

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, ECONOMIC GUARANTEES AND STAY OF EXECUTION OF ACTS OR ORDERS IN ENVIRONMENTAL AMPARO PROCEEDINGS  
(DERECHO A UN MEDIO AMBIENTE SANO, GARANTÍAS ECONÓMICAS Y SUSPENSIÓN DE ACTOS U ÓRDENES EN EL JUICIO DE AMPARO AMBIENTAL)**

**CASE:** *Contradicción de Tesis 270/2016*

**REPORTING JUSTICE:** Alberto Pérez Dayán

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

**DATE OF THE DECISION:** January 11, 2017

**KEY WORDS:** human right to a healthy environment, financial guarantees and stay of execution in *amparo* proceedings, granting of stay in *amparo* proceedings.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Contradicción de Tesis 270/2016*, Second Chamber, Alberto Pérez Dayán, J., decision of January 11, 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/2022-02/CT%20270-2016.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Contradicción de Tesis 270/2016*, Mexico.

## SUMMARY OF THE *CONTRADICCION DE TESIS* 270/2016

**BACKGROUND:** Mexico's Supreme Court of Justice (this Court) decided a *contradicción de tesis* between two collegiate circuit courts, on the admissibility of requiring in an *amparo* proceeding a financial guarantee as a condition to suspend works and activities that could affect biodiversity, violating the human right to a healthy environment. This Court decided that a criterion should prevail as precedent that establishes a series of parameters to inform the decision of judges when deciding whether a financial guarantee should be required as a condition to stay the execution of acts challenged in an *amparo* lawsuit when possible violations of the human right to a healthy environment are claimed.

**ISSUE PRESENTED TO THE COURT:** Whether in order for the granting of a stay of execution order to be effective against acts or orders that allegedly affect the human right to a healthy environment, a financial guarantee must be required of those who resort to an environmental *amparo* lawsuit.

**HOLDING:** This Court determined that there was a contradiction of criteria and decided that the criterion 'HEALTHY ENVIRONMENT. PARAMETER THAT MUST BE TAKEN INTO CONSIDERATION BY AMPARO JUDGES TO DETERMINE IF IT IS POSSIBLE TO EXEMPT THE COMPLAINANT FROM PROVIDING A GUARANTEE TO GRANT THE STAY OF EXECUTION OF ACTS THAT INVOLVE VIOLATION OF THAT HUMAN RIGHT' would prevail because the right to a healthy environment imposes a series of procedural obligations on States, such as the obligation to guarantee effective access to justice. This requires, *inter alia*, that the filing of judicial remedies related to environmental protection is not prohibitive and that consideration be given to removing or reducing financial obstacles—such as the requirement to post a bond or some other financial guarantee to obtain court orders—and other types of barriers for access to justice in environmental matters.

**VOTE:** The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=201740>

## EXTRACT FROM THE *CONTRADICCION DE TESIS 270/2016*

- p. 1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of January 11, 2017, issued the following decision.

### BACKGROUND

- p. 1-2 The judges of a collegiate court of the third circuit reported a possible contradiction between the criteria of their court and a collegiate court of the twenty-seventh circuit. The judges specified that the point of contradiction was to determine whether or not it is "valid to set a guarantee for the stay of execution of the *amparo* to take effect, when the act challenged involves the violation of the human right to a healthy environment." This Court admitted the report of the possible contradiction.
- p.3-7 In the first criteria, a collegiate circuit court decided that a financial guarantee should not be required when the acts whose detainment is requested may cause an impact on ecosystems (such as the destruction of the mangroves and wildlife of Tajamar in this case) because there was danger in delay, and far from causing damage to the social interest, imminent and irreparable damage to the ecological balance and to the right of all people to live in a healthy environment, which could not be restored to the community, could be avoided.
- p.7-12 The second of the conflicting criteria arose from a case in which the stay of execution of a set of works and activities that would lead to the urbanization of the Bosque de los Colomos, in Jalisco, was requested. That collegiate circuit court ruled that the stay of execution of the construction of the project was conditional on the submission of a financial guarantee sufficient to repair the damage and compensate the developers of the project in case the *amparo* decision was not favorable to the petitioners.
- p.14 This Court found that in this case there is a contradiction of criteria, since when resolving the issues of their respective dockets, the collegiate courts ruled on the same legal situation: whether those who resort to the environmental *amparo* lawsuit must be required to post a guarantee for the granting of a stay of execution order against acts or orders that allegedly affect the human right to a healthy environment to go into effect.

p.16 In view of the foregoing, the point of contradiction that this Court must elucidate is to determine whether, in the case of granting the stay of execution of challenged acts that may harm the human right to a healthy environment, it is necessary to require the petitioner of the amparo to grant a guarantee.

