

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.

**RIGHT TO A HEALTHY ENVIRONMENT, ECOLOGICAL RESTORATION AND
REMEDICATION OF MIXQUIC CANALS
(DERECHO A UN MEDIO AMBIENTE SANO, RESTAURACIÓN ECOLÓGICA Y
SANEAMIENTO DE LOS CANALES DE MIXQUIC)**

CASE: *Amparo en Revisión 641/2017*

REPORTING JUSTICE: Alberto Pérez Dayán

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

DATE OF THE DECISION: October 18, 2017

KEY WORDS: right to a healthy environment, human right to drinking water and remediation, ecological restoration, wastewater, failure to act, right to a dignified existence, world heritage.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 641/2017*, First Chamber, Alberto Pérez Dayán, J., decision of October 18, 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/AR641-2017.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo en Revisión 641/2017*, Mexico.

SUMMARY OF THE *AMPARO EN REVISION* 641/2017

BACKGROUND: A group of residents of San Andrés Mixquic, Mexico City, filed an *amparo* lawsuit against the failure of several Mexico City and federal authorities to adopt all the measures within their reach to ecologically restore and remediate the canals of the town of San Andrés Mixquic, for the damage generated mainly by the dumping of wastewater from the Amecameca River. The District Judge who heard the case decided to grant the *amparo* to the inhabitants of Mixquic. Several authorities filed *recursos de revisión* against this decision. The Collegiate Circuit Court that heard the appeal determined that it should request Mexico's Supreme Court of Justice (this Court) to assert jurisdiction.

ISSUE PRESENTED TO THE COURT: Whether the responsible authorities have failed to adopt all the measures within their reach to restore and remediate the canals of the town of San Andrés Mixquic, specifically the canals of the San Miguel neighborhood and, based on this, whether there has been a violation of the human right to a healthy environment.

HOLDING: The decision under appeal was amended, essentially for the following reasons. The *amparo* was denied against one of the authorities because the acts fall outside its sphere of powers and against another authority because it demonstrated that it did not fail to exercise its environmental protection powers. However, the *amparo* was granted because it was determined that certain Mexico City authorities violated the right of the inhabitants of San Andrés Mixquic to a healthy environment, based on the demonstration of the following: the canals of the area are highly contaminated and the responsible authorities have not adopted all possible measures, up to the maximum available resources, to avoid and control processes of water degradation, enforce compliance with wastewater discharge regulations in relation to quantity and quality, and carry out the necessary corrective actions to clean up the waters of the canals in the area; this violation is aggravated by the fact that the area was declared a World Cultural and Natural Heritage Site by UNESCO.

VOTE: The First Chamber of Mexico's Supreme Court of Justice decided by a majority of four votes of justices Margarita Beatriz Luna Ramos (reserved her right to issue a concurrent opinion), Alberto Pérez Dayán, Javier Laynez Potisek, and José Fernando Franco González Salas. Justice Eduardo Medina Mora voted against.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=218790>

EXTRACT FROM THE *AMPARO EN REVISION* 641/2017

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of October 18, 2017, issued the following decision.

BACKGROUND

- p.9 Several inhabitants of San Andrés Mixquic, Mexico City, filed an *amparo* lawsuit in which they argued that the responsible authorities -both local and federal- "have failed to adopt all the measures within their reach to ecologically restore and remediate the canals of the town of San Andrés Mixquic, specifically the canals of the San Miguel neighborhood, product of the damage generated mainly by the dumping of wastewater from the Amecameca River" and that the risk of losing the canals is latent because of poorly designed actions for the rescue and restoration of the Chinampa area.
- p.12 The District Judge considered that although the responsible authorities have carried out actions to restore the ecological balance, they have been insufficient to deem there is a healthy environment.
- p.13 He also considered that the contamination of the water of the San Andrés Mixquic canals was proven, and therefore the water had not been remediated to a healthy level. There was also a violation of the Convention Concerning the Protection of the World Cultural and Natural Heritage, since San Andrés Mixquic is part of the zone declared a UNESCO world heritage site, and therefore the affected parties' right to a dignified existence was violated. For these reasons, the District Judge granted the requested *amparo*.
- p.4 The responsible authorities filed *recursos de revisión*.
- p.5 The Collegiate Circuit Court determined that this Court should assert jurisdiction. This Court decided to hear the case.

