

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.

**MULTICULTURALISM: PROTECTION OF INDIGENOUS LANGUAGES
(PLURICULTURALIDAD: PROTECCIÓN A LAS LENGUAS INDÍGENAS)**

CASE: *Amparo en Revisión 622/2015*

REPORTING JUSTICE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: January 20, 2016

KEY WORDS: indigenous peoples, indigenous languages, national language, access to telecommunications media, right to speak and preserve indigenous languages.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 622/2015*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of January 20, 2016, 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/AR622-2015.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo Directo en Revisión 496/2014*, Mexico.

SUMMARY OF AMPARO EN REVISION 622/2015

BACKGROUND: MCM filed an *amparo* lawsuit against Article 230 of the Federal Telecommunications and Broadcasting Law, considering that it restricted his rights as an indigenous person. The district judge dismissed the case. MCM filed a *recurso de revisión*. The Collegiate Circuit Court overturned the dismissal and referred the case to this Court.

ISSUE PRESENTED TO THE COURT: Whether Article 230 of the Federal Law on Telecommunications and Broadcasting is unconstitutional for violating the right of indigenous persons to speak and preserve their language.

HOLDING: The *amparo* was granted for the following reasons. It was recognized that our Constitution protects the right of indigenous persons and peoples to use and preserve their language. Additionally, it was indicated that this right requires both negative and positive actions to preserve the indigenous languages of our country. Thus, it was decided that article 230 was unconstitutional for contravening the linguistic rights of indigenous peoples, since our legal system recognizes both Spanish and indigenous languages as national languages. Therefore, imposing a differentiated broadcasting system that gives exclusivity or preferences to Spanish is contrary to the multicultural composition of our country.

VOTE: The First Chamber of the Supreme Court 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=181559>

EXTRACT FROM THE AMPARO EN REVISION 622/2015

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of January 20, 2016, issues the following decision.

BACKGROUND

On July 14, 2014, the decree issuing the Federal Telecommunications and Broadcasting Law (LFTR) was published, which entered into force on August 13, 2014.

p. 1-2 MCM filed an *amparo* lawsuit before a district court claiming the unconstitutionality of the first paragraph of Article 230 of the LFTR, which is transcribed below:

Article 230. In their transmissions, the concessionaires' radio stations must use the national language. This is without prejudice that the concessions for indigenous social use make use of the language of the corresponding indigenous people. (...)

p.2-3 MCM stated in his lawsuit that he is an indigenous person originally from A, Veracruz, and that he is a poet, actor and journalist in Spanish and Nahuatl. MCM argued that Article 230 restricted the use of indigenous languages to concessions for social use intended for that purpose, imposing the "national" language – understood as Spanish – on all other concessions. According to MCM, this reduced the means of communication in which he could express himself as a poet, actor and journalist in the Nahuatl language. It also prevented him from receiving information and content in his native language. Consequently, MCM considered that Article 230 of the LFTR violated his freedom of expression, his right to equal treatment and non-discrimination, and his right to participate in cultural life. Finally, he also pointed out that the rights of indigenous communities to self-determination, autonomy and to preserve and enrich their original languages, knowledge, culture, and identity were collectively violated.

p.2 The district judge hearing the case dismissed the *amparo* as invalid for various reasons. MCM filed a *recurso de revisión* challenging this decision. The Collegiate Circuit Court decided in favor of MCM, reversing the dismissal and referring the case this Court.

STUDY OF THE MERITS

p.10-11 In his *amparo* lawsuit, MCM originally claimed the unconstitutionality of article 230 of the LFTR, considering that this provision violates his rights to non-discrimination, freedom of expression, and linguistic rights of indigenous people.

p.11 This unconstitutionality stems from the article establishing that in radio station transmissions the national language must be used – understood as the Spanish language – while the use of indigenous languages is limited to social concessions. This unduly restricts the right of indigenous people to express themselves in their native language. In the opinion of this Court, that argument is well founded and sufficient to grant constitutional protection to MCM.

To justify this decision, the following points will be developed: (i) the linguistic rights of indigenous peoples, and (ii) the analysis of the constitutionality of the challenged provision.

