

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 AND RESTRICTIONS ON PROPERTY FOR THE
CONSERVATION OF NATURAL RESOURCES
(DERECHO A UN MEDIO AMBIENTE SANO Y MODALIDADES A LA PROPIEDAD PARA
LA CONSERVACIÓN DE LOS RECURSOS NATURALES)**

CASE: *Amparo en Revisión 410/2013*

REPORTING JUSTICE: José Ramón Cossío Díaz

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

DATE OF THE DECISION: October 23, 2013

KEY WORDS: right to a healthy environment, restrictions on property for the conservation of natural resources, intergenerational equity, legal regime for the protection of wetlands and mangroves.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 410/2013*, First Chamber, José Ramón Cossío Díaz, J., decision of October 23, 2013, 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/2022-02/AR%20410-2013.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Extract of the *Amparo en Revisión 410/2013*, Mexico.

SUMMARY OF THE *AMPARO EN REVISION* 410/2013

BACKGROUND: EBVS, owner of a property in Quintana Roo, obtained from the Ministry of Environment and Natural Resources an environmental impact authorization for the development of a real estate tourism project. After having requested and obtained two extensions of the environmental impact authorization for her project, she was denied a third request for an extension because, among other reasons, the environmental authority considered that various provisions related to the conservation of mangrove ecosystems at the site would be contravened. EBVS filed an *amparo indirecto* lawsuit against this determination which was decided against her in a district court in Cancun. EBVS then filed a *recurso de revisión* that was referred by the Collegiate Circuit Court to Mexico's Supreme Court of Justice (this Court) because it involved issues related to the constitutionality of the General Wildlife Law.

ISSUE PRESENTED TO THE COURT: Whether the grievances set out in the *recurso de revisión* filed by EBVS are sufficient to demonstrate the unconstitutionality of article 60 TER of the General Wildlife Law and other challenged regulatory provisions that refer to the protection of wetlands and mangroves in the country.

HOLDING: The *amparo* was denied and the constitutionality of article 60 TER of the General Wildlife Law and the other regulatory provisions challenged, related to the conservation of wetlands and mangroves in national territory, were upheld for the following reasons. The regulations challenged, in which restrictions are established on property with the purpose of conserving natural resources, are not retroactive or in violation of article 27 of the Constitution. Article 60 TER of the General Wildlife Law and the official Mexican standard challenged in this case are reasonable according to the purposes established in the third paragraph of article 27 of the Constitution, because they seek to preserve natural resources and the environmental services they provide. They are also proportional since they not only respond to a legitimate constitutional purpose but can additionally limit, both constitutionally and conventionally, the right to property for reasons of social interest. Finally, the regulations challenged do not violate the fundamental right to equality, understood in its specific dimension of analysis of the law's

treatment of one person compared with another, because the legal interest they protect is based on the recognition in the Constitution's article 4 of the right to environment, which responds not only to the social interest or benefit of the individuals who exist in the present, but also of those who will exist in the future. The variant to the principle of equality in the environmental context refers to the commitment to preserve natural resources, in their current version and dynamically, towards the future. In this case, the legislative distinction made by article 60 TER of the General Wildlife Law responds to the protection of coastal wetlands and the difference in treatment of those who have properties where mangrove ecosystems exist is instrumentally adequate for the protection of the environment, as well as proportional and reasonable with respect to the constitutional objective that is sought to protect.

VOTE: The First Chamber decided this case with the unanimous vote of the five justices Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, Alfredo Gutiérrez Ortiz Mena, Jorge Mario Pardo Rebolledo and José Ramón Cossío Díaz.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=154841>

EXTRACT FROM THE AMPARO EN REVISION 410/2013

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of October 23, 2013, issued the following decision.

BACKGROUND

p.1-2 On June 7, 2002, the Federal Delegation of the Ministry of Environment and Natural Resources in the State of Quintana Roo (SEMARNAT) granted EBVS an environmental impact authorization for a real estate tourism development project (the Project) in Quintana Roo. The authorization was extended twice to develop a comprehensive environmental management program and prepare the site for the construction of the Project. When EBVS requested an extension for the third time, SEMARNAT denied it for procedural reasons and because a reform to the General Wildlife Law (LGVS) for the protection of mangroves came into force, under which legal framework it was considered that the Project was unfeasible.

p.4 EBVS filed an *amparo indirecto* lawsuit against the denial of the environmental authority, through which she claimed that her rights under articles 13, 14, 16 and 27 of the Political Constitution were violated. A judge in the State of Quintana Roo denied the *amparo*, against which EBVS filed a *recurso de revisión*.