## STUDY OF THE MERITS

In order to determine the criterion that must prevail as precedent in this case, the scope of the human right to a healthy environment as well as its justiciability must be considered and, on this basis, the precedential position that must be adopted for the stay of execution of the challenged acts that are allegedly harmful for the right to a healthy environment must be elucidated.

### I. Principles of the fundamental right to a healthy environment

p.16-17 This Court develops in this decision a section on the guiding principles of the fundamental right to a healthy environment, in which it explains how, in recent decades, the world community has begun to recognize the link between human rights and the environment. This issue is a priority on the contemporary international agenda<sup>1</sup> and virtually every State in the world has enacted legislation aimed at reducing air and water pollution, regulating toxic substances, and preserving natural resources, among other purposes.

p.18 The traditionally held stance of economic growth at any price has been followed by a more comprehensive idea of development. The paradigm of this conception is the idea of "sustainable development", which pursues the achievement of three essential purposes: (I) A purely economic goal, consisting of efficiency in the use of resources and quantitative growth; (II) A social and cultural purpose, namely the limitation of poverty, the maintenance of the various social and cultural systems and social justice; and (III) An ecological purpose, relating to the preservation of physical and biological systems — natural resources in the broad sense— which support the life of human beings, thus

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<sup>1</sup> The decision refers to the cycle of world conferences at the end of the twentieth century triggered by the United Nations Conference on Environment and Development (Rio de Janeiro 1992), also mentioning: the Second World Conference on Human Rights (Vienna 1993); the International Conference on Population and Development (Cairo 1994); and the Second United Nations Conference on Human Settlements (Habitat II, Istanbul 1996).

protecting various rights inherent to people, such as the right to life, health, food and water, among others.

- p.19 With regard to the protection of the human right to a healthy environment, article 4 of the Federal Constitution states the following: "Article 4. [...] Everyone has the right to a healthy environment for their development and well-being. The State shall guarantee respect for this right. Environmental damage and deterioration will generate liability for whoever causes it in terms of the provisions of the law."
- p.20 The current text of article 4 of the Constitution was modified in 2012 to refer to the right to a "healthy" environment instead of an "adequate" environment, also requiring the State to guarantee it. In the statement of purpose of this constitutional reform, it was recognized that "the environmental conditions in an ecosystem directly influence the health of those who inhabit it" and therefore it was sought to define an objective parameter regarding the conditions of development and well-being that the State must guarantee to its citizens, and the responsibility the citizens have to participate, although in a differentiated manner, in the safeguarding of the human right to a healthy environment; thus liability was established for whoever provokes its harm in the terms established by the secondary legislator.
- p.21-22 Thus, 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 that right and its judicial protection; and (II) as the responsibility, although differentiated, of the State and the citizenry for its preservation and restoration".
- This Court interprets that it was the explicit intention of the Congress that the right to a healthy environment should have full legal effectiveness and be translated into a specific mandate for the authority. In this context, the courts are able to review whether, in fact, the actions or omissions of the authority are in accordance with the full realization of the human right to a healthy environment.
- p.22-23 From the analysis of the conventional instruments on this subject, this Court concludes that the human right to a healthy environment imposes certain procedural obligations on the State, including the duty to assess the environmental impact and make public the information related to the environment as well as to facilitate public participation in

environmental decision-making and to give access to effective remedies for the protection of environmental rights, as set out in Principle 10 of the Rio Declaration on Environment and Development.

p.24-26 The Governing Council of the United Nations Environment Programme adopted the "Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters" (Bali Guidelines) to support States in the effective regulation and implementation of Principle 10 of the Rio Declaration. With regard to the justiciability of the human right to a healthy environment, the Bali Guidelines establish, among other conditions, the State's duties to: (I) Ensure access to a court of law or other independent and impartial body or administrative procedures to challenge any decision, act or omission by public authorities or private actors that violates environmental protection regulations; (II) Provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice. The Supreme Court established that this guideline recognizes the application of the principle *in dubio pro actione* in environmental matters, which requires that courts, when interpreting procedural rules, "avoid unreasonable formalities or understandings that violate the right of the individual to obtain a decision on the merits of the question raised"; and (III) Ensure that the filing of appeals in relation to the environment is not prohibitively expensive and consider removing or reducing financial barriers, such as the requirement to post a bond or other financial guarantee as a condition for obtaining court orders, and other barriers to access to justice. This Court pointed out that the importance of reducing the costs of access to justice in this case is justified if it is considered that the environment does not have the capacity to defend itself in courts; therefore, it is up to private litigants to file actions in defense of environmental values.

p.26 As established by the Governing Council of the United Nations Environment Programme, in order to discern whether a national remedy of access to justice is prohibitively expensive, the costs should not be greater than the resources of the person seeking judicial action. The costs should also be reasonable so that the public can have a constructive role in protecting the environment.

