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.

HUMAN RIGHT TO A HEALTHY ENVIRONMENT AND CO-RESPONSIBILITY OF INDIVIDUALS IN ITS PROTECTION AND GUARANTEE (*DERECHO HUMANO A UN MEDIO AMBIENTE SANO Y CORRESPONSABILIDAD DE LOS PARTICULARES EN SU PROTECCIÓN Y GARANTÍA*)

CASE: *Amparo Directo en Revisión 5452/2015*

REPORTING JUSTICE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: June 29, 2016

KEY WORDS: Right to a healthy environment, intergenerational equity, co-responsibility of individuals and the State in the protection of the environment, concurrent powers in environmental protection matters, municipal powers over public services and waste management.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 5452/2015*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of June 29, 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-emblematicas/sentencia/2022-02/ADR%205452-2015.pdf

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo Directo en Revisión 5452/2015*, Mexico.

SUMMARY OF THE *AMPARO DIRECTO EN REVISION* 5452/2015

BACKGROUND: The company I S.A. DE C.V. sued before one administrative court in the State of Mexico, for the nullity of various procedures instituted by the State Environmental Protection Agency against it, for violating provisions related to waste management in a vehicle verification center. The Administrative Court issued a decision in which it declared the validity of one of the procedures and the invalidity of two others. The company and the Environmental Protection Agency filed a *recurso de revisión*, which was heard by the Superior Chamber of the same Court, which decided to recognize the validity of the three proceedings against the company. I S.A. DE C.V. filed an *amparo directo* lawsuit against this decision, in which it questioned the constitutionality of various provisions of local environmental legislation and the procedures established by the Environmental Protection Agency. The Collegiate Circuit Court that heard the case denied the *amparo*, against which the company file another *recurso de revisión*, which was sent to Mexico's Supreme Court of Justice (this Court).

ISSUE PRESENTED TO THE COURT: Whether article 4.46 of the Biodiversity Code of the State of Mexico is unconstitutional because it transfers to citizens obligations, activities and functions that are exclusive to the State, in light of articles 4 and 115, paragraph c, section III of the Constitution, which refer to the right to a healthy environment and the municipal powers related to the clean-up, transfer and final disposal of waste. Also, decide on the constitutionality of article 34 of the Code of Administrative Procedures of the State of Mexico and whether it forms part of the sanctioning administrative law in conformance with the principle of presumption of innocence.

HOLDING: The *amparo* was denied and the decision challenged by the company was upheld, for the following reasons. Article 4 of the Constitution requires all legislative, administrative and judicial authorities to adopt, within the framework of their powers, all measures necessary for the protection of the environment. This constitutional mandate establishes a co-responsibility between States and citizens to protect and improve the environment for present and future generations. It was also decided that article 34 of the Code of Administrative Procedures of the

State of Mexico is constitutional because it does not contravene the principle of presumption of innocence in the sanctioning administrative law.

VOTE: The case was decided by the unanimous vote of the four justices Norma Lucía Piña Hernández, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz and Alfredo Gutiérrez Ortiz Mena. Justice Jorge Mario Pardo Rebolledo was absent.

The votes may be consulted at the following link:
https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=188193

EXTRACT FROM THE AMPARO *DIRECTO EN REVISION* 5452/2015

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 29, 2016, issued the following decision.

BACKGROUND

p. 1-3 The company I S.A. DE C.V. was authorized to install and operate a vehicle verification center in the State of Mexico. Between September 2011 and March 2012, the Environmental Protection Agency in the State of Mexico (PPA) carried out several inspections, through which administrative procedures P1, P2, and P3 were initiated, which resulted in the imposition of sanctions for infringing the Biodiversity Code of the State of Mexico (CBEM).

p.3-4 Through its legal representative, I S.A. DE C.V. sued, before the Administrative Court of the State of Mexico (TCA), for the nullity of the procedures instituted by the PPA. The TCA recognized the validity of the P1 procedure and declared the invalidity of the P2 and P3 procedures. Dissatisfied, the company and the PPA filed *recursos de revisión* against the decision of the TCA.