In her appeal, EBVS stated that the district judge did not analyze all the arguments she made in her *amparo* lawsuit and claimed the unconstitutionality of article 60 TER of the LGVS as well as the Official Mexican Standard NOM-022-SEMARNAT-2003 which establishes the specifications for the preservation, conservation, sustainable use and restoration of coastal wetlands in mangrove areas (NOM-022); considering that her rights to a prior hearing and the non-retroactivity of the law, equal treatment, legality and legal certainty (articles 1, 14 and 16 of the Constitution) were negatively affected in various ways.

p.5 The Collegiate Circuit Court that heard the appeal referred it for review to this Court to resolve the issues relating to the constitutionality of the LGVS.

STUDY OF THE MERITS

p.9 This Court must determine whether, as EBVS argues and contrary to what the trial judge decided, article 60 TER of the LGVS and NOM-022 are unconstitutional. To resolve this case, the Supreme Court must essentially answer the following questions: 1. Do the challenged norms violate the principle of non-retroactivity of the law? 2. Does the challenged Official Mexican Standard NOM-022-SEMARNAT-2003 violate article 27 of the Constitution by establishing restrictions on private property? 3. Does article 60 TER of the General Wildlife Law violate the right to equal treatment under the law?

I. Do the challenged norms violate the principle of non-retroactivity of the law?

p.24-26 In the *recurso de revisión* filed by EBVS it was argued that the denial of an extension by SEMARNAT for carrying out the Project entails a retroactive application of article 60 TER of the LGVS and NOM-022, because both provisions are of a later date than the date on which she acquired ownership of the land and obtained an environmental impact authorization. In any case, the affected party argued, the district judge should have issued a substitute compliance and ordered the payment of damages to the affected party because she was prevented from using her property.

p.52-53 This Court noted that the aim of both article 60 TER of the LGVS and NOM-022 is to ensure the protection of coastal wetlands, recognizing, among other things, the biological, chemical, ecological, economic, cultural, and social value of their hydrological, climate regulation, coastal stabilization, and primary protection functions, through which marine and terrestrial biodiversity, that depends on their functional integrity, is maintained.

In recognition of the importance of these ecosystems, article 60 TER was added to the LGVS. Similarly, but in the technical aspects, NOM-022 regulates and establishes specifications for the preservation, conservation, sustainable use, and restoration of coastal wetlands in mangrove areas, seeking to eliminate pollution and negative effects generated on wetlands and their biological communities.

Based on the above, this Court concluded that, since their entry into force, the main purpose of both article 60 TER of the LGVS and NOM-022 is the regulation of all human

interference in coastal wetlands in mangrove areas within national territory to ensure their conservation.

p.54-56 Thus, it is considered that the arguments put forward by EBVS regarding the retroactive application of LGVS and NOM-022 are unfounded for the following reasons. On the one hand, the General Law of Ecological Balance and Environmental Protection establishes that certain works and activities –including those that are intended to be carried out in wetlands and mangroves– require an environmental impact authorization. Both article 60 TER of the LGVS and NOM-022 are relevant in this context, since both provisions must be considered in the environmental impact assessment procedure, as well as when assessing whether or not an extension is granted.

p.56-57 On the other hand, it is clear that the authorities cannot prevent without cause the development of works already authorized in mangrove areas when they have been completed, which is why it could not be said that the challenged rules have retroactive effect. NOM-022 and article 60 TER of the LGVS, from their entry into force, are of mandatory application and observance by the environmental authority when evaluating the environmental impact statements that are submitted to its consideration, as happened in this case.

Additionally, this Court did not find that the provisions claimed to be unconstitutional established a temporary scope of validity in which acquired rights or legal situations that occurred prior to their entry into force were affected, since these provisions were applicable and of general observance for situations after their entry into force.