According to this interpretation, the cost of a remedy for access to justice would be prohibitive when, among other things, it could dissuade people or prevent organizations dependent on the contributions of their members from bringing a judicial action in environmental matters. They will be significant when they may constitute a clear disincentive to the pursuit of justice.

## **II. The requirement of a guarantee against acts that may affect the human right to a healthy environment**

p.29-31 This Court has recognized exceptions to the requirement of a guarantee in the ancillary proceeding for a stay of execution when there is a public interest to stop the acts of authority that are challenged. It is also the criterion of this Court that judges can assess whether the requirement of a financial guarantee would result in a violation of the human rights of the person requesting the *amparo*, or the collectivity, if diffuse interests are involved.

p.33 This is so because for this Court it would be nonsense if the granting of the stay of execution in the *amparo* proceedings, far from contributing to the generation of a truly effective system of protection of human rights, stands as an impediment or impairment to the inalienable rights that are precisely intended to be safeguarded through that means of constitutional control.

On the basis of the above, the Court concludes that the mere existence of interested third parties does not imply, in and of itself, that whoever resorts to an *amparo* lawsuit should be required to grant a guarantee. That is because the *amparo* judge must assess the nature of the human right that is considered to be negatively affected and the particularities of the specific case in order to determine the validity of the stay order, especially when there is a public interest in the cessation of acts of authority while the constitutional proceeding is resolved.

p.34 In the case of the human right to a healthy environment, this Court determines that the interpretation of the procedural rules—in this case the requirement in the *Amparo* Law of granting a guarantee in order for the acts challenged to be stayed—cannot be rigid or based on unreasonable formalities that could allow irreparable environmental harm to be

caused; rather, it must be in accordance with the principles that define the right to a healthy environment.

p.37 Thus, this Court considers on the one hand that "in view of the imperative social interest of protecting the environment comprehensively, as an indispensable element to ensure the sustainable development of present and future generations, and to allow the enjoyment of other human rights —such as the right to life and the highest possible level of physical and mental health— the stay of execution of State acts that infringe that right, in general, cannot be at the expense of the presentation of a guarantee, since not only could it be burdensome for the individual —constituting a financial obstacle to its justiciability—but, if not granted, it would allow the execution of acts that are likely to cause irreversible or undue damage to ecosystems, thereby affecting the community as a whole".

The decision to exempt the petitioner of environmental protection from the obligation to comply with the payment of a guarantee would eliminate a relevant financial barrier to accessing justice in environmental matters and would also prevent cases from occurring in which, unjustifiably, the execution of the acts challenged to the detriment of the ecosystem is allowed simply because the petitioner does not have the necessary economic capacity to cover the cost of the guarantee. That, of course, would have a negative impact on the concept of the amparo proceedings as a means of effective constitutional control to protect the human right to a healthy environment.

p.38 On the other hand, this Court considers that not requiring the payment of a financial guarantee for the granting of an injunction is justified because, in this way "the possibility is safeguarded that any natural or legal person, regardless of their economic or financial condition, can resort to the amparo lawsuit to guarantee that the Mexican State complies with the obligations arising from the human right to the environment, without having to face a pecuniary obstacle that not only could be burdensome, but permits the execution of acts of authority that are likely to cause irreversible or undue damage to the environment" solely because said guarantee is not paid. This is so because in environmental matters those affected generally are not seeking "a profit, but the effective application of the environmental commitments the Mexican State has undertaken, with the



preponderant purpose of protecting the combined natural and artificial elements that make the existence and development of human beings and other species of the planet possible", since there is a social interest in not executing acts that can cause irreversible effects on biodiversity.

p.39 For these reasons, this Court considers it is wrong that the social interest of protecting the environment comprehensively must yield to the individual interest of third parties interested in the continuation of acts that could affect biodiversity and, therefore, it is justified that in these cases there is an exception to the delivery of a guarantee. This does not imply that the rights of interested third parties are disregarded, "but that the human right to a healthy environment requires specific protection and awareness of the seriousness of the impacts on biodiversity" since the constitutional protection of the human right to a healthy environment "not only brings concrete benefits to the legal sphere of the complainant, but to society as a whole; hence the defense of this right has an inherent collective dimension that positively impacts not only the petitioner but various groups, as well as the preservation of species among the ecosystems".