STUDY OF THE MERITS

- p.17 The issues before this Court are the following:
- (1) Whether the challenged acts of both the Mexico City Mayor (hereinafter, the Mayor) and the Ministry of Environment and Natural Resources (hereinafter, SEMARNAT) are true,

and whether the affected parties should have exhausted ordinary federal civil appeals prior to filing the *amparo*;

(2) Whether the responsible authorities have failed to take all measures within their reach to restore and remediate the canals of the town of San Andrés Mixquic and, based on this, determine whether there has been a violation of the human right to a healthy environment; and

p.18 (3) If the appealed decision is upheld, determine whether the effects granted to the *amparo* are in breach of the principles of division of powers and legality.

I. Validity of the *amparo* lawsuit against the failure to act

p.19 For an authority to incur liability for failure to act, there must first be a corresponding obligation, established in the relevant legal framework; therefore, a failure to act attributed to the authority will be true or non-existent, depending on its constitutional powers and the obligations it is required to perform.

p.20 In this case, although the responsible authorities denied the existence of the failure to act, the District Judge considered that the Mayor failed to act since it is an "obligation, within the respective scope of his competence, to guarantee an adequate environment".

The judge also held that SEMARNAT failed to act.

p.21 Both the local and federal legal framework establish the obligation of the aforementioned authorities to take measures necessary for the protection, preservation and restoration of the ecological balance and the protection of the environment. Given their obligations and powers in this area, it is concluded that it is reasonable to consider they failed to take the necessary actions.

p.24 Finally, SEMARNAT's argument that the lawsuit should have been dismissed "because the complainant should have first filed an ordinary federal class action lawsuit" is unfounded, because civil proceedings are not appropriate for challenging failures of authorities to act with respect to the human right to a healthy environment, nor for producing the intended remediation.

II. Violation of the human right to a healthy environment

In their grievances, SEMARNAT, the General Director of the Mexico City Water System (hereinafter, Water System) and the Mexico City Ministry of the Environment (hereinafter, SEDEMA) put forward various arguments aimed at evidencing that the contamination in the canals of the town of San Andrés Mixquic is attributable to other authorities that, unlike them, are responsible for protecting the human right to a healthy environment in the zone.

a) Liability of the responsible authorities

1. Framework of powers in environmental matters

- p.27 All three levels of government have concurrent responsibilities for environmental protection and the preservation and restoration of ecological balance.
- p.28 In the Mexican legal system, having concurrent powers implies that Mexico City, the States, the Municipalities and the Federal Government can act with respect to the same matter, but it is for Congress to determine the form and terms of the participation of these entities through a general law.
- p.33-34 Regarding the prevention, preservation, protection and remediation of water, the powers of the authorities are designed according to a "territorial" scope, in which the Federal Government, through SEMARNAT, in conjunction with the National Water Commission, must ensure compliance with the legal provisions on natural resources under federal jurisdiction, i.e., concerning the "national waters", referred to in article 27 of the Constitution.
- p.34 The States and Mexico City are responsible for the "prevention and control of the contamination of waters under state jurisdiction." Specifically, it is the local authorities that, in accordance with the distribution of duties, are responsible for "the control of wastewater discharges to drainage and sewerage systems"; and "the enforcement of the corresponding Mexican official standards [with respect to waters within their jurisdiction]".
- p.35 According to article 6 of Mexico City's Environmental Law for the Protection of Land (hereinafter, Environmental Law), the environmental authorities in Mexico City are: (I) the Mayor; (II) SEDEMA; (III) the Secretary of Science, Technology, and Innovation; (IV) the

Heads of City Municipalities; and (V) the Environmental and Territorial Planning Agency (hereinafter, PAOT).

p.38 In addition, the Mexico City Water Law (hereinafter, local Water Law) establishes that the waters of Mexico City jurisdiction are those that are "an integral part of the heritage lands of the Government of Mexico City, through which they run or in which their deposits are located".

p.38-39 Its article 7 provides for the creation of the Water System, which is a decentralized body of the public administration, assigned to SEDEMA, whose main purpose is the operation of the hydraulic infrastructure and providing the public service of drinking water, drainage, and sewerage "as well as the treatment and reuse of wastewater".