The Superior Chamber of the TCA decided to modify the decision to recognize the validity of the three administrative procedures instituted by the PPA. The company I S.A. DE C.V. filed an *amparo directo* lawsuit against that resolution and invoked, as fundamental rights violated, the contents of articles 1, 14 and 16 of the Constitution.

p.5-6 In its *amparo* lawsuit, the company I S.A. DE C.V. questioned the constitutionality of article 4.46 of the CBEM, considering that it transfers to citizens the obligations, activities and functions that are exclusive to the State in terms of articles 4 and 115, subsection c), section III of the Constitution, related to the management and final disposal of waste under municipal jurisdiction. The constitutionality of article 34 of the CPAEM was also challenged, considering that it violates the principle of the presumption of innocence provided for in article 20 of the Federal Constitution.

p.8-12 The Collegiate Circuit Court that heard the case decided to deny the *amparo*, since it concluded, on the one hand, that there was no violation of the protection of the

environment contained in article 4, nor of the principles contained in section II, subsection c) of article 115 of the Constitution. That court ruled that the right to a healthy environment does not imply that the State is the only one that has obligations and tasks to maintain an adequate environment, but rather it only establishes the environmental policies and can impose burdens on individuals to achieve its constitutional purposes. On the other hand, with regard to the constitutionality of article 34 of the CPAEM, the Collegiate Circuit Court concluded that there was no violation of the principle of the presumption of innocence.

p.14-17 The affected company challenged the decision of the Collegiate Circuit Court. In the *recurso de revisión*, it argued that the decision did not analyze the constitutionality of the normative provisions challenged under a suitable interpretation, nor with objective elements. The Collegiate Circuit Court ordered the matter to be referred to this Court.

STUDY OF THE MERITS

p.20 For deciding this case, this Court develops an analysis of the constitutionality of articles 4.46 of the Biodiversity Code of the State of Mexico and 34 of the Code of Administrative Procedures of the State of Mexico considering the right to a healthy environment, the principle of presumption of innocence, and the incidence of the exclusive powers of the municipalities.

I. Constitutionality of article 4.46 of the CBEM

p.21 According to the allegations of the affected company, article 4.46 of the CBEM violates article 4 of the Constitution by transferring obligations of the State on the right to environment to individuals. Also, from its point of view, the CBEM violates subsection c), section III of article 115 of the Constitution, since it affects the exclusive powers of the municipalities over the handling and final disposal of waste under their jurisdiction. To answer these arguments, this Court addresses the following issues:(i) the content and scope of the human right to a healthy environment; and (ii) the concurrent powers in environmental matters.

A. Content and scope of the human right to a healthy environment provided for in article 4 of the Constitution

p.21-22 The right to a healthy environment is recognized in article 4 of the Federal Constitution, as well as in various international instruments that pursue the protection and conservation of the environment. This constitutional provision gives a mandate to all State authorities to guarantee the existence of a healthy environment conducive to human development and people's well-being. This mandate is binding for all legislative, administrative and judicial authorities, who must adopt, within the framework of their powers, all those measures that are necessary for the protection of the environment.

This protection is also supported at the international level in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, also called the "Protocol of San Salvador", whose article 11 establishes that "everyone shall have the right to live in a healthy environment and to have access to basic public services", and indicates that States have a duty to promote "the protection, preservation, and improvement of the environment".

p.22-24 In the same vein, other international instruments such as the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) refers to the fundamental right of people to live in an environment of quality that permits a life of dignity and well-being, together with the corresponding responsibility of citizens to protect and improve the environment for present and future generations.

The Rio Declaration on Environment and Development of 1992 also established some far-reaching principles, including the right to a healthy and productive life in harmony with nature as well as the obligation of States to create effective laws for the protection of the environment.

Likewise, the Earth Charter, approved in 2000, establishes the correlation between the right to environment and the duty of protection, in such a way that "with the right to own, manage and use natural resources comes the duty to prevent environmental harm and to protect the rights of people".

This Court considers that the following aspects are derived from the above international instruments: (i) there is recognition of the right to a healthy environment; (ii) the State is bound to establishing measures that protect and allow the development of the law; and

(iii) citizens are bound in the protection of the environment. Thus, it can be established that this right is configured as a right-duty; i.e., the recognition of the right entails a close linkage with the duty of its protection, both by the State and individuals.

In this same sense, in the C*ontroversia Constitucional* 95/2004, the Plenary of this Court determined that the right to a healthy environment is developed as a "power of demand and a duty of respect to all citizens to preserve the sustainability of the environment, which implies not impacting or harming it, with the correlative obligation of the authorities of oversight, conservation and guarantee to ensure that the relevant regulations are complied with".

p.24-25 This implies that environmental obligations are a requirement for both the State and individuals. From this perspective, article 4.46 of the Biodiversity Code, rather than transferring state obligations to individuals, establishes an environmental protection framework in co-responsibility with citizens.