p.40 Based on this last precision, this Court considers that the granting of the stay of execution of the acts challenged without the payment of a financial guarantee is justified only in those cases in which the social interest of protecting the environment comprehensively truly exists as an indispensable element to ensure the sustainable development of present and future generations, and to enable the enjoyment of other human rights.

p.41-43 Thus, given that the justiciability of the right to a healthy environment can be presented in a multiplicity of factual-legal dimensions, this Court establishes that the parameters that the *amparo* judges must take into consideration to analyze whether or not it is possible to exempt the petitioner from presenting a guarantee for the stay of execution of the challenged act, are the following:

1. It is essential that the violation of the human right to a healthy environment *be a core aspect of the amparo proceedings*. That is, the guarantee should not be exempted when the lawsuit presents arguments principally related to the impact on other human rights —such as property, legal certainty, access to effective judicial protection, among

others— and the right to a healthy environment is only mentioned as an accessory or peripheral issue to the central dispute;

2. The approach in question must be aimed at combating a real impact on the environment and not merely an act that generates an "environmental impact" in terms of article 3, section XX, of the General Law of Ecological Balance and Environmental Protection; since in that case there would be no justification for exempting the affected party from granting the guarantee;
3. The impact on the environment must be current or imminent, and not merely hypothetical or possible. This means that the future acts challenged threaten the environment as effectively as the existing ones, so that even if they have not been executed, there is certainty that they will be carried out—as the previous acts demonstrate—and only certain formalities must be completed for their realization. With regard to the previous point, it should be specified that in terms of article 15 of the Rio Declaration, "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". In this regard, excessive evidentiary burdens should not be imposed to demonstrate the current or imminent impact on the environment, so an indication will suffice, which means that the respective substantiation meets objective criteria;
4. The alleged violation of the environment must occur as a direct and immediate consequence of the acts challenged. This means that the existence of a logical-legal link between the execution of the acts challenged and the impact on biodiversity, and not distantly derived or simply conjectural, must be assessed;
5. Finally, the complainant should not be exempt from the presentation of a guarantee when it is clearly seen that the act challenged generates a benefit of a social nature—as in the case of public infrastructure works— or when it clearly and obviously responds to a plan of sustainable use—regardless of whether when examining the substance of the matter it can be determined that it is unconstitutional—. In this regard, it is specified

that such a guideline is not aimed at guiding the judicial decision regarding the provisional stay, since according to the procedural-legal logic of the amparo proceedings, it will be in the ancillary proceeding for the definitive stay when the responsible authority, when rendering the preliminary report referred to in article 138, section III, of the Amparo Law, will demonstrate that the act challenged has such nature; this means that saying it will not suffice, but it must prove that the act challenged entails a social benefit or addresses a plan of sustainable use.

p.44 Finally, it should be noted that, in principle, the judges, when granting the stay of execution, must not only verify the danger in the delay, but also that the matter meets the requirement of a *prima facie* case.

## DECISION

p.46-47 In view of the above considerations, this Court concluded that the reported *contradicción de tesis* does exist and the criterion that must prevail as court precedent is the following:

HEALTHY ENVIRONMENT. PARAMETER THAT MUST BE TAKEN INTO CONSIDERATION BY AMPARO JUDGES TO DETERMINE IF IT IS POSSIBLE TO EXEMPT THE COMPLAINANT FROM PROVIDING A GUARANTEE TO GRANT THE STAY OF EXECUTION OF ACTS THAT INVOLVE VIOLATION OF THAT HUMAN RIGHT. Access to an effective remedy in environmental matters, protected by principle 10 of the Rio Declaration on Environment and Development—in conjunction with guideline 20 of the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, Bali Guidelines—implies that all necessary measures must be taken to remove or reduce financial obstacles related to the justiciability of the right to a healthy environment. In that regard, the stay of execution of acts infringing that right must not be, generally, at the expense of the presentation of a guarantee, since it could not only be burdensome for the individual—becoming a financial obstacle to its justiciability—but, if not granted, it would allow the execution of acts likely to cause irreversible or undue damage to biodiversity; thereby affecting the community as a whole. Now, in order to determine whether the complainant should be exempt from granting the guarantee, the *amparo* judges must consider the

following: (I) the violation of that right must constitute a core aspect of the *amparo* lawsuit; (II) the approach must be aimed at combating a real impact on the environment; (III) the adduced impact must be current or imminent, and not merely hypothetical or possible; (IV) the violation of the environment must be a direct and immediate consequence of the act challenged; and (V) it must not be exempt from the granting of the guarantee when the act challenged generates a benefit of a social nature, as in the case of public infrastructure works or when it responds to a plan of sustainable use; a matter that will correspond to the responsible authority to substantiate when rendering its preliminary report.