2. Liability of the responsible authorities with respect to the challenged act

p.40 It is not disputed in this *amparo* lawsuit that the canals of the town of San Andrés Mixquic, specifically those of the San Miguel neighborhood, Tláhuac Municipality, belong to the jurisdiction of Mexico City.

Therefore, it is concluded that the grievances expressed by the Water System and SEDEMA are unfounded.

p.42 The Water System has the legal duty to take the necessary measures to control the quality of water of that city; apply the water-related environmental regulations established in both the local Water Law and the official Mexican standards; enforce compliance with such regulatory provisions and, where appropriate, apply the respective sanctions.

p.44 SEDEMA has the obligation to guarantee the right of citizens to sufficient, safe, and hygienic access to water available for personal and domestic use within the scope of its jurisdiction; i.e., to ensure the sustainable use, prevention, and control of contamination of waters belonging to the Mexico City territory.

Although this authority argues that its powers were delegated by Decree of the Mayor to the "Authority of the Natural and Cultural World Heritage Zone in Xochimilco, Tláhuac, and Milpa Alta", an analysis of the Decree shows that the mentioned authority has powers to aid the Mayor, but does not substitute him or her in environmental matters.

p.46 Finally, SEMARNAT's other grievance that the omissions are not attributable to it because those natural resources are not "national waters" and therefore are not under its jurisdiction is valid.

p.48 Thus, the *amparo* requested by the affected parties should be denied only regarding the challenged acts of that federal authority.

b) Violation of the human right to a healthy environment

1. General principles of the human right to a healthy environment

p.51 The human right to a healthy environment presents its teleology in two dimensions: (I) as the obligation of the State to guarantee the full exercise of this right and its judicial protection; and (II) as the responsibility, although differentiated, of the State and the citizenry for its preservation and restoration.

p.51-52 States "have an obligation to protect [individuals] against environmental damages that interfere with the enjoyment of human rights." States are obligated to: (I) adopt "and implement legal frameworks to protect against environmental damages" that may violate human rights, and (II) "regulate private actors" to protect against such damages.

p.52 In addition, there is an essential correlation between water quality, the right to a healthy environment and public health.

p.53 It cannot be ignored that the safety of water is a central component of human rights and that one of the ecological problems that requires more attention from the State is precisely the proper regulation, monitoring and treatment of "wastewater".

p.54 "Large volumes of untreated wastewater compromise the availability of safe drinking water." Contamination of water also jeopardizes the enjoyment of other human rights. When not managed, wastewater "constitutes a danger to both the environment and human health."

p.55, 56 Due to the negative implications of water contamination for the public, it has been established that "it is essential to formulate specific objectives related to wastewater". Current proposals show a tendency to set goals that include: (I) preventing contamination; (II) "reducing the effects of contamination through collection and treatment"; and (III) reuse

of wastewater. This requires measures that are "deliberate, concrete and oriented to full implementation", in particular aimed at creating an enabling environment for people to exercise their remediation-related rights. Various human rights bodies have considered that, in broad terms, water remediation "includes the treatment and disposal or reuse of excrement and associated wastewater."

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p.56-57 The State bears the primary human rights obligations related to water remediation, and it must guarantee that non-State actors, including individuals, do not jeopardize the enjoyment of human rights.

p.57 States have an obligation to "protect" the human right to a healthy environment. This implies they must pursue the following actions regarding the ecological protection of water: (I) protect the services of provision of water and remediation; (II) protect "necessary resources or infrastructure from contamination or interference," and (III) protect the environment and water resources from misconduct by non-state actors.

2. Violation of the human right to a healthy environment

p.63 The authorities do not argue why, in their opinion, the actions they have taken are sufficient, from the constitutional point of view, to consider that they have complied with the human right to a healthy environment.

With regard specifically to the ecological care of the canals, one of the responsible authorities only indicates that several cubic meters of garbage were removed and silt was removed from the Tláhuac-Chalco Calzada and the Amecameca River; however, it is not seen that it has monitored the level of contamination and undertaken the treatment of the water, or any other remediation activity.