II. Does NOM-022 violate article 27 of the Constitution by establishing restrictions on private property?

p.59-61 In her *recurso de revisión*, EBVS also argued that NOM-022 established restrictions on property by imposing conditions of use and enjoyment of real estate, with the aim of preventing actions that could affect the mangroves on the site. She stated that a restriction on private property should be understood as the establishment of a general and permanent legal norm that modifies the form of the property right. From her point of view,

NOM-022 is unconstitutional as it has not been issued by the body empowered by the Constitution to impose restrictions on her property rights.

To address these arguments, this Court first considered issues related to the establishment of restrictions on property in accordance with the Constitution. Next, it was analyzed whether all impacts on property must be carried out through a law in a formal and material sense.

As for the first argument, this Court specified that the right to property should not be confused with the possibilities of using it (which EBVS calls "modalities" in reference to the third paragraph of article 27 of the Constitution).

The "modalities" that may be imposed on the right to property in accordance with article 27 of the Constitution constitute restrictions on the right to property, but do not imply the deprivation of the right to property nor an expropriation as EBVS argued. The restrictions referred to in article 27 of the Constitution are simply limiting the exercise of the right to property, but they do not mean its annulment.

p.61-62 It is clear that whatever the form by which the property has been acquired, the Nation maintains at all times the "right" -which must be read as competence or power- to impose the restrictions on private property dictated by the public interest, as well as to establish the regulation for the use of natural resources that can be appropriated for public benefit. The consequence of the foregoing, established in the second part of the third paragraph of article 27 of the Constitution, is to dictate the necessary measures for the objectives set forth therein, including the administration of lands, waters, and forests, as well as the preservation and restoration of the ecological balance.

This determination also has its corresponding part in the list of rights established in the Constitution, in the fourth paragraph of article 4, which establishes the right to a healthy environment and the obligation of the State to guarantee it.

p.62-63 Both the right to a healthy environment and the correlative obligation of the State to guarantee it have to be read from the direct constitutional power that establishes the public interest and allows the establishment of restrictions on property, without this being considered an expropriation or confiscation. The above does not imply that when imposing restrictions on property based on article 27 of the Constitution, the authorities do not have

the obligation to reasonably justify the corresponding measures, in order to avoid arbitrariness.

Thus, in a constitutional review trial over norms that impose restrictions on the use of property, the standard of constitutional scrutiny must be guided by the reasonableness of the measure according to the purpose sought, necessity, and proportionality. The main idea that is maintained here is that it must be controlled, through more demanding constitutional scrutiny, that the authority does not use arbitrary measures under the pretext of fulfilling a legitimate purpose, such as the protection of the environment.

p.64 In this specific case, the purpose of the provisions that are claimed to be unconstitutional (article 60 TER of the LGVS and NOM-022) is the protection of coastal wetlands. Thus, considering that the legislature is constitutionally empowered to impose the restrictions on property that it deems appropriate and that environmental protection is a constitutionally legitimate purpose, this Court considered that the analysis of the reasonableness of the measure required only ordinary justification.

p.64-66 Under this perspective, this Court decided that article 60 TER of the LGVS and NOM-022 are reasonable in accordance with the purposes established in the third paragraph of article 27 of the Constitution, because they seek to preserve the natural resources and environmental services they provide. They are also proportional, since they not only respond to a legitimate constitutional purpose, but can also establish, both constitutionally and conventionally, limitations on the right to property for reasons of social interest, as contemplated in article 21 of the American Convention on Human Rights,

For these reasons, this Court considered that there is no impact on the property of EBVS that can be identified as an expropriation, because this case is only a clear example of regulation through the establishment of restrictions on the use of property, contemplated in the third paragraph of article 27 of the Constitution.

Consequently, EBVS's arguments regarding the formal and material reservation of the law as a condition for the impact on her property to be considered constitutional are also unfounded. This is because there is no formal legal reservation in the third paragraph of article 27 of the Constitution. What this provision refers to with the "necessary measures"

is that the Nation may impose the necessary measures for the fulfillment of the purposes established in that same paragraph.

This constitutional power, which is conferred on State agencies to impose the measures or restrictions on property that they deem necessary to grant protection of a collective benefit or social interest, also corresponds with the State's compliance with the obligation to guarantee the constitutional right that we all have to a healthy environment.

