

## **AMPARO UNDER REVIEW 1077/2019**

**COMPLAINANTS AND RECURRING:  
JULIA, IN HER OWN RIGHT AND ON  
BEHALF OF HER SON, EMILIANO**

APPROVAL  
MR. MINISTER

**RAPPORTEUR MINISTER: ALFREDO GUTIERREZ ORTIZ MENA**

COMPARISON

**SECRETARY: MG ADRIANA ORTEGA ORTIZ**

**COLLABORATED: LUCIA I. MOTA CASILLAS**

Mexico City. The First Chamber of the Supreme Court of Justice of the Nation, in a virtual session corresponding to June 16, 2021, issues the following:

### **J U D G M E N T**

Whereby the amparo under review 1077/2019 filed by Mrs. Julia, in her own right and on behalf of her son, young Emiliano, against the resolution of May 15, 2018 issued by the Second District Court of the Auxiliary Center, is resolved of the Eleventh Region, residing in Coatzacoalcos, Veracruz, in aid of the Third District Court in the State of Veracruz, in the indirect amparo file \*\*\*\*\*.

The legal problem that this First Chamber of the Supreme Court of Justice of the Nation will resolve is whether the urgent actions, issued by the Committee against Forced Disappearance, based on the International Convention for the protection of all persons against forced disappearances, They are mandatory and if their compliance by the authorities of the Mexican State, in their different powers, must be judicially and constitutionally supervised.

### **I. CASE BACKGROUND**

1. From the records in the file, we know that on December 11, 2013, at approximately 2:00 p.m., 16-year-old Emiliano was at his place of work, located

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in a neighborhood in the city of Veracruz, when he arrived. a group of civilians and police, who entered the business and arrested it; they put him in a van and informed the owner and manager of the establishment that the reason for his arrest was that he had been identified as an accomplice to a robbery. Until now the whereabouts of young Emiliano are unknown.

2. Upon learning of these facts, his mother, Mrs. Julia, went before various authorities, including the Veracruz Investigation Agency, the Mixed Drug Retail Service Unit, the "Penalito" of Playa Linda and the "Robo a Comercio" offices. " for information about the whereabouts of your child. She got no response from any of them.
3. Without hearing from her son, later, before the Public Ministry agent, she reported his disappearance, but the authority refused to file the complaint, since she had to wait 72 hours.
4. On December 14, 2013, the Public Prosecutor's Office initiated the preliminary investigation \*\*\*\*\*, for the crime of deprivation of physical liberty to the detriment of young Emiliano, son of Mrs. Julia. This investigation was carried out by the Assistant Prosecutor of the Central Veracruz Regional Prosecutor's Office, in charge of the 1st and 8th Agency of the Investigative Public Ministry.
5. As they deal with similar facts, the Prosecutor's Office in charge of the investigation ordered the accumulation of the investigation with the various \*\*\*\*\* and \*\*\*\*\*.
6. Given the lack of results and the omissions incurred by the prosecution, Mrs. Julia, together with other relatives of persons disappeared in the operations carried out in the Formando Hogar neighborhood, presented a communication to the Committee against Forced Disappearance to request precautionary measures and urgent actions. Pursuant to Article 30 of the International Convention for the Protection of All Persons Against Enforced Disappearances, on February 12, 2016, the Committee against Enforced Disappearances

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registered the case under urgent action numbers s \*\*\*\*\* , \* \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* and \*\*\*\*\*,<sup>1</sup>in which it required the Mexican State the following:

- a) Immediately carry out a comprehensive search and serious, exhaustive and impartial investigation to establish the fate and whereabouts of the young men Daniel, Karlo, Luis, Julián, Emiliano and Héctor; all co-petitioners of the urgent measures;
- b) Ensure that inquiries consider the context in which the disappearances occurred. In particular, it was ordered to observe the indications on the possible participation of the municipal, state, ministerial police and military elements eventually involved in them;
- c) Investigate disappearances with full independence and impartiality from the investigative bodies, collect the necessary forensic and expert evidence, as well as the statements of witnesses and family members, to whom they should guarantee physical and mental safety and integrity;
- d) Carry out all actions aimed at fully identifying the remains found in the graves located in Veracruz and the places that the investigating authority has identified, as well as those found by the search teams to determine the existence of a relationship with any of the disappeared persons, and
- e) Inform the Committee, in case of not being able to confirm the whereabouts of the disappeared persons, about the actions taken to locate them, clarify their disappearance and guarantee that they are under the protection of the law, as well as the result of those actions. In addition, report on the actions taken to guarantee the full participation of the relatives and relatives of the disappeared persons in the investigation, to whom the evolution and results of the ongoing investigation must be communicated.

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<sup>1</sup>Demand for amparo, page 71. The urgent actions received different numbers since a total of six young people disappeared in the same operation: Daniel, Karlo, Luis, Julián, Emiliano and Héctor. The AU \*\*\*\*\* correspond to the disappearance of the complainant in this amparo and son of the complainant.

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7. Since then, the Mexican State has submitted reports to the Committee on three occasions, in which it claims to have carried out various procedures.
8. On the other hand, given the scant results of the investigation, Mrs. Julia requested a certified copy of the proceedings that make up the integrated preliminary investigation regarding the disappearance of Emiliano and his accumulated; she received no reply.
9. On May 1, 2017, the Committee against Forced Disappearance requested the Mexican State<sup>2</sup>:
  - a) Design and immediately implement a comprehensive investigation and search strategy, ensuring the analysis of the context and the patterns that are identified in the cases;
  - b) Report to family members on the strategy undertaken;
  - c) Inform the families of the disappeared youth in a timely, clear and accessible manner about the inquiries and provide them with copies of the proceedings carried out;
  - d) Take all necessary measures for the full investigation of the Guadalupe Reyes operation;
  - e) Ensure the investigation of the possible participation of members of the state and municipal police and the Veracruz Agency for Investigation in the disappearance of the young people;
  - f) Guarantee that the exhumations and procedures for the identification of bodies are governed by international standards on the matter to guarantee that the comparisons carried out with the fingerprints of the disappeared persons and the DNA samples of their relatives yield scientifically reliable results;

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<sup>2</sup>Application for amparo, page 91.

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- g) Communicate to the next of kin of the disappeared youth and their representatives about the reason why immediate action has not been taken based on the information provided by two of the mothers of the disappeared, and ensure that all relevant steps take place immediately, and
- h) Ensure that the authorities consider all available information; the authorities must integrate and use this information immediately and in a timely manner, as well as take the relevant actions to search for and locate the disappeared youth and clarify the circumstances of their disappearance.

### II. PROCESSING OF THE AMPARO TRIAL

10. **Protection request.** On October 19, 2017, Mrs. Julia, by her own right and on behalf of her son, Emiliano, filed, at the Common Correspondence Office of the District Courts in the State of Veracruz, a petition for amparo against the authorities and acts following:

#### **Responsible authorities:**

- a) Attorney General of the State of Veracruz.
- b) Special prosecutor in response to complaints of missing persons.
- c) Assistant Prosecutor of the Central Veracruz Zone Regional Prosecutor, in charge of the 1st and 8th agency of the Investigative Public Ministry.

#### **Acts claimed:**

Of all the authorities designated as responsible:

- a) Failure to implement, coordinate, and carry out a diligent, exhaustive, impartial, and serious investigation aimed at locating Emiliano;
- b) The failure to carry out the procedures related to the prosecution of the crimes and those responsible related to the disappearance of the young

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Emiliano in accordance with the current search protocols and the fundamental rights recognized in the Mexican legal system, and

- c) The omission to implement the urgent measures and actions issued by the Committee against Enforced Disappearances of the United Nations in favor of the young Emiliano, so that they could be observed and adopted during the investigation.

From the Assistant Prosecutor of the Veracruz Central Zone Regional Prosecutor's Office, in charge of the 1st and 8th agency of the Investigative Public Ministry:

- a) The omission to respond to the brief presented on March 15, 2017 before the 1st Investigative Prosecutor's Office in Veracruz, and
- b) The refusal to provide copies of the preliminary investigation \*\*\*\*\* and its accumulated \*\*\*\*\* and \*\*\*\*\*.

11. In the lawsuit, the victims indicated as rights violated to their detriment those recognized in articles 1, 6, 8, 14, 16, 17, 20, section B, (prior to the constitutional reform of 2008) and 133 of the Federal Constitution. ; 1; 8 and 25 of the American Convention on Human Rights; 14 of the International Covenant on Civil and Political Rights, and 24.2 of the International Convention for the protection of all persons against forced disappearances; They specified the background of the case and formulated concepts of violation.
12. On October 23, 2017, the Third District Judge in the State of Veracruz admitted and registered the amparo claim with the number \*\*\*\*\*, set a date for the constitutional hearing, required the responsible authorities to provide their justified report and gave legal intervention to the Public Ministry of the Federation.
13. On December 6, 2017, the victims clarified that they pointed to the Special Prosecutor for Complaints for Disappeared Persons of the Veracruz State Attorney General's Office as responsible, the correct name of the authority

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indicated in their initial brief of demand as Special Prosecutor for Attention of Complaints of Missing Persons.

14. On December 8, 2017, the victims expanded their request for amparo and indicated the following as the acts claimed and responsible authorities:

**Responsible authorities:**

- a) As promulgators, the Governor and Congress, both of the Free and Sovereign State of Veracruz of Ignacio de la Llave.
- b) As applicator, the assistant prosecutor of the Central Veracruz Regional Prosecutor's Office, in charge of the 1st and 8th Agencies of the Investigative Public Ministry.

**Act claimed: The issuance, approval, promulgation and sanction of the second paragraph of article 348 of the Penal Code for the State of Veracruz<sup>3</sup>**, as well as its application in the agreement of March 15, 2016 in the preliminary investigation \*\*\*\*\* and its accumulated \*\*\*\*\* to deny the issuance of certified copies requested by Mrs. Julia.

15. Mrs. Julia indicated as rights violated to her detriment those recognized in articles 1, 6, 8, 17, 20, section B (prior to the constitutional reform of 2008) and 133 of the Political Constitution of the United Mexican States; 13 and 24 of the American Convention on Human Rights, and 19 of the International Covenant on Civil and Political Rights. In addition, she narrated the background of the case and formulated concepts of rape.
16. On December 11, 2017, the judge admitted the extension. Following the legal procedures, a constitutional hearing was held on March 1, 2018.

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<sup>3</sup>Article 348. The public servant who, by any means, provides information on orders issued by the judicial authority and has the consequence that the person against whom it is directed evades the action, will be imposed from six months to three years in prison, a fine of up to fifty days of salary, dismissal or disqualification from performing public employment, office or commission for a time equal to the imprisonment imposed.

The same sanction will be applied to the public servant who unduly violates the confidentiality of the proceedings or provides a copy of them or of the documents that are part of the ministerial investigation.

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17. On January 29, 2018, the district judge ordered the records to be forwarded to the Second District Court of the Auxiliary Center of the Eleventh Region with residence in Coatzacoalcos, Veracruz, for the issuance of the sentence. There the amparo trial was registered with the number \*\*\*\*\*.
18. On May 15, 2018, the judge handed down a sentence in which, on the one hand, she dismissed the amparo proceeding with respect to the Attorney General of the State of Veracruz, the Specialized Prosecutor in Attention to Complaints for Disappeared Persons of the Attorney General of the State of Veracruz, Central Zone, Veracruz, as well as the Head of the Special Prosecutor's Office for Attention to Complaints for Disappeared Persons, who denied the existence of the claimed acts when submitting their reports justified<sup>4</sup>. He also decreed the dismissal regarding the omission attributed to the authorities to implement the measures and actions issued by the Committee against Forced Disappearance of the United Nations. On the other hand, it granted protection to the complainants for the purposes<sup>5</sup>; ordered the Assistant Prosecutor of the Central Zone Regional Prosecutor's Office, Veracruz, in charge of the Agencies 1st and 8th of the investigative public ministry:
  - a) Adjust your performance to the standards on the investigation and conclude it effectively until you find the whereabouts of young Emiliano;
  - b) Follow the lines of investigation into Emiliano's disappearance and establish patterns in consideration of the other adolescents who disappeared in similar circumstances;
  - c) Order the necessary confrontation procedures between witnesses and police elements;
  - d) Order the necessary steps to establish the geographic location in real time of the telephone number of the disappeared person and the expert

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<sup>4</sup>Judgment of May 15, 2018, in indirect amparo 952/2017-II, page 7 back.

<sup>5</sup>Ibid, pages 67 to 72.



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opinions rendered to establish a historical line of the places where the disappeared person was possibly;

- e) Carry out an exhaustive search on social networks that provides you with indications of the whereabouts of the disappeared person;
- f) Order the necessary steps to follow up on the statements of Mrs. Julia, mother of the disappeared;
- g) Arrange all pertinent procedures to identify the remains found in the clandestine graves located in Veracruz and the rest of the country;
- h) Remove the obstacles that prevent the due investigation of the facts. Regularly provide the victim's mother with information on the progress of the investigation and give her full access to the records that make up the investigation;
- i) Ensure the participation of the necessary bodies in the investigation;
- j) Adheres to the mandatory protocols and manuals to properly investigate;
- k) Establish lines of investigation based on the information gathered, as well as a hypothesis and carry out the necessary procedures for its verification, and
- l) Order all the necessary steps to obtain information that makes possible the location of the young Emiliano, as well as the clarification of the facts and the identification of those responsible.

19. **Review appeal.** Dissatisfied with the ruling, both Mrs. Julia and the Assistant Prosecutor of the Central Veracruz Regional Prosecutor's Office, in charge of the 1st and 8th Agencies of the Public Ministry in Veracruz, filed an appeal for review. On June 7, 2018, it was ordered to refer the matter to the Collegiate Court in Criminal Matters of the Seventh Circuit in turn. It was up to the First Collegiate Criminal Court of the Seventh Circuit to hear the review appeal,

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which, on July 3, admitted the appeal filed by Mrs. Julia and dismissed the appeal filed by the prosecution as it was time-barred.<sup>6</sup>.

20. **Application and processing of the application for resumption of jurisdiction.** On August 28, 2018, before the Office of Judicial Certification and Correspondence of this Supreme Court of Justice of the Nation, Mrs. Julia requested that this Supreme Court resume its original jurisdiction to resolve the amparo under review \*\*\*\*\* of the index of the First Collegiate Court in Criminal Matters of the Seventh Circuit.
21. On September 11, 2018, the Secretary General of Agreements of the Supreme Court processed and registered the document under the request number for resumption of jurisdiction \*\*\*\*\* and sent it to the First Chamber for its substantiation.
22. In a private session on November 5, 2018, in view of the applicant's lack of standing, Minister Arturo Zaldívar Lelo de Larrea endorsed the aforementioned petition and, in a public session on August 7, 2019, the First Chamber issued a resolution to resume its original jurisdiction.
23. **Processing of the amparo under review before the Supreme Court of Justice of the Nation.** On January 15, 2020, the president of the Supreme Court of Justice of the Nation ordered the formation and registration of the matter with number 1077/2019, resumed its original jurisdiction and ordered the filing of the matter in the First Chamber, as well as its turn. Minister Alfredo Gutiérrez Ortiz Mena. On March 5, 2020, the president of the First Chamber addressed the matter and ordered the submission of the records to the presentation by Minister Alfredo Gutiérrez Ortiz Mena.

