law for the Protection of Defenders of Human Rights and Journalists and other substantive provisions construct the means and mechanisms for protecting journalists, while the Federal Criminal Procedures Code and the National Criminal Procedures Code detail the functioning of those mechanisms.

p.29-30 Under the above criteria, for purposes of applying the journalist protection system, the definition of journalist contained in article 2 of the Law for the Protection of Defenders of Human Rights and Journalists should be used, according to which journalists are individuals, as well as the public, community, private, independent, university, experimental or any other means of communication and dissemination, whose work consists of collecting, generating, processing, editing, commenting, opining, disseminating, publishing or providing information, through any means of dissemination and communication which may be print, radio, digital or image.

p.30 As mentioned, the assertion of jurisdiction over crimes committed against journalists in the states is justified to ensure that the investigations, processing and prosecution of the

events are not partial given that normally journalists are confronting the local authorities in exercise of their freedom of expression.

In this regard, the MPF can assert jurisdiction over state crimes when they are committed against a person who is engaging in their journalistic role, without requiring such person to present any media credential. It is enough that the person shows he or she regularly performs that role, whether independently or in a media company.

Therefore, the MPF's authority to assert jurisdiction will be exercised, in terms of article 10 of the Criminal Procedures Code, in the case of state crimes committed against a journalist, person or facility, that affect, limit or diminish the right to information or the freedoms of expression or press, when the crime is presumed intentional and when any of the circumstances listed in section I to IX of that provision occurs. Thus, federal judges will also have jurisdiction to hear state crimes when the MPF exercises that power to assert jurisdiction.

p.31 In light of the criteria cited in the above section, EAC is right in indicating that such decision violates the right to freedom of expression. As explained, it is not necessary that the journalist prove working for a media outlet or having a professional credential; it is enough for the journalist to show that he or she engages in journalism regularly. In effect, journalism should be qualified from a functional perspective, based on the activities it is composed of, and the purpose it serves; to inform society of public events.

Thus, for this Court it is clear that EAC showed that he exercises the journalistic role and that there are indications that several public officials participated in the criminal act. Indeed, the supposed criminal events occurred because EAC was documenting relevant public information.

p.31-32 As recorded in the documents of this case, as well as in the news stories, it is a well-known fact that EAC has been a reporter for the newspaper "Diario de Yucatán" since 2007. Among his activities as a reporter are to report events of the municipality of Seyé, Yucatán, and other nearby municipalities, to take photographs and videos of them, and write news stories about them. It is also seen that EAC, at the time of reporting the

accident caused by the van of the brother of the mayor of Seyé, was acting in the exercise of his freedom of expression.

p.32 In that regard, this Court considered that federal jurisdiction arises, since the federal judge can hear state crimes if jurisdiction is asserted by the Federal Prosecutor, as occurred in this case.

DECISION

Based on the above, this Court overturned the appealed decision ordering the processing of this case to continue in the federal courts and jurisdiction be reserved for the Collegiate Circuit Court hearing the case so that it may resolve the questions that were not addressed in this decision, related to the reclassification of the crime.