Also in the C*ontroversia Constitucional* 95/2004, this Court determined that environmental protection and the preservation of the ecological balance are ways through which the State can assure people an adequate environment for their development and well-being. These requirements are materialized in the legislative regulation that allows government bodies, whether federal or local, to take necessary actions to preserve and maintain the environment.

p.25-26 One aspect of environmental protection is the regulation of waste, including the obligations of those who generate it. The provisions of the CBEM are intended to establish guidelines to regulate the participation of private generators of municipal solid and special handling waste, which does not mean that it requires citizens to carry out activities exclusive to the State, but simply to comply with their correlative duty of environmental protection.

These duties are specified in the provisions of article 4.46 of the CBEM, which regulates the following obligations for generators of municipal solid and special handling waste: (i) obtain authorization for the registration of waste management; (ii) establish management plans and records of waste volumes; (iii) keep an annual log where the volume and type

of waste are recorded; (iv) undertake the collection and storage; and (v) make a final disposal of their waste and deliver such waste to registered clean up services.

For this Court it is clear that these obligations are guidelines that regulate the co-responsibility for environmental protection, and that, far from violating the right to a healthy environment, their purpose is precisely the protection of the environment through the establishment of responsibilities of individuals.

B. Exclusive power of the Municipality related to the clean-up, collection, transfer, treatment and final disposal of waste

p.27 This Court considers that, contrary to the argument of the affected company, article 4.46 of the CBEM does not transfer to individuals the exclusive power of the Municipality in matters of clean-up, collection, transfer, treatment and final disposal of waste.

p.26 To reach this conclusion, this Court considers it necessary to distinguish between the protection of the environment –as a concurrent matter in the Constitution– and the power of municipalities to carry out certain public services, such as clean-up, collection, transfer, treatment and final disposal of waste.

The Plenary of this Court has indicated in C*ontroversias Constitucionales* 95/2004 and 72/2008 that municipalities may issue, especially in concurrent matters, general provisions related to the procedure and function of the public services under their jurisdiction, in strict adherence to those provided by the general laws, federal and state, especially in those where there is concurrence.

p.27-28 In this context, section IV of article 4.46 of the CBEM establishes a series of obligations on the generators of municipal solid and special handling waste, so that they undertake the collection, storage, transportation, recycling, and treatment or final disposal of their waste generated in large volumes or special management waste, as well as the cost of handling and delivering this waste to municipal clean up and transportation services.

This implies that waste generated in large volumes or of special handling, generated by individuals, is delivered precisely to the competent clean up and transportation services. Thus, there is no obligation for individuals to carry out actions of clean-up, collection,

transfer, treatment and final disposal of waste within the municipality; rather their obligation is limited to certain obligations derived from their own activity as generators of urban waste.

Therefore, this Court considers that article 4.46 of the CBEM does not affect the exclusive powers of the Municipality in terms of article 115, section III subsection c).

B. Constitutionality of Article 34 of the CPAEM

p.28 This Court considers that to analyze the arguments raised by the affected company regarding the unconstitutionality of article 34 of the CPAEM, it is necessary to address the following issues: (I) sanctioning administrative law, (II) principle of presumption of innocence in sanctioning administrative law, and (III) analysis of the constitutionality of Article 34 of the CPAEM.

1. Sanctioning administrative law

p.28-30 The Plenary of this Court, in deciding the A*cción de Inconstitucionalidad* 4/2006, established that sanctioning administrative law refers to the competence of the administrative authorities to impose sanctions on unlawful actions and omissions. Thus, the administrative penalty is a reaction to an unlawful action that infringes the Administrative Law.

Following this parameter, when resolving the *Contradiccion de Tesis* 200/2013, the Plenary of this Court determined that the sanctioning administrative procedure is a set of formalities in the form of a lawsuit before the competent authority to hear cases of irregularities, whether of public servants or private individuals or entities, whose purpose will be, in any case, to impose some sanction.

Therefore, this Court considers that the premise held by the Collegiate Circuit Court according to which "*the principle of presumption of innocence is applied, with certain nuances, in sanctioning administrative law, which is identified with the administrative responsibilities that are imputed to public servants where infractions of the laws that give rise to an administrative sanction can be attributed to them"* is false. This is because for

this Court, the characteristics of the sanctioning administrative procedure can also be present in proceedings in the form of a lawsuit filed against private entities or individuals.