### III. COMPETENCE

24. This First Chamber of the Supreme Court of Justice of the Nation is competent to hear this review appeal, in terms of articles 107, section VIII, of the Political

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<sup>6</sup>Agreement of July 3, 2018 in the amparo under review \*\*\*\*\*.

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Constitution of the United Mexican States; 83 of the current Amparo Law; 21, section II, subparagraph a), of the Organic Law of the Judiciary of the Federation; in addition, the Third Point, in relation to the Second, section III, of the Plenary General Agreement 5/2013. The appeal for review was filed against a sentence handed down by a district judge in the constitutional hearing of an amparo trial, with respect to which this First Chamber resumed its original jurisdiction.

### **IV. CHANCE**

25. The appeal for review was filed within the corresponding period. The amparo ruling was notified personally on May 22, 2018<sup>7</sup>; notification that took effect the next business day; that is, the 23rd. The 10-day period, established by article 86 of the Amparo Law, elapsed from May 24 to June 6, 2018, without counting in said computation the days 26 and 27 of May and 2 and June 3 for being non-working<sup>8</sup>. The appeal for review was filed on June 6, 2018. Therefore, it is timely.

### **V. LEGITIMATION**

26. Mrs. Julia and the young Emiliano, appellants, are entitled to file the review appeal, since in the amparo trial they were recognized as complainants, in terms of article 5, section I of the Amparo Law.

### **VI. ORIGIN**

27. The appeal for review is appropriate, since it was filed against a sentence issued by a District Judge in the constitutional hearing of an amparo trial, for which the ends of the third point are met, in relation to the second, section III, of the Plenary General Agreement 5/2013, issued on May 13, 2013 and published in the Official Gazette of the Federation on the 21st of the same month and year.

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<sup>7</sup>Agreement of July 3, 2018 in the amparo under review \*\*\*\*\*.

<sup>8</sup>In accordance with article 19 of the current Amparo Law and article 163 of the Organic Law of the Judiciary of the Federation.

## VII. PRELIMINARY ISSUES

28. Before studying the grievances asserted by the appellant, it is pertinent to review the arguments raised in the matter.
29. **Protection request.** The complaining party argued:
- a) In the first place, the context of serious human rights violations that Mexico is going through.
  - b) The violation of their right of access to justice. Forced disappearance constitutes both a crime and a serious violation of human rights. The victims of these acts have the right to know the truth, to justice, and to reparation for the damage, the realization of which depends on access to justice. Indeed, the satisfaction of the rights of the victims depends on an adequate administration of justice. The investigation constitutes the premise of a successful criminal process, so that function constitutionally assigned to the Public Ministry must be carried out in accordance with the guidelines for the protection of human rights, not only those of the accused, but also those of the victims.
  - c) According to the First Chamber, the right to judicial protection comprises three stages: the pre-trial, the judicial and the execution.
  - d) The demand for prompt, complete and impartial justice begins in the investigation stage; the effectiveness of the victims' right depends on it, for which reason all the essential actions must be carried out so that those responsible for criminal conduct are brought before the courts and are punished.
  - e) The State has the obligation to take action to guarantee respect for fundamental rights (such as the rights to dignity, life, liberty and personal integrity). It corresponds to the State to prevent the violation of these rights with legislative, administrative and judicial actions, as well as to guarantee the protection of individuals in danger.

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- f) When a complaint of facts that probably constitute the crime of forced disappearance of persons is received, the ministerial authority must immediately initiate a serious, impartial and exhaustive investigation to clarify the facts; it must exhaust all possible lines of investigation to rule out the detention, concealment or forced disappearance by elements of the State.
- g) This duty of investigation is part of the guarantees of the substantive rights violated by a crime of this nature. It is necessary to analyze the context of the denounced facts and assess the systematic patterns that allow the commission of these acts: impunity, obstruction in the investigation; among others.
- h) The duty of investigation, in accordance with international jurisprudence (Case of Radilla Pacheco vs. Mexico of the Inter-American Court of Human Rights), is an obligation of means and not of result; Its objectives are: to determine the truth, investigate, persecute, capture, prosecute and punish those responsible for the crime. The Inter-American Court of Human Rights has also established the specific standards that must govern this type of investigation: due diligence, exhaustiveness, impartiality, seriousness, and effectiveness.

Thus, the investigation must be carried out within a reasonable time, the authorities must adopt the necessary protection measures against threats that arise during it and avoid delays and obstructions in the investigation, in addition to following the logical lines of investigation.

An investigation must also be conducted rigorously, by professionals and with the most appropriate procedures. It is not a matter of merely complying with a formality, but should be aimed at clarifying the truth. While it does not serve private interests, it does not depend on the procedural initiative of the victim or her relatives, rather it is about gathering all the necessary evidence to achieve the desired result.

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- i) The authorities in charge of investigating the disappearance of her son have failed to meet those standards. They have limited themselves to collecting genetic samples and sending letters to other instances so that they report any data in this regard.
- j) The omission of the investigative authorities to carry out proceedings regarding the Guadalupe Reyes Operation, regarding the possible participation of members of the state and municipal police and the Veracruzana Investigation Agency in the disappearance of Emiliano.

Nor have they been in charge of guaranteeing that exhumations and body identification procedures are governed by international standards on the matter so that they are reliable. The authority has only collected random information without starting from a clear line of investigation, so their contributions do not allow them to build a truth or establish responsibilities or locate Emiliano. This lack of organization prevents the satisfaction of his rights.

- k) Non-observance of human rights derived from international obligations that bind the State.
- l) He cites the precedents where this Supreme Court has established that the rights of international source integrate the parameter of constitutional regularity, in addition to the fact that derived from international commitments, the rulings of international jurisdictional organizations are binding and must be understood as a minimum standard for the State. . That is: the content of a human right recognized in international treaties is not limited to the express text of the norm where it is recognized, but rather extends to the interpretation that the body authorized for it has made of it.
- m) Thus, the Committee against Forced Disappearance of the United Nations is the body authorized to interpret the provisions of the International Convention for the protection of all persons against forced disappearances with urgent actions and precautionary measures,

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procedures of a humanitarian nature that facilitate the protection of the disappeared persons –immediately ensure their personal integrity and security–, as well as the State's acknowledgment of their detention.

- n) The authorities in charge of the investigations \*\*\*\*\* and their accumulated \*\*\*\*\* and \*\*\*\*\* have breached the obligations derived from the International Convention for the protection of all persons against forced disappearances and the interpretation that the United Nations Committee against Enforced Disappearances has issued the urgent actions \*\*\*\*\*  
\*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\* and \*\* \*. It stresses that its competence should not be expressly accepted by the State party to receive requests for urgent actions, as in the case.
- o) Regarding the case, this international committee has made various requirements to the responsible authorities regarding compliance with the due investigation, including:
- Design and immediately implement a comprehensive investigation and search strategy ensuring the analysis of the context and the patterns that are identified in the cases;
  - Inform the next of kin and their representatives about the search and investigation strategy developed;
  - Provide the families of the disappeared youth with timely, clear, and accessible information on the strategy and the investigations, as well as provide them with copies of the proceedings that make up the investigations;
  - Take the necessary measures to ensure the investigation of Operation Guadalupe Reyes and the possible participation of members of the state and municipal police and the Veracruz Investigation Agency in the disappearance of the six youths;

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- Guarantee that exhumations and body identification procedures are governed by international standards to guarantee scientifically reliable results;
  - Inform the next of kin of the disappeared youth and their representatives about the reason why immediate action has not been taken based on the information provided by Mrs. Naomi and Julia and ensure that all relevant steps are taken immediately;
  - Guarantee that all available information is duly taken into account, integrated and used immediately and in a timely manner by the authorities, who must carry out the relevant actions for the search and location of the disappeared, as well as for the investigation into their disappearance, and
  - Inform family members of the actions carried out.
- p) Mrs. Julia affirms, then, that the Committee is empowered to request the State party to provide information on the situation of the person requesting the actions. In light of the information it receives, the Committee may formulate recommendations to the State so that it adopt the necessary measures, including precautionary measures, to locate and protect the person. Thus, the State must report, within the period determined by the Committee, on the measures taken, according to the urgency of the situation (Article 30 of the Convention).
- q) Thus, the fact that the responsible authorities do not take urgent action implies a violation of the rights of the disappeared persons and their families – indirect victims.
- r) He affirms that his right to petition was violated, since the request for copies of the file of the preliminary investigation presented to the prosecutor in charge of it – presented on March 15, 2017 – received no response.



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- s) The authority was negligent in not issuing an agreement in a timely manner regarding that promotion. With this act, the authority not only violated their right recognized in Article 8 of the Constitution, but also those recognized in the General Law of Victims to assist, to legal advice, to the truth, to obtain copies of the file and to be recognize as a victim. (Article 7 of that general law).
- t) Indeed, the right to assist in the investigation is a constitutionally recognized right, but also a guarantee for the satisfaction of other fundamental rights of the victims. By assisting the prosecution, the victim exercises legitimate control over the actions of the investigating authority and ensures that their interests and the effectiveness of the investigation are considered, which, in turn, impacts on their right to know the truth and to obtain the corresponding repairs.
- u) The right to participate is broad in scope. In order to guarantee the effective participation of the offended party, he alleges, it is essential that the victim be informed about the development of the criminal procedure, from its beginning in the investigation stage. In this regard, it has been said that the State complies with its obligation to inform when it issues copies of the inquiry to the victim.
- v) The responsible authority, by not agreeing to her request, deprives her of collaborating with the Public Ministry in discovering the truth about what happened to her son; private act that is impossible to repair. By preventing her participation, the prosecutor's actions affect the rights of the victim, since he does not consider her interests.

30. **Expansion of the application for protection.** In her expansion brief, Mrs. Julia exposed the following concepts of violation against the constitutionality of article 348 of the Penal Code for the State of Veracruz:

- a) The contested article violates the right of access to the truth and access to justice of the victims, as well as the right of access to information.

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- b) In terms of article 6 of the Constitution, all information held by any authority is public and can only be temporarily reserved for reasons of public interest in the terms established by law. Thus, the limits to this right –public interest, private life and the protection of personal data– are not absolute. In addition, everyone has the right to free access to public information.
- c) Although the contested article is not addressed to the victim nor does it prohibit their access to copies of the investigation, it does prohibit the person in charge of the investigation from providing them under penalty of imprisonment. The provision does not make it possible to distinguish whether the probable perpetrator, the victim and offended party, or a third party should be denied the required information, in cases of serious human rights violations – in which the confidentiality of information is prohibited.
- d) The provision establishes as a general rule what is an exception to the principle of maximum publicity; It starts from the premise that the prohibition to share copies of the investigation, even to the victim, and contradicts articles 7 and 12 of the General Law of Victims that establish this prerogative of the victims.
- e) In its normative design, the norm does not allow pondering reasons that authorize the server to break the reservation, therefore it limits the right of access to the information of the investigation by the victims. The rule:
  - Restricts the right of access to information by means that are not the least burdensome;
  - It generates an absolute reserve that prevents any modulation by the authority in charge of the investigation;
  - Prevents the exercise of the right of access to information, and
  - It violates the principle of maximum publicity.

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- f) Victims' access to copies of the investigation is related to the right to participate and assist in the investigation. The preliminary investigation is not a simple formal procedure in which ministerial agents can, absolutely and without considering the victims, decide what is best for them. Therefore, the activity of the Public Ministry carried out without the participation of the victim affects the rights of those who resent the crime.
- g) Pursuant to precedents of this Supreme Court, as well as various legal instruments, the next of kin of the victims of disappearance have the right to know the truth of what happened, as well as to know their fate and, where appropriate, to know where they were. find their remains and the States have the correlative obligation to inform them of these circumstances.
- h) He cited what was resolved by this First Chamber in the amparo under review 168/2011, in which it was stated that preliminary investigations into serious violations of rights are an exception to the reservation of investigations, since there is a social interest in knowing the proceedings carried out carried out for the timely investigation, arrest, trial and punishment of those responsible.
- i) Access to information in said investigations not only directly affects the victims of the crimes in question, but also the entire society, due to its seriousness and the repercussions that these conducts have on it.
- j) It also cites the inter-American jurisprudence, in which it has been established that, in order to guarantee the right to participation of the victims, access must be given to the copies of the investigation (Case of Rosendo Radilla Pacheco vs. Mexico).
- k) International standards, such as the International Convention for the Protection of All Persons Against Enforced Disappearances, also recognize the right of victims to know the truth about the circumstances of the disappearance, as well as the evolution and results of the investigation in this regard.

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The United Nations Organization's Working Group on Forced or Involuntary Disappearance has even recommended that the Mexican state strengthen the right of victims to participate in investigations.

31. **Protection sentence.** The district judge based her determination on the following considerations:

- a) In the first place, it declared non-existent the acts claimed from the Attorney General of the State of Veracruz, the Special Prosecutor for the Attention of Complaints for Missing Persons, Central Zone, Veracruz and the Head of the Special Prosecutor's Office for the Attention of Complaints for Missing Persons, to the note that these authorities denied the claimed acts. He considered that as long as it is not the authorities in charge of integrating the investigation, the claimed acts cannot be attributed to them.
- b) It considered that the effects of the act claimed from the Assistant Prosecutor of the Central Zone Regional Prosecutor's Office, Veracruz, in charge of the first and eighth agency of the investigative public prosecutor, consisted of the omission to respond to the letter of March 15, 2017, by which They requested a certified copy of the proceedings that make up the preliminary investigation \*\*\*\*\* and its accumulated \*\*\*\*\*. The responsible authority responded to Mrs. Julia with which the effects of the claimed act ceased.
- c) It also considered the amparo lawsuit against the omission to implement the urgent measures and actions issued by the United Nations Committee against Forced Disappearances inadmissible, since it considered that there was no obligation on the part of the responsible authority to abide by those measures. He considered that, since there is no obligation for the authority, there is no breach that affects the legal sphere of Mrs. Julia. As long as the recommendations of international human rights organizations are not binding – and therefore not an act of authority – their compliance is not a matter of the amparo proceeding.