- p.63-64 Hence, this Court considers that since the water of the canals of the San Miguel neighborhood is not only excessively contaminated and unsuitable for the survival of aquatic species, but in fact "contact with it should be avoided" according to an expert, there is a frank violation of the duty to guarantee a healthy environment, as well as the right to sufficient, safe, and hygienic access to water.
- p.64 In particular, the ecological degradation generated by the unregulated discharge of wastewater from adjacent properties is noticeable, despite the existence of various technical standards that should be used to monitor and control these waters so that they do not cause unjustified damage to the ecological balance.
- p.65 The authorities should: (i) prevent wastewater contamination; (II) "reduce the effects of contamination through collection and treatment"; and (III) where appropriate, reuse wastewater by means of a treatment system.
- p.66-67 In this regard, it is concluded that the authorities designated as responsible have not adopted all possible measures, up to the maximum of available resources, to avoid and control water degradation processes; to ensure that the wastewater discharges comply with the current regulations in quantity and quality; and to take the necessary corrective actions to clean the waters of the canals of the San Miguel neighborhood.
- p.67 These failures are even more important considering that the Tláhuac zone, along with Xochimilco, was declared a World Cultural and Natural Heritage Site by UNESCO as of December 11, 1987, requiring its protection for the benefit of humanity, a conventional obligation that was not complied with by the responsible authorities either.
- This obligation is not overcome by the argument of the Mayor and SEDEMA that the effects claimed cannot be attributed to the State since the contamination in the canals is due, to a large extent, to the acts of individuals.
- p.67-68 The human right to a healthy environment is not limited to ensuring that the State, through any of its agents, does not contaminate or directly endanger the sustainability of ecosystems, but also entails the obligation to take all positive measures aimed at protecting this right from acts of non-State agents that endanger it.

p.68 The State cannot be passive when individuals are carrying out acts that negatively affect the environment and human rights due to the loss of sustainability and failure to safeguard ecosystems.

p.71 Therefore, the grievances stated by the authorities are unfounded, since those responsible have a positive obligation to take all measures aimed at protecting the human right to a healthy environment from the acts of non-State actors that endanger it; thus, they should have ensured that non-State actors act in accordance with the relevant provisions that have been issued to protect that right, exercising their inspection functions in order to safeguard the ecological balance - an obligation to "protect"- which did not happen.

The Mayor is incorrect in arguing that since there are wastewater discharges from the Amecameca River, belonging to the State of Mexico, the Mexico City authorities cannot be held responsible for the contamination they cause to the canals.

p.71-72 This argument is unfounded given that the poor quality of the surface water of the canals of the town of San Andrés Mixquic is not only the result of the flow of water from the Amecameca River, but also of other contaminating factors whose source of emission comes from Mexico City, namely: (I) the discharge of wastewater from dwellings adjacent to the canals; (II) the discharge of wastewater by spillage from the collector; (III) improper handling of hazardous waste by unidentified farmers in the area; and (IV) the inadequate handling of household waste by unidentified residents of San Andrés Mixquic.

p.73 In any case, the responsible authorities should have exercised their powers of coordination or cooperation with the different authorities and levels of government to protect the environment.

p.73-74 Hence, if the mentioned authorities of Mexico City did not demonstrate that they took the necessary actions to prevent or, where appropriate, to control the degradation of the waters of the San Andrés canals, it is clear that they transgressed the human right to a healthy environment.

p.74 Clarifying the above, the grievance expressed by the PAOT that it did not fail to exercise its powers in matters of environmental protection is considered to be well founded.

- p.75 This is because the evidence provided to the *amparo* proceedings clearly shows that in the exercise of its powers, it filed various complaints to ensure compliance with the applicable legal provisions on environmental matters and territorial planning in the town of San Andrés Mixquic.
- p.76 Its resolutions specify that in the San Miguel neighborhood "the existence of irregular human settlements and illicit constructions, in contravention of the environmental law" has been verified, so the authorities were urged to take the necessary actions to "stop the irregular human settlements in San Andrés Mixquic and the illicit filling of its canals, *chinampas* and other water bodies", and to "execute, without the express request of an individual or authority, the programs to clean the canals of the town of San Andrés Mixquic". Based on the above, it follows that PAOT did exercise its powers in environmental matters. Consequently, the *amparo* requested by the affected parties against the failure to act claimed must be denied.
- p.78 Having confirmed the *amparo* granted in the challenged judgment -except for the acts claimed against SEMARNAT and PAOT- the legality of the effects of the *amparo* is examined.