I. Linguistic rights of indigenous peoples

Even though MCM claims violations of various rights, this Court understands that such impacts find protection in a more specific right, the right to express oneself in his or her indigenous language, recognized in international treaties on human rights, in international law, and in the Constitution.

p.12-13 In our country, with the intention of recognizing and protecting the multicultural composition of the Nation, article 2 of the Constitution established various rights of indigenous peoples and persons, among them, in part A, section IV, the right to self-determination and autonomy to preserve and enrich their languages, knowledge and all the elements that constitute their culture and identity. Part B, section VI of the same article requires the authorities to establish conditions for indigenous peoples and communities to acquire, operate and manage means of communication.

p.13 Thus, the Constitution recognizes the multiculturalism of our country and, as an aspect thereof, the right of indigenous peoples to preserve and enrich their languages. It also requires the State to take positive measures to protect this right.

To this end, the General Law on the Linguistic Rights of Indigenous Peoples (LGDL) was issued, article 3 of which recognizes that the plurality of indigenous languages is one of the main expressions of the multicultural composition of the Mexican Nation. Thus, this Law establishes the right of all Mexicans to communicate in the language they speak without restrictions, in the public or private sphere, in oral or written form, in all their social, economic, political, cultural, religious and any other activities. The right of indigenous peoples and communities to have access to the courts of the State in their language and respecting their culture is also recognized, as well as the right to bilingual and intercultural education.

p.14 Consequently, from article 2 of the Constitution, the LGDL and international treaties the right of indigenous peoples to preserve and use their language can be considered a human right.

Although this right is recognized in the Constitution as a right of indigenous peoples, it also has an individual aspect, i.e., it constitutes both a right of peoples and a right of indigenous persons. Indeed, language is an essential component of the identity of peoples and individuals, in particular since it is one of the main factors of identification. It is, therefore, a social or cultural right with individual and collective impact.

In addition, the right to language of indigenous peoples and individuals is connected with the exercise of other rights, such as the right to non-discrimination and the right to freedom of expression. It also reflects the recognition of the multicultural composition of our Nation.

As explained, the recognition of the multiculturalism of the Mexican Nation implies the right to preserve and enrich identity and culture.

p.15 Thus, respect for multiculturalism includes the understanding of others as culturally diverse and holders of fundamental rights.

- p.15-16 The purpose of the recognition of multiculturalism in the Constitution was also to increase awareness of the situation of vulnerability that the indigenous peoples of Mexico have historically suffered. Thus, emphasis was placed on the prohibition of all forms of discrimination based on ethnic origin. In order to promote complete and effective equality for persons belonging to indigenous peoples in all economic, social and cultural areas, the State was tasked with adopting the necessary conditions to protect and promote the culture of indigenous peoples.
- p.16 Therefore, the right to language also fulfills the function of recognizing difference and demands both negative and positive actions to avoid discrimination and promote full equality among Mexicans. The recognition of the different languages that coexist in the country also implies respect for diversity; in that regard, language should not be a factor of discrimination; on the contrary, the State must take all the necessary actions to protect it and allow its development.
- p.18 With regard to the specific duties that must be undertaken to promote access to the dissemination of indigenous languages, article 2, part B, section VI of the Constitution specifically mentions the need to integrate communities through the construction and expansion of communications networks and telecommunications, and to establish conditions for indigenous peoples and communities to acquire, operate and administer media outlets, in the terms that the applicable laws determine.
- p.18-19 Article 6 of the LGDL indicates the duty of the State to adopt and implement the necessary measures to ensure that the mass media disseminate the reality and linguistic and cultural diversity of the Mexican Nation, and to allocate a percentage of the time available in the concessioned mass media, in accordance with the applicable legislation, for the broadcast of programs in the various national languages spoken in their areas of coverage, and cultural programs in which literature, oral traditions and the use of the national indigenous languages of the various regions of the country are promoted.
- p. 20 Therefore, linguistic rights protect the right of indigenous peoples and individuals to found or use the media. This right must be exercised under conditions of non-discrimination, and

through the adoption of measures by the State that ensure cultural diversity in these media.

II. Analysis of the constitutionality of article 230 of the LFTR

- p.24 In light of the above, it must be determined whether Article 230 of the LFTR is constitutional. For this purpose, its regulatory framework will be established briefly and then its content will be developed.
- p.25 In title four, the LFTR regulates the regime of concessions to provide the public service of telecommunications and broadcasting. Thus, to provide the service, a person must acquire a concession according to the use it will be given. Concessions can be used for public (exclusively for government entities), private (for private communication, experimentation, etc.), commercial (for profit) and social (cultural, educational, or scientific non-profit) purposes. Social use concessions can be subdivided into indigenous social use and community social use concessions. Indigenous social use concessions seek the promotion, development and preservation of the language, culture, and knowledge of indigenous peoples.