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- d) With respect to article 348, second paragraph, of the Penal Code of the State of Veracruz, the judge also dismissed the trial, since she considered that there was no act of application in the case, therefore -since it is a hetero-applicative norm- the amparo was unfair. The judge considered that, although when denying the issuance of copies, the prosecutor cited that article, this did not imply that he had applied it. That article provides for the sanction for illegal conduct, which was not updated, so the article did not harm Mrs. Julia.
- e) On the merits of the case, the judge considered that the concepts of violation asserted against the agreement of March 15, 2017, which denied Mrs. Julia copies of the investigation, were essentially founded.
- f) In accordance with the jurisprudence of the Inter-American Court of Human Rights, particularly in cases of forced disappearance, the relatives of the victims suffer direct consequences and, generally, face the constant refusal of the state authorities to provide information about the victim or to initiate an investigation. effective investigation to clarify what happened. That Court has considered, based on Articles 1.1, 8, and 25 of the American Convention on Human Rights, that the next of kin of the victims have the right, and the States the obligation, to have the facts effectively investigated and to know the truth. By virtue of this right, the authorities have the obligation to guarantee that the victims can make statements, receive information, provide evidence, formulate allegations,
- g) According to the criteria of the First Chamber, it stressed that the reservation of the preliminary investigations on facts that constitute serious violations of human rights or crimes against humanity not only affects the victims, but also society as a whole, for which reason they cannot be dealt with. as reserved.
- h) Thus, it determined that the refusal to issue copies to Mrs. Julia was incorrect: her right is not subject to confidentiality reservations. The responsible prosecutor should have provided her with the requested

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copies, due to her status as her victim, so that she has full knowledge of the steps taken for the timely investigation, arrest, trial, and punishment of those responsible.

- i) The judge granted the amparo regarding this act, for the purpose of rendering the claimed agreement insubsistent and issuing one in which the requested copies were provided to the complainant.
- j) Regarding the claimed act consisting of the omission to investigate the denounced facts and to integrate the investigation tending to locate the young Emiliano, the judge found essentially founded the concepts of rape of Mrs. Julia.
- k) The judge considered that the rights recognized by Articles 1, 14, 17 and 21 of the Constitution, as well as Articles 5, 7 and 25 of the American Convention on Human Rights, were violated, since the lack of efficacy and diligence of the authority in relation to the disappearance of the young Emiliano resulted in the denial of justice by the prosecutor who integrated the investigations \*\*\*\*\* and \*\*\*\*\*.
- l) He stressed that all authorities, within the scope of their powers, have the obligation to promote, respect, protect and guarantee the human rights of people; generic obligations from which their duty to investigate human rights violations derives. Likewise, everyone has the right to have justice administered promptly, completely, and impartially, which begins with the corresponding investigation by the public prosecutor.
- m) Indeed, in accordance with Article 21 of the Constitution, it is the responsibility of the Public Ministry to investigate any possible commission of crimes. This function does not constitute a power or prerogative whose exercise is subject to the will of the social representation, but rather constitutes a duty. The investigation is the budget to punish the subjects who have affected the victims with the commission of a crime. Thus, the investigations must inevitably be carried out as soon as the possible commission of an illegal act is made known

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to the authority. Failure to comply with this obligation constitutes an act of authority that directly violates the fundamental rights of access to justice and legal certainty. It emphasizes that this omission not only affects the defendant, but also the victim.

- n) From the records, it warned that the responsible authority committed a violation of the principle of procedural speed, as well as that of legal certainty, since the achievement of the objective pursued by the investigation has been postponed, and it is up to that authority to guarantee that the investigation is carried out in a serious, efficient and effective manner to gather sufficient elements to ascertain the truth of the events that led to the disappearance of the adolescent Emiliano, events that his mother denounced on December 14, 2013.
- o) In the case, the judge warned that the responsible prosecutor incurred in a delay in the actions taken and did not give the appropriate follow-up to the case to find the whereabouts of the person reported missing.
- p) He pointed out that several adolescents disappeared on the date and in the neighborhood in which Mrs. Julia's son disappeared and that the responsible prosecutor failed to establish lines of investigation that would allow him to identify patterns; He also failed to consider the context in which the events occurred in the cases and neglected his duty to carry out an immediate, efficient, exhaustive, professional, and impartial investigation.
- q) After receiving a criminal notice, the Public Ministry must determine what the necessary evidence is according to a line of investigation. In the case, the prosecutor limited himself to issuing summonses and writing official letters, which implies a deficient performance of the ministerial authority to the detriment of the rights of the victims.
- r) Almost four years later, the prosecution has not been able to establish a line of investigation to effectively address the problem raised.

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- s) It observes that the investigation has the testimony of two witnesses – Mr. Humberto and Mr. Martín – who witnessed the moment in which Emiliano was taken away by some people dressed as federal officers and carrying long weapons aboard two trucks, who reported that the adolescent had participated in a robbery perpetrated months before to the owner of the business where he was and where he worked. After the search by his relatives in the various police stations, without finding the adolescent made available to the authorities, the prosecutor's office learned of the disappearance. However, the investigative authority has limited itself to sending official letters to the police organizations in the city of Veracruz in which it requests information about the arrest. As a reply, It has only obtained the appearance of some elements of the police and the Secretary of the Navy, who only gave statements. Based on this, he concludes that the prosecutor in charge has not carried out the confrontation procedures between the police elements – presumably involved – with the witnesses.
- t) The authority has not established a clear line of investigation in which it considers that several people were disappeared in the same neighborhood, nor has it ordered proceedings to verify a hypothesis. Due to the lack of follow-up, the authority has not been able to establish a chronological line of what happened to the disappeared person after his deprivation of liberty, despite having information provided by various witnesses. Indeed, it is not noted that he had used any monitoring of the disappeared person's communications to locate him.
- u) It concludes that this shows a lack of expertise on the part of the responsible authority regarding the actions taken for a real and effective search for the victim.
- v) Although the authority ordered the obtaining of the biological sample test from the relatives of the disappeared person, as well as their confrontation with the bodies of unidentified persons in the entity, it did not take all the steps to identify all the remains found in the clandestine graves located



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both in the entity as in the rest of the country. It was necessary to coordinate with various authorities to carry out a thorough search and identification. The authority ignored the information provided by the victim's mother regarding the whereabouts of her son.

- w) Thus, it confirms that the actions taken by the prosecutor do not indicate that he had implemented reasonable practices aimed at guaranteeing an immediate search in the event of a disappearance report; The prosecutor's office did not take the necessary measures with due diligence to avoid delays in completing the investigation, nor did it endorse the prompt collection of information to locate the disappeared person.
- x) Indeed, the authority did not adopt reasonable measures in accordance with the circumstances of the case to find the victim alive. The prosecutor wasted time and resources, an action that harms the rights of the victim and contributes to the uncertainty about what happened to the young Emiliano.
- y) The inefficiency of the person responsible fosters impunity and facilitates and promotes the repetition of acts of violence in general.

### 32. **Review appeal.** Mrs. Julia formulated the following grievances:

- a) The reasoning by which the court considered the non-existence of the acts attributed to the Attorney General of the State of Veracruz, the Specialized Prosecutor for the attention of Complaints for Missing Persons, Central Veracruz Zone and the Head of the Specialized Prosecutor's Office for the Attention of Complaints, was incorrect. for Missing Persons, since it limits the binding nature of the requirements of international organizations only to the authorities directly responsible for the investigations.

Forced disappearance, as a crime and as a serious violation of human rights, implies that the authorities have not only passive obligations; Their

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participation is required to prevent, investigate, punish and repair human rights violations, within the scope of their powers.

Thus, the duty of the authorities in the face of the disappearance of the young Emiliano, which was not isolated, was to provide a coordinated and comprehensive response from all the authorities involved, not only those that make up the preliminary investigation.

- b) The authorities that have intervened in the different phases of the investigation into the disappearance of the young Emiliano should have acted proactively and for the benefit of the victim by adopting measures to ensure his physical and psychological integrity. Without observing this, the amparo judge limited the analysis of the acts of authority to the omission to investigate the denounced facts, without taking into account the omissions to implement, coordinate and carry out the necessary actions in the search for the disappeared person, in the investigation of the facts and in the implementation of urgent actions.
- c) It reiterates that the obligation to observe the communications of the Committee against Forced Disappearance is not only attributable to the assistant prosecutor of the regional prosecutor's office in the central Veracruz area, in charge of the 1st and 8th agencies of the investigative public prosecutor, as stated by the judge.

The search for the young Emiliano is not limited to implementing actions to investigate the crime of enforced disappearance, but also requires enabling integral mechanisms that allow prioritizing his location, based on coordination between different state and even national instances, as well as the participation bodies specialized in the matter.

It emphasizes that, in accordance with the Organic Law of the Attorney General of the State of Veracruz and its regulations, the participation of the entity's attorney general, as the hierarchical superior of the prosecutor's staff, as well as the specialized prosecutor, is required in

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investigations, although it is not directly who integrates the ministerial investigations.

In this regard, it points out that in the document \*\*\*\*\* that is in progress, it is evident that the head of the specialized prosecutor's office ordered the regional prosecutor's office to define an investigative hypothesis; however, he failed to implement actions aimed at clarifying the truth and locating the disappeared person, in order to guarantee an effective investigation and access to justice.

The fact that the district judge has determined the non-existence of the claimed act implies a failure to comply with the obligations of the authorities. In effect, the search for disappeared persons should not be understood as an action circumscribed to the criminal sphere, but rather as a humanitarian task of coordination between different authorities, of different ranks, to safeguard the fundamental rights of a person: prioritizing their search while alive. By rejecting the existence of the acts attributed to the authorities – omission to carry out, coordinate and implement the urgent actions and precautionary measures of the Committee – the rights of Mrs. Julia are violated.

- d) The judge incurred in an inconsistency by holding the acts true only with respect to certain authorities, since the obligation to implement the urgent actions issued by the Committee against Forced Disappearance is an obligation in force for the entire Mexican legal system and its recognition binds all authorities belonging to the State.

In addition, the authorities have the duty to observe, in their respective areas of competence, the fundamental rights recognized by the legal system.

By ignoring the duty of the authorities identified as responsible, within their sphere of competence, to coordinate, carry out and implement the search for young Emiliano and the urgent actions of the committee, it prevents

an effective control of the constitutionality and conventionality of the acts claimed.

- e) It maintains that the appealed resolution must be revoked and, in its place, issued one where the claimed acts are considered true and constitutional protection is granted.
- f) Regarding the dismissal decreed on the omission to implement the urgent measures and actions AU \*\*\*\*\*<sup>9</sup>, issued by the Committee against Enforced Disappearances, argues that it was incorrect. From their perspective, this determination ignores the obligation of the International Convention for the Protection of All Persons against Enforced Disappearances –which make up the Mexican constitutional block– and of the determinations of the United Nations Committee against Enforced Disappearances as the implementing body. .

That Convention was signed by Mexico and duly ratified. In accordance with international law, this imposes a commitment for the Mexican State; It is part of the legal order and is mandatory for all Mexican authorities. In the same sense, the mechanisms derived from that Convention and the resolutions derived from them are binding.

- g) In the case, the judge failed to analyze the omissions claimed in light of the Convention. Instead, she equated the nature of the United Nations Committee against Enforced Disappearances with that of the National Human Rights Commission and, accordingly, defined its determinations as recommendations. The judge ignored that this Committee is the body authorized to establish the guidelines on the application of the Convention, thereby not only failing in its duty to exercise conventionality control, but also disregarding an international obligation that implies responsibility for the State.

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<sup>9</sup>It had already been said that urgent actions were granted to six young people at the request of their families. The AU \*\*\*\*\* is the one that is responsible for the search subject of this review: that of the young Emiliano.

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- h) Compliance with the recommendations that the Committee may transmit to a State party, including requests for it to adopt all necessary measures to locate and protect the disappeared person, does not depend on the goodwill of the State but rather constitutes an obligation; In accordance with the principles of international law, adherence to the Convention obliges the State to cooperate in good faith with the Committee to adopt the necessary measures and locate and protect the disappeared person and ensure the protection of the complainant, witnesses, relatives of the disappeared person and their defenders, as well as the participants in the investigation.
- i) The urgent action procedure and precautionary measures are mechanisms established by the Convention in charge of the Committee against Enforced Disappearance of the United Nations. This Committee is empowered to adopt them in serious and urgent cases to request the State to take measures to avoid irreparable damage to people, although these do not imply a prejudgment on the merits of the matter.
- j) In the case, the actions were directed not only at the investigating authorities, but at all the Mexican authorities that must provide care to victims of human rights violations, at all levels of government.
- k) It is incompatible with the Convention for a State to prevent or hinder the work of the Committee in following up on the request for urgent action or in the implementation of its recommendations, since this normative instrument is binding. The authorities indicated as responsible for not assuming the precautionary measures and urgent actions issued by the Committee restrict the rights recognized in favor of Mrs. Julia.
- l) All international systems for the protection of human rights have protection mechanisms for the adequate development of their functions and to guarantee the effectiveness of their decisions; their non-compliance may violate the right to due process of individuals, since they

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are issued within the framework of an international procedure that must be perfected internally.

- m) Urgent actions must not only be complied with and implemented due to their mandatory nature, but their compliance must be institutionalized. It was up to the amparo judge to force compliance. In effect, the Colombian constitutional court has established that the guardianship action is the ideal means to obtain effective compliance with the precautionary measures, while both instruments have the objective of preventing irremediable damage, in relation to the violation of any right inherent to the human being. The provisions of international law are only operative if the States put into operation their internal legal system to make them effective.
- n) He claims that his right to information and the truth was violated. It considers it incorrect that the amparo judge dismissed article 348 of the Penal Code for the State of Veracruz, considering that it was not applied to her detriment; She argues that the precept was applied in the agreement of March 15, 2017, by which she denied the complainant the issuance of copies of the preliminary investigation \*\*\*\*\* and its accumulated \*\*\*\*\*.
- o) Although it is true that this article is not addressed to the victim nor is its purpose to prohibit access to copies of the investigation, the judge is unaware that it has the effect of prohibiting the person in charge of the investigation from providing copies to any person, under penalty of committing a crime punishable by deprivation of liberty, without establishing any exception.
- p) Thus, it reiterates the unconstitutionality of the article, since it does not satisfy the proportionality requirement by establishing a restriction on access to information. In this sense, he points out, the criminal type violates the principle of legality, in its aspect of strictness and exact

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application of criminal law, since it does not clearly mention when there is an illegal breach of the reservation of the proceedings.

- q) The principle of maximum publicity that governs the right of access to information implies that the restrictions to these are exceptional and must be justified based on the existence of a public interest in the reserve.
- r) On the other hand, it indicates that the victims' access to copies of the investigation is related to their right to actively participate in the investigation, therefore, in turn, it is based on the rights to the truth and access to justice.