III. Analysis of the legality of the effects of the *amparo* granted

- p.80-81 Contrary to the arguments of the Mayor and SEDEMA, the fact that the final *amparo* decision obligates them to enter into agreements or administrative coordination and collaboration accords with the State of Mexico regarding the discharge of wastewater from the Amecameca River that affects San Andrés Mixquic, does not violate the sovereignty of the responsible entity, nor is it against the law.
- p.81 This is because various regulations provide the basis for local authorities, within the scope of their respective competencies, to undertake the mechanisms of coordination, inducement and dialog that are necessary to address common environmental problems and exercise the powers established by their laws in ecological balance and environmental protection matters.

p.81-82 And because it has been shown that there is a problem of severe water pollution in the canals of the town of San Andrés Mixquic, whose remediation requires, among other measures, the participation of the State of Mexico authorities to control the ecological degradation caused to those canals by the contaminated waters of the Amecameca River.

p.83 With regard to SEDEMA's mandate to issue "a strategic environmental assessment for the integral solution of the environmental problems that arise in the Chinampa area of San Andrés Mixquic", that duty is based on Article 9, section I, of the Environmental Law, which empowers SEDEMA to "evaluate environmental policy in the Federal District, as well as the plans and programs that derive from it".

The obligation to establish "water quality monitoring systems in the area" follows from article 9, section XXVII, of the mentioned law, which provides that the said administrative entity must exercise "all those actions aimed at the conservation and restoration of the ecological balance", as well as the regulation, prevention "and control of the contamination of the [...] water and soil that do not fall under federal jurisdiction."

p.84 This obligation is also expressly contemplated in article 15, section IV, of the local Water Law, which establishes that SEDEMA is responsible for "establishing and operating water quality monitoring systems in Mexico City."

The *amparo* decision's guideline that SEDEMA must show that "it has promoted with the inhabitants of San Andrés Mixquic the best practices in the use of agrochemical products", can be based on article 9, section XIX, of the Environmental Law, which establishes its obligation to coordinate the participation of the government branches and entities of the Public Administration of Mexico City, and of the city municipalities "in the actions of environmental education, prevention and control of environmental deterioration, conservation, protection and restoration of the environment".

The obligation to initiate or continue with the corresponding administrative procedures in order to stop irregular human settlements in San Andrés Mixquic is expressly derived from section XIX Bis 2 of article 9, which establishes that SEDEMA has the power to remove persons and property that take part in human settlements established in contravention of urban development programs or of ecological land planning, "and to execute the necessary

actions to avoid the establishment of such irregular human settlements in green areas, areas of environmental value, protected natural areas and land under conservation".

- p.85 Finally, with regard to the mandate to apply "the restoration programs of the natural elements affected in the land under conservation of the town of San Andrés Mixquic, with the purpose of recovering and restoring the conditions that favor the evolution and continuity of the natural processes that develop in them", it is noted that this obligation derives from article 9, section XXVII, of the mentioned law, which provides that it must exercise "all those actions aimed at the conservation and restoration of the ecological balance", as well as the regulation, prevention "and control of the contamination of the [...] land that does not fall under federal jurisdiction."

Based on the foregoing, the *recursos de revisión* filed by the Mayor, SEDEMA and the Water System must be declared unfounded.

DECISION

- p.86 On the basis of the above arguments, the challenged decision must be amended to deny the requested *amparo* against the challenged acts of PAOT and SEMARNAT.

On the other hand, the affected parties are covered and protected from the challenged acts of SEDEMA, the Mayor, Water System, Head of the Municipality in Tláhuac, and Secretary of Rural Development and Equity for the Communities, all of Mexico City, for the purposes specified in the appealed decision.