2. Principle of presumption of innocence in sanctioning administrative proceedings

p. 30 It is relevant to specify that, in this specific case, the PPA after several inspections of the vehicle verification center operated by the affected company instituted three administrative procedures, pursued in the form of a lawsuit, which concluded with a sanction on the company. In this context, this Court finds the claim of the affected company that the Collegiate Circuit Court failed to carry out the study of the constitutionality of article 34 of the CPAEM in light of the principle of presumption innocence in the sanctioning administrative law to be well-founded.

p.30-31 This Court has consistently held in precedents such as the *Contradicción de Tesis* 200/2013 that the principle of the presumption of innocence is a fundamental right applicable to sanctioning administrative law and that it must be carried out with the necessary modulations to make it compatible with the institutional context to which it will be applied.

p.31-32 The principle of the presumption of innocence does not have the same scope when it is applied to the action of the authority in a procedure that is pursued in the form of a lawsuit as it does in the case of unilateral acts. Like any principle formulated as a maximization mandate, the principle of the presumption of innocence must be adjusted to each specific case.

Variants of the principle of presumption of innocence in criminal proceedings are applicable in the sanctioning administrative procedure. These variants have been defined by the First Chamber of this Court in the *Amparo en Revision* 349/2012, through three aspects: i) as a rule of treatment of the defendant that excludes or restricts to the minimum the limitation of their fundamental rights, especially those that affect their personal freedom because of the proceeding against them; (ii) as an evidentiary rule that imposes the burden of proof on the accuser and, therefore, acquittal in case of doubt; and (iii) as an evidentiary standard or rule of judgment that can be understood as a rule that requires

judges to acquit the defendant when sufficient evidence has not been provided during the process to prove the existence of the crime and the liability of the defendant. Thus understood, the presumption of innocence does not apply to the evidentiary procedure (the evidence understood as an activity), but to the moment of the evaluation of the evidence (understood as a result of the evidentiary activity).

Thus, this Court considers that the principle of the presumption of innocence is applicable to sanctioning administrative law, but it must be considered that when it is transferred to the sphere of administrative law, it acquires certain nuances or specific modulations.

3. Analysis of the constitutionality of article 34 of the CPAEM

p.32-33 In order to consider whether article 34 of the CPAEM infringes a fundamental right or guarantee in criminal matters, this Court will apply the same methodology as set out in the *Amparo en Revision* 590/2013.

This methodology consists of: i) first, determining whether the challenged rules regulate a procedure in which evidence can be obtained that can be used later; ii) second, specifying the content of the right whose violation is being alleged; (iii) third, modulating the content the fundamental right invoked has in the criminal setting in order to be able to transfer it to the sanctioning administrative procedure; and (iv) finally, contrasting the challenged provision with the content that was determined for the rule in the administrative setting.

Applying this methodology, this Court considers that the first premise is affirmative, since the article challenged was part of an administrative procedure against the affected company.

p.34 The affected company claimed that article 34 of the CPAEM was unconstitutional because it considered that the presumption of legality of administrative acts gives those acts a higher ranking, positions the authority at an advantage and infringes the principle of presumption of innocence as an evidentiary rule. This dimension establishes the requirements the proof must meet to consider that there is valid inculpatory evidence, among which is that the evidence must be provided by the accusing party.

p.34-35 However, one of the nuances of the principle of presumption of innocence in sanctioning administrative law is precisely that administrative acts have a *iuris tantum* presumption i.e., they are, in principle, considered valid and in accordance with the law.

Thus, this Court considers that article 34 of the CPAEM does not infringe the evidentiary rule of the principle of presumption of innocence when presuming the legality of administrative acts. This is so because the presumption of legality of administrative acts is indispensable, since without it, the administrative body could not execute them until a favorable decision is obtained: without this presumption the legal operation of the administration would be unviable. For this reason, it is stated that the characteristic of validity and legality of any administrative act constitutes a virtual mandatory or command power, which is based on the fact that the executive action seeks to satisfy the general needs of the community which cannot be delayed.

DECISION

p.35 The *amparo* is denied to the affected company and the decision of the Superior Chamber of the TCA of the State of Mexico is upheld.