33. It corresponds to this First Chamber, in the first place, to determine if the dismissals ordered by the district judge were correct and then to analyze if the indicated authorities observed the duties that correspond to them when investigating the disappearance of the young Emiliano.

### **VIII. EVALUATION OF THE DISMISSAL DECREED BY THE DISTRICT JUDGE**

34. In the first place, the district judge dismissed the existence of the acts claimed with respect to the Attorney General of the State of Veracruz, the Specialized Prosecutor for the Attention of Complaints for Missing Persons, Central Zone, Veracruz and the Head of the Specialized Prosecutor's Office for Attention of Complaints for Missing Persons. She warned that these were not the authorities directly in charge of integrating the investigation regarding the disappearance of young Emiliano, so it was not possible to attribute the omissions to them.
35. This First Chamber does not share that determination. On the contrary, it observes that these authorities, as heads of the dependencies, should have efficiently supervised the actions of the authorities found to be responsible by the district judge, as well as setting criteria or lines of investigation so that they were complied with by the personnel under their charge, as they function in a chain of command and accountability when it comes to the investigation and

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prosecution of crimes. It is their responsibility to monitor respect for and compliance with national and international standards regarding the search for people, as well as to guarantee the observance of protocols that respond rationally to the urgency of locating a person who has been reported missing and to promote institutional coordination. to achieve that purpose.

36. The State Attorney General is the hierarchical superior of the entire Public Prosecutor's Office, which is why he is responsible for supervising the actions of the authorities that make up the agency's staff. His functions are aimed at ensuring the speed and prosecution of investigations to discover the historical truth.
37. This Chamber observes that, when rendering his report, the Head of the Special Prosecutor's Office for Attention to Complaints for Disappeared Persons denied the acts that were attributed to him and explained that, although his special competence allows him to hear cases related to the crimes of disappearances forced, their jurisdiction is not exclusive. For this reason, the district judge dismissed this authority. In the opinion of this Chamber, this distinction is inappropriate. The head of the Special Prosecutor's Office for Attention to Complaints for Disappeared Persons cannot be separated from the omissions claimed by Mrs. Julia and her son in their application for amparo.
38. The Regulations of the Organic Law of the Attorney General's Office of the State of Veracruz show that this unit has the exclusive competence to investigate the facts possibly constituting the crimes of forced disappearance, disappearance committed by individuals and others provided for by the general law on the matter.<sup>10</sup>. For this reason, this Chamber does not share the distinction that the

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<sup>10</sup>Regulations of the Organic Law of the Attorney General of the State of Veracruz

**Article 54.**For the exercise of its functions, the Specialized Prosecutor's Office for the Attention of Complaints for Disappeared Persons, will have directly assigned Specialized Prosecutors, in the Xalapa Central Zone regions; Central Veracruz area; Cordoba downtown area; Downtown Cosamaloapan area; North Zone Tuxpan; North Zone Tantoyuca; and, Zona Sur Coatzacoalcos, who will know exclusively about the Ministerial Investigations and Investigation Files initiated due to the probable commission of the crimes of Forced Disappearance of persons and/or Disappearance committed by individuals, as well as the related crimes established in the General Law on Forced Disappearance, Disappearance Committed by Individuals and the National System for the Search for Persons.



specialized prosecutor tried to assert between special jurisdiction and specialized jurisdiction.

39. As part of the measures that have been implemented in the Mexican legal system in view of the recognition of the existence and magnitude of serious human rights violations such as the forced disappearance of persons, the Congress of the Union issued the General Law on Disappearance Forced Persons, Disappearances Committed by Individuals and the National System for the Search for Persons, in which it provided for the existence of specialized prosecutors<sup>11</sup>. These departments of the local justice prosecutors are precisely responsible for the investigation of crimes of disappearance<sup>12</sup>and, within them, the persistent search for the person reported missing.
40. This legislation provides concrete, agile and efficient tools for the prompt location of disappeared persons and to clarify the facts related to this serious violation of human rights; empowers specialized prosecutors to carry out specific investigative acts and to undertake, as a matter of greater efficiency, the search, location or identification of a person, as well as to clarify the facts and satisfy the rights of direct and indirect victims<sup>13</sup>.

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<sup>11</sup>The law also created Person Search Commissions, but, in this review, it deals with the powers of the Specialized Prosecutors.

<sup>12</sup>General Law on Forced Disappearance of Persons, Disappearances committed by Individuals and the National System for the Search for Persons.

**Article 4.**For the purposes of this Law, it is understood as:

[...]

X. Specialized Prosecutors: the Special Prosecutor's Office of the Attorney General's Office and the Local Attorney's Offices whose purpose is the investigation and prosecution of crimes of forced disappearance of persons and those committed by individuals;

[...]

<sup>13</sup>General Law on Forced Disappearance of Persons, Disappearances Committed by Individuals and the National System for the Search for Persons

**Article 70.**The Specialized Prosecutor's Office has, within the scope of its competence, the following attributions:

I. Receive the Complaints related to the probable commission of acts constituting the crimes subject of this Law and initiate the corresponding investigation file;

II. Maintain coordination with the National Search Commission to carry out all actions related to the investigation and prosecution of the crimes subject to this Law, in accordance with the Approved Investigation Protocol and other applicable provisions;

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III. Give immediate notice, through the National Registry, to the National Search Commission about the initiation of an investigation of the crimes subject to this Law, so that the actions corresponding to the search can be initiated; as well as share the relevant information, in accordance with the Approved Investigation Protocol and other applicable provisions;

IV. Maintain continuous and permanent communication with the National Search Commission and the Local Search Commissions, in order to share information that could contribute to the actions for the search and location of persons, in terms of the applicable provisions;

V. Immediately inform the National Search Commission or the Local Search Commission, as the case may be, the location or identification of a Person;

SAW. Maintain continuous and permanent communication with the Foreign Support Mechanism and the Unit for the Investigation of Crimes for Migrants to receive, collect, and provide information on actions to investigate and prosecute crimes under this Law committed against migrants;

VII. Directly request the geographic location in real time or the delivery of the stored data, in the terms established in the National Code of Criminal Procedures;

VIII. Request authorization from the competent judicial authority to order the interception of communications, in terms of the applicable provisions;

IX. Carry out and communicate without delay all those acts that require judicial authorization that have previously been requested by the corresponding Commission for the search and location of a Disappeared Person;

X. Form inter-institutional and multidisciplinary working groups to coordinate the investigation of facts that probably constitute the crimes that are the subject of this Law, when the information available to the authority reveals that they could have occurred in two or more Federal Entities or it deals with a foreign person in a migration situation, regardless of their immigration status;

XI. Request police support from the competent authorities, to carry out investigation tasks in the field;

XII. Collect the necessary information for the prosecution and investigation of the crimes provided for in this or other laws;

XIII. Send the investigation and the actions carried out to the competent authorities when it notices the commission of one or several crimes other than those provided for in this Law;

XIV. Request the competent Control Judge the precautionary measures that are necessary, in accordance with the National Code of Criminal Procedures;

XV. Request the participation of the Executive Commission and the Commissions of Victims; as well as human rights and civil protection institutions and organizations, under the terms of the applicable legal provisions;

XVI. Establish cooperation mechanisms for the exchange of information and continuous training of public servants specialized in the matter;

XVII. Locate the families of the identified unclaimed deceased persons, in coordination with the corresponding institutions, in order to deliver the corpses or human remains, in accordance with the provisions of the Approved Investigation Protocol and other applicable regulations;

XVIII. Request authorization from the competent jurisdictional authorities to carry out exhumations in cemeteries, graves, or other sites where there are well-founded reasons to believe that corpses or human remains of Missing Persons are found;

XIX. Request to the competent jurisdictional authorities the transfer of inmates to other detention centers safeguarding their human rights, provided that this measure favors the search or location of the Disappeared Persons or the investigation of the crimes that are the subject of this Law, in terms of the National Law of Penal Execution;

xx. Facilitate the participation of Family Members in the investigation of the crimes provided for in this Law, including periodically providing information to Family Members about the progress in the process of investigation and prosecution of the crimes provided for in this Law in terms of the National Code of Criminal Procedures ;

XXI. Celebrate collaboration or cooperation agreements, for the optimal fulfillment of the powers that correspond to it in accordance with this Law;

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XXII. Provide the information that the Executive Commission and the Commissions for Victims request to improve care for Victims, in terms of what is established by the applicable provisions;

XXIII. Provide the information that the Citizen Council requests for the exercise of its functions, in terms of what the applicable provisions establish;

XXIV. Provide technical assistance to the Specialized Prosecutor's Offices of the Federal Entities that request it, and

xxv. The others that establish other applicable legal provisions.

In the case of the State of Veracruz, the Regulations of the Organic Law of the Attorney General of the State of Veracruz

**Article 57.** The Head of the Specialized Prosecutor's Office will have the following powers:

I. Directly request the geographic location in real time or the delivery of the stored data, in the terms established in the National Code of Criminal Procedures;

II. Request authorization from the competent judicial authority to order the interception of communications, in terms of the applicable provisions;

III. Sign, prior agreement with the Prosecutor of Ministerial Interventions, collaboration letters to any civil or military authority of the Republic, as well as with dependencies of the three levels of government and the Prosecutors or Attorneys of the Federal Entities and that of Military Justice, in order to collaborate, assist and, where appropriate, require the authorities to investigate matters within their jurisdiction;

IV. Integrate by itself or through the Specialized and Specialized Prosecutors attached to the Specialized Prosecutor's Office, the investigations related to matters within its competence and related matters; and intervene in criminal proceedings that are initiated in relation to said investigations;

V. Determine criteria for the organization and operation of the Specialized Prosecutor's Office, for the application of an efficient and effective investigation;

SAW. Propose, coordinate and evaluate the activities of the Special Prosecutor's Office for the Attention of Complaints for Disappeared Persons;

VII. Attract, prior agreement with the Head of the Ministerial Investigations Prosecutor's Office, the Investigation Folders or Ministerial Investigations on crimes within its jurisdiction and related;

VIII. Authorize, prior agreement with the person in charge of the Prosecutor of Ministerial Investigations, depending on the development of the investigations, the non-exercise of criminal action, as well as other forms of termination of the investigation, the dismissal of the case, the conditional suspension of the process, abbreviated procedures, as well as other forms of early termination of the process;

IX. Coordinate and supervise the actions of the Investigation Police attached to the Specialized Prosecutor's Office;

X. Review the correct integration of the investigations carried out by the Specialized Prosecutors and Specialists under their command;

XI. Supervise the sequel and control of the Investigation Folders located in the Specialized Prosecutor's Office;

XII. File by itself or through the Specialized and Specialized Prosecutors, the resources, the promotion and follow-up of the incidents and, when appropriate, the withdrawal of the same;

XIII. Authenticate the documentation in which they intervene in the exercise of their functions, as long as it does not contravene the provisions of the National Code of Criminal Procedures and the Criminal Code, as well as the limitations indicated by the legal provisions regarding reserve, confidentiality, secrecy and access to public government information;

XIV. Request from the National Banking and Securities Commission, the necessary information for the correct integration of the Ministerial Investigations and Investigation Folders related to disappeared persons, in terms of the corresponding procedural legislation and the existing Collaboration Agreements;

XV. You must send to the Specialized Prosecutors under your charge the criteria, guidelines, protocols, international treaties, as well as all regulations on the matter that must be applied, and verify their application in the practice of the necessary diligences for the due exercise of the faculties assigned to them in relation to the facts that the law considers as crimes within their competence,

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41. Its function is specifically governed by national and international parameters regarding investigations of acts constituting forced disappearances or disappearances committed by individuals. Thus, whenever there is a complaint of facts possibly constituting this type of crime, the prosecutor's office specialized in the matter must take charge of it to guarantee that the investigation is adequate.
42. Therefore, if the district judge found that there was an investigation that did not meet the national and international standards that were developed in the amparo ruling and that the search for young Emiliano had not been undertaken with the necessary urgency, those omissions are, without doubt, attributable to the officials of the entities in charge of the investigative function of the State, at all levels, and the granting of amparo must, of course, be extended to those authorities. In the opinion of this Chamber, it is not possible to deny their responsibility for the irregularities committed during the investigation and in the search for the young Emiliano, therefore their character as responsible authorities is confirmed and they are linked to the acts claimed and their compliance.
43. Therefore, this Chamber revokes the dismissal with respect to the Attorney General of the State of Veracruz, as well as the Specialized Prosecutor for the Attention of Complaints for Disappeared Persons, Central Zone, Veracruz, and the Head of the Specialized Prosecutor's Office for the Attention of Complaints by Persons Disappeared and, on the contrary, considers as existing the acts that were attributed to them, particularly those related to the ineffective conduct of the investigation to find the whereabouts of Mrs. Julia's son and the refusal to comply with the urgent actions issued by the Committee against the Forced Disappearance of Persons, with the implications that this has in the obligation to use, in institutional coordination, the maximum of available resources to find the person who has been reported missing alive. In particular, when there is a conducive context for this serious violation of human rights.

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XVI. The others indicated by other applicable regulatory provisions or hierarchical superiority.

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44. On the other hand, it was correctly noted that the effects of the claimed act consisting of the omission to respond to the complainant's letter of March 15, 2017, in which she requested a certified copy of the proceedings that make up the preliminary investigation, had ceased. The judge pointed out that the plaintiff learned of the response of the responsible prosecutor when he rendered his justified report, an agreement that constituted the act claimed in the extension of the amparo petition.
45. Referring to that response, the district judge declared the amparo trial inadmissible to verify the constitutionality of article 348, second paragraph, of the Veracruz penal code challenged by the complainant, since she considered that the provision contained a hetero-applicative norm and that it did not was applied to the detriment of Mrs. Julia, despite having been cited as a basis for the refusal to issue copies of the investigation. In her review brief, the plaintiff contested that determination: she argued that the refusal to issue copies constituted an application of the article and reiterated its unconstitutionality.
46. However, this Chamber observes that the district judge ruled on the merits on the irregularity of the response of the responsible prosecutor, reason for which she granted the amparo. Indeed, the prosecutor reported that it was impossible to provide copies of the records of the investigation to Mrs. Julia, while article 348 of the Penal Code of Veracruz provides for a sanction for public servants who provide copies of the proceedings or documents that part of a ministerial investigation<sup>14</sup>. Regardless of the fact that the unlawful conduct provided for in the criminal law had not been updated, nor had criminal proceedings been initiated against any authority, it is noted that Mrs. Julia's disagreement derives from the actions of the ministerial authority, which, in her opinion , generated an

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<sup>14</sup>Penal Code of the State of Veracruz

**Article 348.** Any public servant who, by any means, provides information on orders issued by a judicial authority and has the consequence that the person against whom it is directed evades the action, will be imposed from six months to three years in prison, a fine of up to fifty days of salary, dismissal and disqualification from performing public employment, office or commission for a time equal to the imprisonment imposed.