III. Does article 60 TER of the LGVS violate the right to equal treatment under the law?

p.67 In the *recurso de revisión* that is analyzed, the affected party also argued that article 60 TER of the LGVS contravenes the right to legal equality by disadvantaging the owners who have properties in which there are mangroves, compared to those who can take advantage of their land as established in the municipal urban development programs because it does not have mangrove ecosystems.

p.67-68 This Court considered that the arguments of the affected party on this question are unfounded, for essentially the following reasons. The principle of equality constitutes the fundamental right recognized by articles 1 and 13 of the Constitution, which establish that all persons must, in principle, be treated equally before the law and the actions of the State.

p.69-70 However, it is clear that the difference in the legal treatment given to EBVS, in terms of the use she can give to her lands, is based on the existence of mangrove communities on the site, which is why its factual situation is different from that of other properties. Indeed, the principle of equality implies giving equal treatment to those in equal situations, which in this case does not happen because in the properties that EBVS owns there are mangrove communities, which justifies the granting of a treatment different from those lands where coastal wetland ecosystems have not developed.

Hence, this Court concludes that under this parameter it cannot be considered that article 60 TER of the LGVS and NOM-022 violate the principle of equality, because the same

treatment is given to the owners of properties in which there are coastal wetlands, compared to those in which these ecosystems do not exist.

p.70-71 This Court does not lose sight of the fact that in this case the violation of the principle of equality being claimed comes from the imposition of restrictions for reasons of environmental protection. In this context, it is relevant to address the arguments of EBVS on the content of article 4 of the Constitution, which establishes the obligation of the State to guarantee the right to a healthy environment. This is because article 60 TER of the LGVS and the NOM-022 establish differentiations based on the state interest of protecting a human right explicitly established in the Constitution.

In this regard, equality should not only be understood as a condition of equal treatment given to persons, in generic terms, but as a situation that must be verified between those who are in certain specific circumstances; which in this case means the presence of a certain ecosystem that is to be protected and preserved, such as mangroves. The above as ultimate justification, derived from the constitutional text itself, gives rise to the restrictions on property.

p.72 This Court considered that equality is applied as a specific criterion, dynamically, which requires the scrutiny of the person in relation to the constitutional interest that it is sought to safeguard, established in article 4 of the Constitution. Therefore, the conditions of treatment of the norm with respect to the person on an intergenerational level and in the environment in which they find themselves must be examined. This is because the right to an adequate environment not only responds to the social interest or benefit of existing individuals but must also be understood as a right of individuals who will exist in the future.

The public and social interest, set forth in article 27 of the Constitution, must be understood as applicable to a changing environment whose needs are modified by its usage, by the specific conditions of its conservation and preservation and, something that is fundamental, by the way of understanding and systematizing these needs and conditions.

The variant to the principle of equality in the environmental context is drawn as a concept in which the commitment to preserve natural resources becomes relevant –not only with a current version, but dynamically, towards the future– which is established from the

constitutional text to the norms that are challenged. That is why the criterion on which the distinction between persons is based responds to an objective and constitutionally valid purpose –the protection of the environment– behind which there is a weighing or assessment of the interests to be preserved.

p.73-75 According to the criteria that this Court has issued regarding the right to equal treatment, it can be said that in this case this fundamental right has been fully complied with. By virtue of the fact that, first, the legislative distinction is due to the protection of the coastal wetland as a fundamental ecosystem for the environment in the area; second, the difference between properties that have mangroves and those that do not is an instrumental means suitable for environmental protection; and, finally, the act whose constitutionality is challenged does comply with the requirement of proportionality or reasonableness required by the fundamental law, since the mentioned constitutional purpose is not pursued through an unnecessary or excessive impact on the constitutional right to property.

Thus, for this Court, the grievances that were raised in the *recurso de revisión* are unfounded, since they do not violate the fundamental right to equality, understood in its specific dimension of analysis of the treatment that the law gives to one person as compared with another, as well as a robust criterion that is based on article 4 of the Constitution due to the legal interest that it protects.

DECISION

p.82 The decision under appeal is upheld. EBVS is not covered or protected against article 60 TER of the LGVS and the Official Mexican Norm. The adhesive *recursos de revisión* are considered moot and the jurisdiction is reserved to the Collegiate Circuit Court to decide on the questions of legality that escape the constitutional analysis of this Court.