Article 230 is inserted in that context, which provides that:

In their transmissions, the concessionaires' radio stations must make use of the national language. This is without prejudice that the concessions for indigenous social use make use of the language of the corresponding indigenous people. (...)

- p.26 This provision contains two elements: on the one hand, that the transmissions of the concessionaires' radio stations must be in Spanish; and on the other hand, that the transmissions of the radio stations for indigenous social use must be in the language of the corresponding indigenous people.

The first part of the provision may be interpreted as referring to the Spanish language, since it refers to a single national language, as opposed to the indigenous languages provided for in the second part of the article. Thus, it would seem that two different regimes are established: one for the transmission of content in Spanish, and another for the transmission of content in indigenous languages.

It must be determined what type of use the challenged rule refers to; i.e., whether it is a single or exclusive use or a preferential use. Thus, there could be two interpretations, the first that the concessions may not broadcast in indigenous languages, nor may the concessions of indigenous social use broadcast in Spanish. The second, understanding that concessions can broadcast in indigenous languages, but must prefer the Spanish language, while indigenous concessions may broadcast content in Spanish, but they must make use mostly of indigenous languages. In spite of the above, this decision will refer indistinctly to the two types, "exclusive" or "preferential" use, because as will be developed below, both interpretations are unconstitutional.

p.26-27 The first part of the provision establishing the exclusive or preferential use of Spanish in broadcasting concessions is unconstitutional because the Constitution expressly protects indigenous languages and does not recognize a single language as the national language. Moreover, this part of the article contravenes the linguistic rights of indigenous peoples by imposing a barrier on the use of indigenous languages without any justification. This is determined based on the following arguments.

p.27 As explained, the Constitution does not establish that Spanish is the national language; indeed, it accommodates for and fully recognizes the indigenous languages. In the national legal order, the LGDL points out that both Spanish and indigenous languages are national languages.

Multiculturalism demands the coexistence of all national languages, without establishing exclusive regimes or giving preponderance or preference to any of them. Some clarifications should be made on this aspect.

p.27-28 The fact that certain provisions establish that different procedures must be carried out in Spanish does not mean that this is the language of the Nation. A distinction should be made between the concept of official language and national language. The first refers to the language in which State communications are normally issued. The national language, on the other hand, denotes the language in which a country bases its identity and cultural roots. Thus, even if some procedures before the State are carried out in Spanish, it is not the only language of the Nation.

- p.28 On the other hand, the use of languages under conditions of equality does not imply that affirmative action cannot be established to promote and protect those groups that have historically experienced discrimination and vulnerability.
- p.28-29 In addition, the part of article 230 that states that the radio stations of the concessionaires must make use of the national language in their broadcasts contravenes the linguistic rights of indigenous peoples, because although the legislative statement of purpose indicates that its purpose was the promotion, development and preservation of indigenous languages, such a purpose is not achieved through imposing a broadcasting scheme in which the Spanish language is used "exclusively or preferentially", but through providing additional spaces for indigenous peoples to disseminate their languages. In fact, the norm and its purpose are opposed since the exclusivity or preference in the use of Spanish imposes a barrier for indigenous peoples to access commercial concessions.
- p.29 Indeed, multiculturalism is achieved through the integration of minority languages -in the Mexican case, indigenous languages- into national spaces. Integration, as opposed to assimilation, is considered a legitimate aim of the State, in which both the majority and the minority contribute. This should be understood as a process of social cohesion in which diversity has a place.
- Thus, the provision to which we have referred generates an effect contrary to social integration and cohesion, since it establishes a limited and differentiated scope for the exercise of linguistic rights in the media.
- p.29-30 Consequently, the part of article 230 that states that: "In their transmissions, the radio stations of the concessionaires must make use of the national language" is unconstitutional since it establishes the use of a single national language –understood as Spanish– in the radio stations of the concessionaires, given that the Constitution protects and recognizes indigenous languages in the same way.

DECISION

- p.30 Hence, the *amparo* is granted to MCM against Article 230 of the LFTR, so that the aforementioned part of that provision will not be applied to him when accessing the broadcasting concessions.