The same sanction will be applied to the public servant who unduly violates the confidentiality of the proceedings or provides a copy of them or of the documents that are part of the ministerial investigation.

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affectation to their rights; in particular, the right to participate in the research and learn about its development.

47. When supervising that action, the judge considered that denying copies of the investigation to Mrs. Julia violated her rights, for which she granted the amparo and ordered the authority to issue her copies. Thus, this Chamber notes that the analysis of the constitutionality of the norm would not give greater scope to the constitutional protection granted, therefore the dismissal decreed by the judge remains firm and recalls the precedents of the Full Court and of this Chamber that have clearly declared that victims must agree to the investigation, particularly when it comes to serious human rights violations<sup>15</sup>.
48. Finally, the district judge rejected that the urgent measures and actions of the Committee against Enforced Disappearance of the United Nations are binding on the Mexican authorities, for which reason – she stated – their observance cannot be supervised in the amparo proceedings.
49. In the opinion of this Chamber, this determination was incorrect. One of the issues that the Chamber must resolve in this review appeal is precisely the binding nature of the urgent measures and actions that the United Nations Committee against Enforced Disappearance issues in cases submitted to its knowledge as a body authorized to interpret and apply the provisions of the International Convention for the protection of all persons against forced disappearances, which integrates the parameter of constitutional regularity in the Mexican legal system<sup>16</sup>.

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<sup>15</sup>See amparo under review 382/2015, resolved by the First Chamber on March 2, 2016, unanimously with 5 votes of the ministers Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo, Norma Lucía Piña Hernández and Alfredo Gutiérrez Ortiz Mena, and by a majority of four votes regarding the effects, against the vote of Minister Jorge Mario Pardo Rebolledo. In addition, the amparo under review 554/2013, resolved in the session of March 25, 2015, by unanimity of 5 votes of the ministers Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo, Olga Sánchez Cordero and Alfredo Gutiérrez Ortiz Mena; amparo under review 835/2018, resolved in the session of October 9, 2019, by unanimity of 5 votes of the minister Norma Lucía Piña Hernández, Luis María Aguilar Morales, Jorge Mario Pardo Rebolledo,

<sup>16</sup>See the thesis 1a./J. 64/2014 (10th), published in the Federal Judicial Weekly Gazette, book 11, October 2014, volume I, page 272, heading and text: "HUMAN RIGHTS RECOGNIZED IN INTERNATIONAL TREATIES. ITS INTERPRETATION CONSTITUTES A PROPERLY CONSTITUTIONAL ISSUE FOR PURPOSES OF THE APPEAL FOR REVIEW IN DIRECT AMPARO TRIALS. The human rights recognized in the international treaties ratified by the Mexican State are part

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50. This Supreme Court has recognized that the Mexican State, by ratifying an international treaty, incurs obligations before the international community. In the case, the Convention on the matter affects the rights of direct and indirect victims<sup>17</sup> of forced disappearance, as a crime and as a serious violation of fundamental rights, for which reason its compliance must be ensured; in particular, effective access to justice for direct and indirect victims must be guaranteed through the mechanisms recognized by those instruments.
51. This Chamber must determine, then, the scope of the pronouncements derived from these international procedures and their binding nature for the Mexican authorities, especially those that participate in the investigation of crimes of disappearance of persons and in the search for persons reported as missing. . By involving a substantive study, this Chamber considers that it is not possible to conclude that the matter is inadmissible.<sup>18</sup>.

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of the internal legal system, so that they expand the catalog of those, which was one of the objectives of the constitutional reforms published in the Official Gazette of the Federation on 6 and June 10, 2011. Thus, In the first reform, the origin of the amparo trial was expressly extended to those cases in which rights provided for in international treaties had been violated, regardless of whether or not they are recognized in the Political Constitution of the United Mexican States; while in the second, it was recognized that in Mexico all people are holders of the rights recognized in the Federal Constitution and in international treaties ratified by the Mexican State. However, given that the amparo trial is a jurisdictional mechanism created to protect human rights, the constitutional issues –direct interpretation of constitutional precepts– raised in direct amparo trials and, especially, in the appeals for review promoted against the enforceable ones that result from them, they will refer to the interpretation of fundamental rights. Due to the foregoing, it would be impossible to challenge the lack or improper interpretation of a human right recognized in international treaties in an appeal for review if said interpretation is not considered as a properly constitutional issue, which would be contrary to the operation of direct amparo and the appeal. of review, as well as of the constitutional text itself, because even when the guiding principle of the appeal for review provides for a limited field of action for its origin against direct amparo judgments, The Constitution was amended to expressly include the rights recognized in international treaties as part of the catalog of rights that enjoy constitutional protection, which was harmonized with the reform regarding amparo that recognized the origin of the trial to repair the possible violations committed to said rights. In this sense, although this extension of the protected rights through constitutional proceedings was not expressly included in article 107, section IX, this cannot be interpreted in isolation from the rest of the constitutional principles, especially those recently modified. Consequently, the appeal for review under direct amparo proceeds to hear the interpretation that the collegiate circuit courts make of the rights recognized in international treaties,

<sup>17</sup>Article 24, paragraph 1, International Convention against the forced disappearance of persons.

<sup>18</sup>See Jurisprudence P./J. 135/2001, published in the Judicial Weekly of the Federation and its Gazette, volume XV, January 2002, page 5, with the following content: "INFORCEMENT OF THE AMPARO TRIAL. IF A CAUSE INVOLVING THE SUBSTANTIAL STUDY OF THE MATTER IS ASSERTED, IT SHOULD BE DISMISSED. The causes of inadmissibility of the guarantee trial must be clear and unobjectionable, from which it follows that if one is asserted in which an argument closely related to the merits of the business is involved, it must be dismissed."

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### *Accuracy of the acts claimed and matter of revision*

52. Consequently, this Chamber deems that the dismissal decreed by the district judge must be revoked and, in terms of article 74 of the Amparo Law, proceed to the substantive study regarding the acts attributed to the Attorney General of the State of Veracruz, the Special Prosecutor for the Attention of Complaints for Missing Persons, Central Zone, Veracruz and the Head of the Special Prosecutor's Office for the Attention of Complaints for Missing Persons and the assistant prosecutor of the Central Veracruz Regional Prosecutor's Office, in charge of the 1st and 8th agency of the Investigative Public Ministry, and which are specified below:
- a) The failure to implement, coordinate, and carry out a diligent, exhaustive, impartial, and serious investigation aimed at locating young Emiliano;
  - b) The failure to carry out the procedures related to the prosecution of the crimes and those responsible related to the disappearance of Emiliano in accordance with the current search protocols and the fundamental rights recognized in the Mexican legal system, and
  - c) The omission to implement the urgent measures and actions \*\*\*\*\*, issued by the Committee against Enforced Disappearances of the United Nations in favor of the young Emiliano, so that they could be observed and adopted during the investigation.
53. It is anticipated that the Chamber deems essentially correct the considerations expressed by the district judge regarding the first and second acts claimed by which constitutional protection was granted; that is, regarding the minimum elements that an investigation must meet. Therefore, the matter of the review will be limited –in principle– to elucidating the mandatory nature of the urgent measures and actions issued by the Committee against Forced Disappearances, in use of the powers conferred by the International Convention for the protection of all persons. against enforced disappearances.

## IX. BACKGROUND STUDY



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54. As already indicated in the study on the dismissal ordered by the district judge in this matter, the subject of this amparo under review will be -fundamentally- to answer the question:

Are the Mexican authorities, within the scope of their respective competences, obliged to implement the urgent actions decreed by the Committee against Forced Disappearance of the United Nations, in exercise of the powers conferred by the International Convention for the protection of all persons? against the forced disappearance of people?

55. To answer that question, this Chamber will divide its study into three sections: a. the parameter of constitutional regularity of the right not to be the object of forced disappearance; b. the right to search as an expression of the rights to the truth and access to justice in cases of disappearance of persons, and c. the obligatory nature of urgent actions and, therefore, the feasibility of their compliance being supervised by constitutional judges.

### Right of every person not to be subjected to forced disappearance

56. The Political Constitution of the United Mexican States establishes, in its first article, that international treaties on human rights signed and ratified by Mexico make up the scope of respect, protection and guarantee of the rights of persons subject to the jurisdiction of the State. Mexican. In the contradiction of thesis 293/2011<sup>19</sup>, the Full Court of this Supreme Court of Justice of the Nation confirmed that international treaties and the Constitution integrate the parameter of constitutional regularity of the human rights protected in both instruments, which is completed with the jurisprudence issued by the Inter-American Court of Human rights. The content and scope of these rights –according to that

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<sup>19</sup>Resolved by the Full Court in session of September 3, 2013, by a majority of ten votes of the ministers Gutiérrez Ortiz Mena, Luna Ramos, Franco González Salas, Zaldívar, Pardo Rebolledo, Valls Hernández, Sánchez Cordero de García Villegas, Pérez Dayán and Silva Meza, against the vote cast by Minister Cossío Díaz.

precedent– must be defined and interpreted in the sense that grants greater protection to people.

57. Articles 4, 14, 16 and 22 of the Constitution protect various rights that are violated when a person is a victim of forced disappearance; among them, the right to identity, the protection of freedom, the sphere of privacy that must be free from arbitrary interference and the categorical prohibition of acts that suppose that the State harms physical integrity beyond the strict constitutional limits, psychological and moral of someone.
58. For its part, the International Convention for the Protection of All Persons Against Enforced Disappearances<sup>20</sup>, in its article 1, recognizes the autonomous right of every person not to be subjected to forced disappearance<sup>21</sup>, and, in its article 2, defines this serious violation of human rights as "the arrest, detention, kidnapping or any other form of deprivation of liberty that are the work of State agents or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the refusal to recognize said deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person, removing him (from) the protection of the law."

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<sup>20</sup>Signed by the Mexican State on February 6, 2007, approved by the Senate on November 13, 2007, and ratified on January 18, 2008.

<sup>21</sup>Until the approval of the International Convention, there was no autonomous right not to be subjected to forced or involuntary disappearance. This led to forced disappearance being defined for a long time as a complex phenomenon that violated a set of individual rights, such as the right to life, liberty, security, etc. However, this definition did not offer adequate protection. Thus, the need arose to expressly recognize a specific right not to be subjected to a forced disappearance. In his report before the Commission on Human Rights, the independent expert Manfred Nowak suggested two courses of action to resolve the issue: the first, the establishment of an autonomous, non-derogable right not to be a victim of enforced disappearance; the second, specify in a binding manner that the act leading to an enforced disappearance constituted, in addition to an arbitrary deprivation of liberty, inhuman and degrading treatment (incompatible with article 7 of the Convention on Civil and Political Rights) as well as a serious threat to the right to life and a violation of the right to have an effective remedy before a national authority. The first alternative was, in his opinion, the desirable one and is the one that has finally been included in the text of the International Convention. Thus, article 1.1 has been worded as follows: "No one shall be subjected to an enforced disappearance." This is a pioneering provision because for the first time the specific right not to be subjected to enforced disappearance is expressly recognized and the fact that its wording is in the same terms as that of the rights recognized in the Universal Declaration of Human Rights deserves special attention. Human Rights, because it is a strong example of the value that has been recognized for this new right. In addition, the States parties to the Convention undertake to classify the crime of forced disappearance in their criminal laws.

59. The Inter-American Convention on Forced Disappearance of Persons<sup>22</sup>, also in its article II, defines it as "the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to inform about the whereabouts of the person, thereby preventing the exercise of legal remedies and the pertinent procedural guarantees." Both Conventions reaffirm the absolute prohibition of this despicable practice and provide, among other things, the obligation, in charge of the States, to thoroughly, diligently and impartially investigate its occurrence, effects and responsible parties, as well as to seriously and forcefully commit to finding it alive. of the missing person,<sup>23</sup>. In addition, the International Convention for the Protection of All Persons Against Enforced Disappearances states, in Article 5, that the widespread and systematic practice of the forced disappearance of persons is a crime against humanity. Characterization confirmed by paragraph i) of article 7 of the Rome Statute<sup>24</sup>.
60. For its part, at the national level, the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search of Persons, in its article 27, when classifying forced disappearance, uses the same parameters of international human rights law and complies with the indication to consider this serious violation of human rights as a crime commensurate with its magnitude. That law states: "the crime of forced disappearance of persons is committed by a public servant or individual who,

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<sup>22</sup>Signed by the Mexican State on May 4, 2001, approved by the Senate on December 11, 2001, and ratified on April 9, 2002.

<sup>23</sup>In short, whenever there are reasonable grounds to suspect that a person has been subjected to forced disappearance, an investigation must be launched. This obligation is independent of the filing of a complaint, since in cases of forced disappearance international law and the general duty to guarantee impose the obligation to investigate the case ex officio, without delay and in a serious, impartial and effective manner. (Cf. article 12.2 of the International Convention for the Protection of All Persons against Enforced Disappearances and article 13 of the Declaration on the Protection of All Persons against Enforced Disappearances. In addition, the approved Vienna Declaration and Program of Action by the World Conference on Human Rights on June 25, 1993, establishes that: "[i]t is the obligation of all States,

<sup>24</sup>Signed by Mexico on September 7, 2000, approved by the Senate on June 21, 2005, and ratified on October 28, 2005.

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with the authorization, support or acquiescence of a public servant, deprives a person of liberty in any way, followed by the abstention or refusal to acknowledge said deprivation of liberty or to provide information about it or its fate, fate or whereabouts”.

61. That same Law creates the Search Commissions and the National Search System with different attributions, competences and resources whose main mission is to give substance to the largest conventional mandate regarding the disappearance of persons: promote and coordinate all institutional efforts to find alive the missing person. In addition, the Law confirms the necessary responsibility and commitment, within the scope of their powers, of all State institutions in this search, especially those in charge of investigative and investigative work. For this Chamber -then- it is undoubtedly important to endeavor to identify the perpetrators and punish them to the extent of their responsibility for a crime of unquestionable gravity, which is located within the specific duty –prescribed in our Constitution– to punish proportionally those who have committed human rights violations and in the conventional mandate to give the forced disappearance of persons the character of a crime; but it is even more important to use all available institutional efforts to find the person reported missing alive, which configures the general obligation to guarantee and the specific duties to prevent and repair human rights violations.<sup>25</sup>.
62. The Plenary of this Supreme Court, in various file 912/2010 (Rosendo Radilla Pacheco)<sup>26</sup>, stressed that the violation does not stop until the fate or whereabouts of the disappeared person is not fully established; In other precedents, the continuity of the violation has also been insisted on. Although, initially, the discussion revolved around the criminal prosecution of the crime, in this matter, the Chamber emphasizes that this continuity also affects the search. In other words, at no time should the obligation to allocate all the necessary

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<sup>25</sup>Principle 13 of the Guiding Principles for the Search for Disappeared Persons, Committee against the Forced Disappearance of Persons of the United Nations, April 8 to 18, 2019.

<sup>26</sup>Resolved by the Full Court of this Supreme Court of Justice of the Nation in session of July 14, 2011.

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resources to find the fate or whereabouts of the disappeared person and identify the persons responsible for their disappearance be neglected or ignored.

63. The Inter-American Court of Human Rights, over the years, has consolidated a consistent jurisprudential line in matters of forced disappearance of persons. In the case of *Rosendo Radilla Pacheco v. Mexico*<sup>27</sup>, For example, the regional court pointed out the complex and multi-offensive nature of forced disappearance based on the indisputable impact that it has on multiple rights. In that case, the Court indicated that the right to legal personality had been violated (Article 3 of the American Convention on Human Rights); the right to personal integrity, including the prohibition of being subjected to torture<sup>28</sup> or other forms of cruel, inhuman and degrading treatment, (Article 5); the right to personal liberty (article 7), and the right to life (article 4).
64. On this point, this Chamber wishes to emphasize that both this regional Court and the First Chamber have indicated that the right to life not only entails negative obligations for the State, but also positive obligations to facilitate the development of a dignified life.<sup>29</sup>, which includes a life project that expresses the

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<sup>27</sup>IHR Court. Case of *Rosendo Radilla-Pacheco v. Mexico*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209.

<sup>28</sup>The prohibition of torture has acquired the character of *ius cogens*, as indicated by national and international standards. It is important to remember, at this time, the adoption by Mexico of the Inter-American Convention to Prevent and Punish Torture, signed on February 10, 1986, approved by the Senate on December 16, 2016, and ratified on June 22, 1987, as well as the amparo under review 703/2012, resolved by the First Chamber in session of November 6, 2013, by unanimous vote, among other precedents of this Chamber.

<sup>29</sup>Cf. *inter alia*, I/A Court HR. Case of *García Ibarra et al. v. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306; IHR Court. Case of the "Street Children" (*Villagrán Morales et al.*) v. Guatemala. Background. Judgment of November 19, 1999. Series C No. 63; IHR Court. Case "Institute for the Reeducation of Minors" Vs. Paraguay, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112; IHR Court. Case of the *Xákmok Kásek Indigenous Community. v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214; IHR Court. Case of the *Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125; Case of the *Sawhoyamixa Indigenous Community v. Paraguay*. Background, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, and I/A Court HR. Case "Institute for the Reeducation of Minors" v. Paraguay. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112. In addition, the amparo under review 1388/2015, resolved by the First Chamber of the Supreme Court of Justice of the Nation, in session of May 15, 2019, unanimously of five votes and direct protection 6/2008, resolved by the Full Court in session of January 6, 2009, from which the thesis was derived with the following heading and text: "RIGHT TO FREE DEVELOPMENT OF PERSONALITY. ASPECTS THAT INCLUDE. From human dignity, as a superior fundamental right recognized by the Mexican legal order, derives, among other very personal rights, that of every individual to freely and autonomously choose their life project. Thus, according to comparative doctrine and jurisprudence, this right is the State's recognition of the natural faculty of every person to be individually

aspirations and potential of a person. The right to a dignified life must be understood not only as the right to maintain life in its biological sense, but as the right to (i) autonomy or the possibility of building the "life project"<sup>30</sup> and to determine its characteristics (live as one wants); (ii) certain specific material conditions of existence (living well), and (iii) the intangibility of non-equity assets, physical integrity and moral integrity (living without humiliation).<sup>31</sup> The concept of life project demonstrates the importance of the expectations that each person has for their life according to their conditions and their context, and is based on the self-determination of how each one wants to live their life.

65. This Chamber finds it undeniable that the disappearance of persons not only interrupts and definitively affects the full realization of a life project of the direct victim and indirect victims, but also places the life and personal integrity of the disappeared person in permanent risk, since there is no legal protection for her. Hence, the immediate, careful and diligent search for the disappeared person is an unavoidable obligation of the State, which must be undertaken without unjustified obstacles and with all available institutional force. This follows from one of the specific duties contained in the first article of the Constitution: to exhaustively investigate human rights violations.<sup>32</sup>
66. The multi-offensive and permanent characterization of forced disappearance is deduced not only from the very definition of Article III of the Inter-American

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as they want to be, without coercion or unjustified controls, in order to meet the goals or objectives that have been set. , according to their values, ideas, expectations, tastes, etc. Therefore, the free development of the personality includes, among other expressions, the freedom to marry or not; to procreate children and how many, or to decide not to have them; to choose his personal appearance; his profession or work activity, as well as his free sexual choice, insofar as all these aspects are part of the way in which a person wishes to project himself and live his life and that, therefore,

<sup>30</sup>IHR Court. Case of Loayza Tamayo v. Peru. Judgment of November 27, 1998. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42.

<sup>31</sup>Colombian Constitutional Court, judgment C-355/06.

<sup>32</sup>In this sense, this obligation implies the duty of the States Parties to organize all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As part of this obligation, the State – the COIDH affirmed when resolving the case of Rosendo Radilla – has the legal duty to "[p]revent, reasonably, human rights violations, to investigate seriously with the means at its disposal the violations that have been committed within the scope of its jurisdiction in order to identify those responsible, to impose the pertinent sanctions and to ensure the victim adequate reparation."

Convention on Forced Disappearance of Persons, the preparatory work for it<sup>33</sup>, its preamble and regulations<sup>34</sup>, but also from other definitions contained in different international instruments<sup>35</sup> that they indicate as concurrent and constitutive elements of forced disappearance: a) the deprivation of liberty; b) the direct intervention of state agents or by their acquiescence, and c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.<sup>36</sup> Forced disappearance – the Inter-American Court has said in its precedents – implies a gross abandonment of the essential principles on which the system is based<sup>37</sup>.

67. In the cases *Rosendo Radilla v. Mexico*<sup>38</sup>, *Gomez Palomino vs. Peru*<sup>39</sup>, *Alvarado Espinoza vs. Mexico*<sup>40</sup>, *Caballero Delgado and Santana vs.*

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<sup>33</sup>Cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent insofar as it is committed not instantly but permanently and continues throughout the time the person remains disappeared" (OEA/CP-CAJP, Report of the Chairman of the Working Group in Charge of Analyzing the CIDFP Project, document OEA/Ser.G/CP/CAJP-925/93 rev.1, of 01/25/1994, p. 10).

<sup>34</sup>Article II of the CIDFP provides that "[s]e considered forced disappearance is the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, the support or acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to inform about the whereabouts of the person, thereby preventing the exercise of legal remedies and guarantees relevant proceedings". Article III of that instrument states, as pertinent, that: "[said] crime will be considered continuous or permanent until the fate or whereabouts of the victim is established."

<sup>35</sup>Cf. Economic and Social Council of the United Nations, Report of the Working Group on the Forced or Involuntary Disappearance of Persons, General Comment on Article 4 of the Declaration on the Protection of All Persons against Forced Disappearance of January 15, 1996 (E/CN. 4/1996/38), para. 55, and article 2 of the International Convention for the Protection of All Persons against Enforced Disappearances.

<sup>36</sup>Cf. Case of *Gómez Palomino v. Peru*, supra note 51, para. 97; Case of *Ticona Estrada v. Bolivia*, supra note 23, para. 55; and, Case of *Anzualdo Castro v. Peru*, supra note 44, para. 60.

<sup>37</sup>Cf. Case of *Goiburú et al. v. Paraguay*, supra note 83, para. 84; Case of *Tiu Tojín v. Guatemala*, supra note 24, para. 91, and Case of *Anzualdo Castro v. Peru*, supra note 44, para. 59.

<sup>38</sup>IHR Court. Case of *Rosendo Radilla-Pacheco v. Mexico*. op. cit.

<sup>39</sup>IHR Court. Case of *Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136.

<sup>40</sup>IHR Court. Case of *Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370.

Colombia<sup>41</sup>, Case of Blake v. Guatemala<sup>42</sup>, Case of Terrones Silva et al. Peru<sup>43</sup>; among others that make up the solid line of inter-American jurisprudence on the forced disappearance of persons, the Court has confirmed its multi-offensive nature<sup>44</sup>, its permanent or continuous nature<sup>45</sup> and has urged the need for the analysis of the disappearance to take into account all the facts that make it up and the consideration of the context, and that the responsible States resort to all the tools that the instruments for the protection of human rights provide to privilege the discovery of the disappeared person alive, since it cannot be forgotten that one of the main purposes of this violation is to make it impossible -with different means- to find the fate or whereabouts of the disappeared person<sup>46</sup>. This approximation has been shared by the Human Rights Committee in the Christian Téllez Padilla cases<sup>47</sup>, Jesus Israel Moreno Perez<sup>48</sup> and Victor Manuel Guajardo Rivas<sup>49</sup>; all against Mexico. In all these precedents, he insisted on the importance of the speed and continuity of the investigation<sup>50</sup>, in the demand to dedicate institutional efforts to the search, as well as the assessment of the suffering of the indirect victims<sup>51</sup>.

68. The Declaration on the Protection of All Persons Against Forced Disappearances, approved by the United Nations General Assembly in its resolution 47/133 of December 18, 1992, confirms that the forced disappearance of persons is a serious violation of human rights. and points out

<sup>41</sup>IHR Court. Case of Caballero-Delgado and Santana v. Colombia. Background. Judgment of December 8, 1995. Series C No. 22.

<sup>42</sup>IHR Court. Case of Blake v. Guatemala. Background. Judgment of January 24, 1998. Series C No. 36.

<sup>43</sup>IHR Court. Case of Terrones Silva et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 360.

<sup>44</sup>IHR Court. Case of Rosendo Radilla-Pacheco v. Mexico. op. cit., paragraph 138, 139, as well as several other precedents already mentioned in the body of this judgment.

<sup>45</sup>IHR Court. Case of Alvarado Espinoza v. Mexico, op. cit., paragraph 165.

<sup>46</sup>Ibid, paragraph 166.

<sup>47</sup>Human Rights Committee, September 13, 2019 paragraphs 9 onwards.

<sup>48</sup>Human Rights Committee, November 28, 2019, paragraphs 12.1 onwards.

<sup>49</sup>Human Rights Committee, November 29, 2019, paragraphs 12.1 onwards.

<sup>50</sup>Case of Gómez Palomino v. Peru. Op.cit. In the same sense: Christian Tellez vs. Mexico of the Human Rights Committee of the United Nations Organization (CCPR/C/126/D/2750/2016), paragraph 9.2.

<sup>51</sup>IHR Court. Case of Rosendo Radilla-Pacheco v. Mexico. Op.cit., paragraph 253.



how it violates other rights such as freedom, life, security, personal integrity and the right to be free from torture. It also ensures that arrests must be monitored, registered, founded and motivated.

69. This Chamber recognizes -then- the autonomy of the right not to be subjected to forced disappearance, as it arises from the international instruments that were cited, but also -based on them- sustains the multi-offensive nature of this serious violation of human rights and its undeniable impact on rights whose constitutional and conventional protection is indisputable, due to the interdependence of human rights.
70. As can be seen from the aforementioned laws and precedents and which make up the parameter of constitutional regularity of the right not to be subjected to forced disappearance, this supposes the participation of the State, through its agents or any person or group that acts with its acquiescence, support, collaboration, authorization, among other legally determinable forms of participation, regardless of the degree and intensity of said participation, in any form of deprivation of liberty (even legal detentions in their form can become forced disappearances when they meet certain characteristics). followed by the refusal to acknowledge this deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person who is removed in this way from the protection of the law.
71. Finding the disappeared person and identifying and punishing those responsible gives content and substance to the specific duties to prevent, investigate, punish, and repair human rights violations. Duties set forth in the first article of our Constitution and which commit the Mexican State to a diligent, exhaustive and continuous search, to an impartial and effective investigation into the fate or whereabouts of the disappeared person and the identity of the perpetrators, and to guarantee that they face the legal consequences that correspond to their criminal acts. These obligations are even more critical at the slightest indication of the participation of State agents or groups that act with their complicity or acquiescence in the disappearance. This Chamber deems it appropriate to point out that,

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72. This Chamber considers –then– that the forced disappearance of persons is a serious violation of human rights, which demonstrates the inability of the State to guarantee the right to integrity, security, liberty and dignity of the persons subject to its jurisdiction, whose standard of Constitutional regularity contains not only the obligation to punish those responsible and assign them the legal consequences proportional to the magnitude of their violation, but also the urgent obligation to search for the disappeared person with all the institutional force available and with all the institutional coordination necessary to achieve that task.
73. Once the parameter of constitutional regularity of the right of every person not to be subjected to forced disappearance has been established, it corresponds to determine the existence of a right to search, what this Chamber will do based on this parameter and its interrelation with the crucial rights to justice and truth.

### Justice and truth: right to search

74. In the case, the judge found it proven that on December 11, 2013, at approximately 2:00 p.m., 16-year-old Emiliano was at his place of work in the city of Veracruz, Veracruz, when a group arrived of civilians and police, who entered the business and arrested it; they put him in a van and informed the owner and manager of the establishment that the reason for his arrest was that he had been identified as an accomplice to a robbery. Until now the whereabouts of young Emiliano are unknown.
75. When reviewing the records that made up the preliminary investigation, the district judge observed an erratic investigation that was inconsistent with the urgency of locating Mrs. Julia's son, and finding those responsible for his disappearance, despite the existence of available evidence that should lead to to precise and efficient lines of investigation. Given this finding, the judge granted the amparo and ordered that the investigation adhere to national and international due diligence standards to prevent and investigate human rights violations and the search for missing persons, favoring the location of young

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Emiliano alive. For this, she ordered that the assistant prosecutor of the Central Zone Regional Prosecutor's Office, Veracruz,

- a) Adjust their actions to the provisions of articles 1, 14, 17 and 21 of the Political Constitution of the United Mexican States, and effectively conclude the investigation phase until they find the whereabouts of the young Emiliano, since up to now no single line prevails. investigative.
- b) Follow the lines of investigation of the disappearance of the young Emiliano, taking into account that on December 11, 2013 another minor also disappeared in similar circumstances, for which reason the authority has the duty to establish patterns in which it considers the context in which they occurred the facts.
- c) Order the necessary confrontation procedures between the witnesses who witnessed the deprivation of liberty of the wanted person with the police elements and the Secretary of the Navy who have appeared in the investigation and with those who are summoned to appear in the future for their investigations.
- d) Order the necessary steps to establish a chronology of the places where young Emiliano was possibly in the days after his deprivation of liberty, according to the report issued by Radio Móvil Dipsa, SA de CV on the details of calls, geographic location in real time of the telephone number of the wanted person and the expert opinions rendered. Once the locations are established, proceed to research him.
- e) Carry out an exhaustive search on social networks that provides data or indications of the whereabouts of the disappeared person, with the data provided by the witnesses.
- f) Order the necessary steps to take the statement of Mr. Bernardo, who can provide information on the whereabouts of the disappeared person, in response to what was expressed by Mrs. Julia in her appearance on February 8, 2017 before the responsible authority.

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- g) Arrange all pertinent procedures to identify the remains found in clandestine graves, both in the State of Veracruz and in the rest of the country. Require the collaboration of the various attorney general's offices to carry out an exhaustive search and identification, in accordance with the provisions of international standards on the matter.
- h) Remove all obstacles that prevent the proper investigation of the facts and, therefore, use all available means to expedite the investigations. In addition, regularly provide the victim's mother with information on the progress of the investigation and give her full access to the records of the preliminary investigation.
- i) Ensure that the different bodies that participate in the investigation fully satisfy the entrustment addressed to them in an adequate, independent and impartial manner.
- j) Carry out investigations in accordance with the protocols and manuals that serve as guidelines or are mandatory for cases such as the one being analyzed and privilege, at all times, the knowledge of the truth and the location of the disappeared person.
- k) Establish lines of investigation related to the information obtained from the evidence collected; establish hypotheses and carry out the necessary steps to verify them.
- l) Establish effective logistics to obtain more data to make possible the location of the young Emiliano.
- m) Carry out all the procedures aimed at clarifying the facts and identifying those responsible, regardless of the time elapsed.

76. This Chamber finds these guidelines – extended to the responsible authorities that were not considered by the judge as such – in accordance with national and international standards on the right not to be subjected to forced disappearance

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(discussed in the preceding section) and on search matters. of people, as will be developed below. Therefore, she confirms them.

77. Indeed, after reviewing the file of this investigation, this Chamber shares the conclusion of the Judge and reaffirms that the responsible authorities must abide by those orders in all their terms to redirect the course of an investigation that is not sufficiently diligent, but warns the authorities responsible parties who – in use of the investigative powers, conferred by the Constitution, and their mandatory technical capacity – must exhaustively explore the lines of investigation resulting from the procedures carried out, conducted based on the content and scope of the right not to be a victim of disappearance forced and to be wanted that has every person subject to the jurisdiction of the State, as it was considered by the judge when granting the amparo and as it will be specified in this executory. at all times,
78. This Chamber also insists with the judge that the authorities carry out all the necessary inquiries and with all the institutional resources available to determine the fate or whereabouts of the young Emiliano, son of Mrs. Julia, and to identify those responsible for his disappearance.
79. In this section –then– the Chamber will delve into some criteria on the search for people, the primary concern of Mrs. Julia and her son when filing this review and essential matter of the urgent actions whose mandatory nature was ruled out by the district judge.
80. The Inter-American Court, in the Alvarado Espinoza and Rosendo Radilla cases, both against Mexico, ruled that when it comes to forced disappearance, the obligation to investigate entails the duty to direct the efforts of the state apparatus to unravel the structures that allowed these violations, their causes, their beneficiaries and their consequences, and not only discover, prosecute and, where appropriate, punish the immediate perpetrators, adopting a comprehensive vision of the facts that takes into account the background and context in which they occurred and that seeks to reveal the participation structures. For this, the authorities must generate hypotheses and lines of

investigation, according to the relevant contexts, to determine the people who, in various ways, intellectually and materially allowed, designed and executed the act,<sup>52</sup>.

81. As can be seen, the different international standards cited and those that refer to them as part of the jurisprudential line of the Inter-American Court of Human Rights insist on the importance of recognizing the influence of the context in which the disappearances occur, not only to define the meaning and the lines of investigation, but rather – at the time – to decide on the seriousness of the responsibility of the State by refraining from taking all the necessary measures to establish the whereabouts of the disappeared persons, in terms of Principle 8 of the Guiding Principles for the search for missing persons of the UN Committee against Enforced Disappearances<sup>53</sup>:

“The comprehensive search strategy must take context analysis into account. Context analyzes can be used to determine patterns, clarify the motives and modus operandi of the perpetrators, determine profiles of the disappeared persons and establish the regional particularities that explain the disappearances. The competent authority must carry out the context analyzes autonomously, in accordance with scientific criteria and not only based on the information derived from the individual cases investigated. Context analyzes should not be a pretext for excluding in advance research and search hypotheses that *prima facie* do not fit into them”.

82. Therefore, this Chamber confirms the determination of the judge that the responsible authorities consider, within their investigations and search efforts, the situation of violence in Veracruz, the extent of the disappearance of persons in the country and in that state in Specifically, the identification of a specific pattern in these events and the characteristics of the police operations deployed

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<sup>52</sup>"The foregoing is applicable to the case, in response to the relevant contexts, for which the authorities have had to investigate diligently to reveal possible patterns of joint action or complex criminal structures." Cf. Inter-American Court of Human Rights. Case of Alvarado Espinoza v. Mexico, op. cit.

"The Court reiterates that the obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights recognized in the Convention. In light of this duty, once the state authorities are aware of the fact, they must initiate *ex officio* and without delay a serious, impartial, and effective investigation." Cf. Alvarado Espinoza v. Mexico

<sup>53</sup>Approved from April 8 to 18, 2020.

the day the disappearance of young Emiliano, son of Mrs. Julia, both complained in this amparo under review.<sup>54</sup>

83. The forced disappearance of persons is undeniably – as the national and international instruments and standards for the protection of human rights consistently and forcefully affirm – a serious violation of human rights. As such, it activates in a qualified manner and with extreme diligence the specific duties contained in the first constitutional article: prevent, investigate, sanction and repair<sup>55</sup>. These specific duties are correlative to the rights of victims of human

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<sup>54</sup>In the case of Alvarado Espinoza vs. Mexico, the COIDH stated: "... internally, the CNDH has reported, in multiple annual reports, in a special report, as well as in a report addressed to the UN Committee against Enforced Disappearances, of the existence of said generalized context of disappearances of people and the seriousness of this problem associated with the scene of violence that Mexico is facing, particularly from 2007 to the present. In this sense, in 2017, the CNDH concluded the existence of 29,903 cases of disappearances registered from 2007 to October 2016 in the official databases, of which 82.71% were concentrated in 11 entities of the country. [one of them, Veracruz] The CNDH also indicated that up to 2015 it had received information on 260 complaints for the crime of forced disappearance of persons. However, he reiterated his concern about the lack of knowledge of the whereabouts of the thousands of disappeared people in Mexico and stressed that the inconsistencies and deficiencies of the official information available in this regard have been an impediment to adequately assess the magnitude of this problem and accurately determine " how many of these cases correspond to the forced disappearance of persons, which are attributable to subjects linked to organized crime and the number of victims whose acts that led to their absence respond to causes other than those indicated".

Regarding the shortcomings in the investigations and the absence of a judicial response and reparation in the cases of forced disappearances, the GTDFI, after its mission to Mexico in 2011, pointed out the existence of a chronic pattern of impunity and the lack of confidence of the victims. of forced disappearance in the justice system and in the authorities, including the Armed Forces, where sufficient efforts are not being made to determine the fate or whereabouts of the disappeared persons, punish those responsible, and guarantee the right to the truth and the repair; which, in his opinion, was a manifestation of the state's lack of will or inability to carry out effective investigations in such cases. In 2015, the GTDFI reiterated its conclusions that generalized impunity in Mexico persisted as a chronic pattern and was a factor that led to the repeated perpetration of enforced disappearances", while the UN Committee against Enforced Disappearances expressed its concern about impunity regarding the cases reported for forced disappearance, "which was expressed in the almost non-existence of convictions for this crime." The Observatory, report Veracruz, politics and violence: "Veracruz, in turn, has been considered one of the most dangerous places in Mexico according to the National Survey of Victimization and Perception of Public Safety. In the database of the Veracruz Attorney General's Office of November 17, 2017, 2433 records are identified, which coincides with the people who are in the search process according to the report of the Special Prosecutor for Complaints of Disappeared Persons published on August 8, 2017. It should be noted that the number of people reported as missing in the prosecutor's office in the period 2006-2016 There are 5,934 of which 3,501 (59%) have been located (362 dead and 3,139 alive, equivalent to 10% and 90% of the total number located, respectively). The Veracruz Prosecutor's Office has 124 investigation folders open for the forced disappearance of 202 people in 52 municipalities of the state. As of July 13, 2020, the National Search Commission reported a total of 73,201 missing and missing persons. Veracruz is one of the states with the highest number of missing and missing persons as of July 13, 2020: 2,075.

<sup>55</sup>When resolving the amparo under review 476/2014, this First Chamber determined that the authorities must take the appropriate measures to protect and preserve human rights, assuming the specific duties of prevention, protection, investigation and reparation, recognized in article 1 of the Constitution. In that same amparo, the Chamber established that human rights violations must be investigated to avoid impunity and restore – as far as possible – the fullness of human rights.

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rights violations to truth, justice, and reparation. This Chamber understands – then– that the search for the disappeared persons with the intention of establishing their fate or whereabouts and the investigation into the events that led to their disappearance is a critical moment for the victims and their legitimate claims to truth and justice.

84. This Chamber has already indicated in its precedents that, in accordance with Articles 17 of the Constitution and 8 and 25 of the American Convention on Human Rights, all persons enjoy the right of access to justice, which includes the rights to due process, to judicial guarantees and effective judicial protection.
85. The right of access to justice is – the Chamber has said – a complex right with three dimensions<sup>56</sup>. From the formal point of view, the right to access justice supposes the universalist consecration of the right and unrestricted entry to the courts and other institutional means of defense of rights. In its substantive aspect, the guarantee of access to justice refers to the protective content of the decisions handed down on legitimate claims. Finally, a structural understanding of access to justice examines the social and economic context that determines whether or not a court or other institutional means of defense can be resorted to, and the form, conditions and consequences of that appeal. This three-dimensional conception of access to justice commits to look at the existing inequalities in the country,
86. From this three-dimensional perspective of access to justice, it will not be enough to obtain any response from the legal system, but –in the particular case of forced disappearance– it is necessary that this response be the product of an exhaustive and impartial investigation, conducted on the basis of the presumption of life of the disappeared person, committed and committed to his finding and in the criminal prosecution of those responsible<sup>57</sup>. This conception of access to justice highlights the importance of the participation of victims in the

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<sup>56</sup>Amparo under review 1284/2015 (Karla Pontigo Lucciotto case), resolved by this First Chamber in a session of November 13, 2019, unanimously with five votes.

<sup>57</sup>Even principles 12 and 13 of the Guiding Principles for the search for missing persons. UN committee against enforced disappearance (16th period of sessions, April 8-18, 2019), insist on pointing out how the criminal investigation and the search must be combined at all times.



investigation and search processes, as well as the right to know their progress in a timely, respectful and dignified manner.<sup>58</sup>

87. It is therefore crucial that the victims' claims for justice and the information they provide are sufficiently considered in these processes, which should be aimed at locating the victims alive, determining the truth, and pursuing, capturing, prosecution and punishment of those responsible for the facts, as essential components of the normative scope of the right to access justice<sup>59</sup> when it comes to forced disappearance of persons. In this sense, when the State becomes

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<sup>58</sup>"The Court has established that the next of kin of the victims of human rights violations can be, in turn, victims. In addition, it has considered that, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to integrity of the next of kin of the victims is a direct consequence of this phenomenon, which causes them severe suffering due to the fact which is increased, among other factors, by the constant refusal of the authorities to provide information about the whereabouts of the victims or to carry out an effective investigation to clarify what happened." Case of Alvarado Espinoza v. Mexico, paragraph 263.

<sup>59</sup>See the thesis 1a./J. 79/2015 (10th), published in the Gaceta del Semanario Judicial de la Federación, book 25, December 2015, volume I, page 244, under the heading: "VICTIM OR OFFENDER OF THE CRIME. YOU HAVE THE RIGHT TO BRING AN APPEAL AGAINST INTERMEDIATE AND FINAL JUDGMENTS IN THE CRIMINAL PROCESS, EVEN WHEN THE LAW DOES NOT ALLOW YOU TO DO SO (INTERPRETATION IN ACCORDANCE WITH ARTICLE 353 OF THE CODE OF CRIMINAL PROCEDURES FOR THE STATE OF GUANAJUATO). The aforementioned precept that provides that the Public Ministry, the defendant and the defense attorneys have the right to appeal, must be interpreted in accordance with the human right of access to justice contained in article 17 of the Political Constitution of the United Mexican States, which in the case involves the existence of an effective remedy, the right to truth and justice, that in favor of the victim or offended of the crime are recognized by the Constitution, so it must be read in the sense that the victim or offended of the crime has the right to appeal the sentence, the orders or the resolutions provided for in articles 354 and 355 of the Code of Criminal Procedures for the State of Guanajuato, with the purpose of directly or indirectly defending the rights enshrined in their favor in article 20, section B, of the Federal Constitution, in its text prior to the reform published in the Diario Oficial Federación on June 18, 2008, and international treaties, in accordance with number 1, first paragraph, of the Fundamental Regulation. The foregoing, in accordance with the principle of constitutional supremacy contained in article 133 of the Constitution itself, which is configured as an inherent guideline of the Mexican legal-political system that rests on the primary expression of sovereignty in the issuance of the Constitution and that therefore places it above all laws and all authorities. In this sense, more than a power, constitutional supremacy imposes a duty on all authorities to adjust the acts carried out in the exercise of their powers to their precepts, so that the Legislative Power, when issuing laws, must observe the Supreme Law. , in the same way as the Executive and the Judiciary when exercising their powers. Thus, considering that the legitimacy to challenge intermediate and final resolutions in criminal proceedings is limited only to the Public Prosecutor, accused and defense attorneys, as does article 353 of the aforementioned code, would negate the human rights of the victim or victim of the crime contained in the Political Constitution of the United Mexican States, whose legislative motivation was to rescue them from the oblivion in which they found themselves, a factor that motivated to reconsider at the constitutional level the position they occupy in the preliminary stage of prior investigation and the criminal process, with the purpose of improving their legal situation and consolidating their active participation, mainly to obtain reparation for the damage that the typical event caused them; Hence, the fundamental rights of the victim or offended party derived from a criminal process cannot be nullified due to deficient or insufficient regulatory development by the secondary legislator.

aware of a disappearance, it has the duty to initiate an exhaustive, diligent and impartial investigation, even when no formal complaint has been filed.<sup>60</sup>.

88. The search, the discovery of the fate or whereabouts of the disappeared person and the determination of the responsibilities associated with that disappearance also integrate the right to the truth of the victims. The claim of the victim of a human rights violation to find the "truth" as a state response is an essential component of the validity and legitimacy of justice. In fact, the right to know is recognized by the international corpus iuris as a fundamental right.
89. The Inter-American Court of Human Rights<sup>61</sup> it has resolved that every person has the right to know the truth, and that one modality of reparations is precisely that the State satisfies said right. The regional court has also ruled that the right of the victims and/or their relatives to obtain clarification of the facts that violate human rights and the corresponding responsibilities from the competent bodies is precisely the core of the right to the truth.
90. Principle 4 of the "Set of principles for the protection and promotion of human rights through the fight against impunity"<sup>62</sup> indicates that "[...] the victims and their next of kin have the right [...] to know the truth about the circumstances in which the violations were committed...". It also recognizes the importance of respecting and guaranteeing the right to the truth to end impunity and promote and protect human rights.<sup>63</sup> This guarantee acquires critical dimensions in generalized contexts of violence or where crimes are perpetrated that may have some of the characteristics of systematicity, as occurs in Mexico with the disappearance of people.

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<sup>60</sup>IHR Court. Case of Rosendo Radilla-Pacheco v. Mexico, op. cit. paragraph 169.

<sup>61</sup>IHR Court. Case of Bámaca Velásquez v. Guatemala. Background. Judgment of November 25, 2000. Series C No. 70.

<sup>62</sup>Report by Diane Orentlicher, "Updated set of principles for the protection and promotion of human rights through the fight against impunity", February 8, 2005, E/CN.4/2005/102/Add.1., 8 February 2005.

<sup>63</sup>See Pablo de Greiff, "Theorizing Transitional Justice," in *Transitional Justice: NOMOS LI*, Melissa S. Williams, Rosemary Nagy, and Jon Elster, eds., (New York and London, NYU Press, 2012).

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91. The Chamber has already recognized in its precedents<sup>64</sup> that one of the demands of the victims is that the damage that has been caused to them be recognized. It is essential, therefore, to recognize that the victims have been wronged; something that can only be achieved through diligently conducted investigations and ending with an account consistent with extensively collected evidence and professionally and impartially analyzed. Attitude of the authority that will be consistent with the justice aspirations of the victims. Victims and their families have the right to name the abuse they have suffered, to find their loved ones, to identify the perpetrators, to know the causes that originated the violations<sup>65</sup> and that the competent authorities are committed to all these purposes.
92. Effective research requires the development of rational avenues of inquiry; a thorough analysis of the facts, and extensive gathering of evidence, including opinions from experts on the different components, background, and consequences of the disappearance, as well as on the necessary and efficient elements for the search. Thus, the State must ensure not only that the authorities in charge of the search for persons reported as disappeared and the investigation into the events that culminated in their disappearance have at their disposal the means required to carry them out, but that these are actually used to carry out the proceedings and inquiries promptly. mistakes, oversights,
93. The truth is – the Chamber has already said<sup>66</sup> – an acknowledgment of the suffering of the victims and not just a typical adequacy decision, based on legal categories. The truth will consist, more than anything, in the delivery of an account corresponding to the facts, sufficiently proven and arising from an exhaustive and diligently conducted investigation. The truth is not any version; explanations for facts that are inconsistent with the available evidence or the product of an arbitrary selection or interpretation thereof do not satisfy the right

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<sup>64</sup>Amparo under review 1284/2015 (Karla Pontigo Lucciotto case), op. cit.

<sup>65</sup>Report by Diane Orentlicher “Updated set of principles for the protection and promotion of human rights through the fight against impunity”, February 8, 2005, E/CN.4/2005/102/Add.1., February 8, 2005. February 2005.

<sup>66</sup>Amparo under review 1284/2015 (Karla Pontigo Lucciotto case), op. cit.

to the truth. Truth is ideally built on consensus. That is, the versions and explanations of the victims must be considered and, in any case, they must be convinced by the authorities; it is difficult to associate reparatory purposes to an imposed truth or where the victims do not feel represented or taken into account.

94. The Chamber has already indicated in its precedents<sup>67</sup> that between the interests of the victims and the punitive claim of the Public Ministry – if the rights of the victims are to be respected – a convergence must be aspired to; possible antagonisms must be purged to generate a justice process where the victims are recognized and restored. The strength of this exchange is built –said the Chamber– with the participation of the victims in the preliminary investigation and with the possibility of correcting –with the use of the necessary and available resources– the actions of the Public Ministry that the victims understand as opposed to their needs for justice.
95. In the case of the disappearance of persons, this convergence implies that the Public Prosecutor adapts its action to the primary purpose of the victims: finding their loved ones alive. Thus, each act of the investigative process must be aimed at locating the victims alive, determining the truth, and pursuing, capturing, prosecuting, and punishing those responsible for the events. In this sense, when the State becomes aware of a disappearance, it has the duty to initiate an exhaustive, diligent and impartial investigation, even when no formal complaint has been filed.<sup>68</sup>
96. The proceedings and investigations whose objective is to determine the fate or whereabouts of a person reported as missing must start from a presumption of life, be deep, exhaustive, diligent, and allow the participation of the victims in the search for their loved ones.<sup>69</sup>, and give satisfactory, convincing and dignifying

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<sup>67</sup>Ibid.

<sup>68</sup>IHR Court. Case of Rosendo Radilla-Pacheco v. Mexico, op. cit. paragraph 169.

<sup>69</sup>"In accordance with this criterion, the Court attributes a high probative value to the statements of the witnesses, within the context and circumstances of a case of forced disappearance, with all the difficulties that derive from it, where the means of proof they are essentially indirect and circumstantial testimonies due to the very nature of this crime, added to pertinent logical inferences, as well as its link to a general practice of disappearances." Cf. Inter-American Court of Human Rights. Case of Alvarado Espinoza v. Mexico. Op.cit.

results<sup>70</sup>. A different approach violates the right to the truth, impedes access to justice and reparation, and compromises the responsibility of the State and its agents, both internally and internationally.

97. The Inter-American Court of Human Rights maintains that the obligation of the State to investigate must be fulfilled diligently to avoid impunity; which means that "once the state authorities are aware of the fact that presumably violates human rights, they must initiate ex officio and without delay, a serious, impartial and effective investigation by all available legal means and aimed at determining the truth"<sup>71</sup>. In the opinion of the Inter-American Court, impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their families."<sup>72</sup>
98. Consequently, it is essential that the Mexican State fulfill its obligation to combat such a situation by all possible legal means. In this way, the responsible authorities must effectively investigate the facts of the case, identify those responsible for them, both material and intellectual, as well as any possible concealers, and punish them.<sup>73</sup> If the facts are not seriously investigated, they would be helped in some way by the public power, which would compromise the international responsibility of the State<sup>74</sup>.
99. General Law Regarding Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons,

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<sup>70</sup>Regarding cases of forced disappearance, the [Inter-American] Court has confirmed the existence of a right of the next of kin of the victim to know what their fate was and, where appropriate, where they are or, where appropriate, his rests". In these cases, impunity must be eradicated by determining the responsibilities, both general –of the State– and individual –criminal and of another nature of its agents or individuals. Cf. Inter-American Court of Human Rights. Case of Rosendo Radilla-Pachecho v. Mexico. Op.cit.

<sup>71</sup>See I/A Court HR. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Paragraphs 289 and 290. Likewise, I/A Court HR. Case of Véliz Franco et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277.

<sup>72</sup>See I/A Court HR. Case of Suárez Peralta v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261.

<sup>73</sup>See I/A Court HR. Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103.

<sup>74</sup>See I/A Court HR. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196.

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especially in article 5, it establishes the principles that must govern the search for persons, which are, among others:

I. Effectiveness and exhaustiveness: all the procedures carried out to search for the Missing or Unlocated Person will be carried out immediately, in a timely manner, and in a transparent manner, based on useful and scientific information, aimed at locating and, where appropriate, identification, taking into account all possible lines of investigation. Under no circumstances may the particular conditions of the Missing or Unlocated Person be invoked, or the activity carried out prior to or at the time of the disappearance so as not to be searched for immediately;

II. Due diligence: all authorities must use the necessary means to promptly carry out those essential and timely actions within a reasonable time to achieve the purpose of this Law, especially the search for the Missing or Unlocated Person; as well as help, attention, assistance, the right to the truth, justice and comprehensive reparation so that the victim is treated and considered as a holder of rights. In any investigation and criminal process that is initiated for the crimes provided for in this Law, the authorities must guarantee its development in an autonomous, independent, immediate, impartial, effective manner, and carried out with opportunity, completeness, respect for human rights and the highest level of professionalism; [...]

VIII. Maximum protection: the obligation to adopt and apply the measures that provide the broadest protection to guarantee dignified treatment, security, protection, physical and psychological well-being, and privacy of the Victims referred to in this Law;

X. Joint participation: the authorities of the different levels of government, in their respective spheres of competence, will allow the direct participation of the Relatives, under the terms provided in this Law and other applicable provisions, in the search tasks, including the design, implementation and evaluation of actions in particular cases, such as in public policies and institutional practices;

XIII. Truth: the right to know with certainty what happened and receive information about the circumstances in which the acts constituting the crimes provided for in this Law were committed, while the object of the same is the clarification of the facts, the protection of the Victims, the punishment of the responsible persons and the repair of the damages caused, in terms of the articles 1o. and 20 of the Political Constitution of the United Mexican States.

100. Article 21 of the General Law on Victims states that:

The State, through the respective authorities, has the obligation to initiate, immediately and as soon as it is informed, all the procedures at its disposal

to determine the whereabouts of the disappeared persons. Every victim of disappearance has the right for the authorities to deploy the pertinent actions for her protection with the aim of preserving, as much as possible, her life and her physical and psychological integrity. This includes the implementation of search protocols in accordance with the applicable legislation and the International Treaties to which Mexico is a Party.

This obligation includes carrying out exhumations from cemeteries, clandestine graves or other places where there are well-founded reasons to believe that the bodies or bones of the victims are found. Exhumations must be carried out with due diligence and competence and in accordance with international regulations and protocols on the matter, always seeking to guarantee the correct location, recovery and subsequent identification of the bodies or bones under internationally recognized scientific standards. The next of kin of the victims have the right to be present at the exhumations, by themselves and/or through their legal advisors; to be informed about the protocols and procedures that will be applied; and appoint independent experts,

101. Regarding the characteristics of the search and its relationship with the duty to investigate, the Inter-American Court, in the case of *Alvarado Espinoza vs. Mexico*, specifically said:

“As part of the duty to investigate, the State must carry out an effective search for the whereabouts of the victims (), since the right of the next of kin to know the whereabouts of the victim constitutes a measure of reparation and, therefore, an expectation that the State must satisfy them. In turn, this allows family members to alleviate the anguish and suffering caused by such uncertainty.”<sup>75</sup>

Consequently, it is necessary for the State to make exhaustive search efforts through the appropriate judicial and/or administrative channels, in order to determine the whereabouts of the disappeared as soon as possible, which must be carried out systematically and rigorously, with the resources adequate and suitable human, technical and scientific personnel. The aforementioned proceedings must be reported to their relatives. In this sense, the State must carry out a search schedule, and in its next annual report report to the Court on the results of the actions carried out.”<sup>76</sup>

102. Based on the General Law Regarding Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons, the Approved Investigation Protocol and the Approved

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<sup>75</sup>IHR Court. Case of *Alvarado Espinoza v. Mexico*, op. cit., paragraph 298.

<sup>76</sup>*Ibidem*, paragraph 299.

Search Protocol were issued, the purpose of which is to establish general parameters of action for all the authorities involved in the Search for people reported missing. These instruments provide for how the search for people should involve all the competent authorities and how they should coordinate and collaborate with each other to achieve efficient search processes, which are the responsibility of both the search authorities and the investigative authorities.<sup>77</sup>, and, in general, of the institutions of the Mexican State. According to this instrument, the degree of participation of the institutions differs according to the nature of their functions and attributions.

103. It is true that the investigation of crimes and the exercise of criminal proceedings correspond to the Public Prosecutor's Office, but this Chamber finds no impediment for it -in the exercise of these powers and with the necessary institutional coordination between all the competent authorities- to try to establish the fate or whereabouts of a person reported as disappeared, with due consideration and participation of the victims, to show the state's commitment to the rights to truth, justice and reparation<sup>78</sup>.
104. Regarding the standards that a search must meet, the Approved Protocol says, among other things:

69. Any person whose whereabouts or location is unknown has the right to be searched by the authorities. Likewise, family members and other people directly affected by the absence have the right to search for the missing or missing person.

70. Although it is true that the search for the disappeared person and the ministerial investigation of the events and persons that caused their disappearance are closely related and necessarily have an impact on each other, it is essential to highlight that they have their own legal entity, that is, they are independent obligations; the specific obligations of each of them should not be diluted in the other, nor should one be preferred over the

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<sup>77</sup>Published on November 17, 2017 in the Official Gazette of the Federation and in an extraordinary session of the National Search System, approved on August 27, 2020 in an extraordinary session of the National Search System, in the process of being published. Information obtained from the amicus curiae presented by the National Search Commission regarding this matter.

<sup>78</sup>"Disappearance should not be understood only as a crime, so that the investigation is mainly focused on finding and investigating the perpetrators, in these cases the primary function - without neglecting the investigation of the crime - is the search and location of the person alive disappeared, any delay seriously jeopardizes this possibility". Cf. Case of Alvarado Espinoza v. Mexico.



other. In any case, both in the search and in the investigation, due diligence must be applied.

72. The evolutionary development of the right of every person to be searched implies evaluating the content and scope of this right against the right to have an investigation carried out with due diligence. In other words, it is necessary to rethink –as has been done in other countries– certain actions that had been considered exclusively for their impact on the search [...]

73. The obligation to search for the disappeared or missing person is as important as the obligation to investigate the facts that cause or caused the impossibility of locating them. In other words, every person has the right to be searched for, independently and in parallel with the right to a diligent investigation into the events that caused the disappearance [...]

105. At the international level, the Guiding Principles for the Search for Disappeared Persons, issued by the UN Committee against Enforced Disappearance, are acceptable and observable.<sup>79</sup> In their justification, these principles state that:

[...]seek to consolidate good practices for the effective search for disappeared persons, derived from the obligation of States to search for them. They have been prepared based on the accumulated experience of the Committee during its first eight years, in particular, in the final observations (article 29) and urgent actions (article 30). The Guiding Principles were developed in dialogue and broad consultation with many victims' organizations, civil society, experts, intergovernmental organizations, and States: The Guiding Principles reaffirm the essential role that victims play in the search for missing persons.

106. These principles indicate, among other things:

- i. The search must be conducted with the presumption of life (Principle 1);
- ii. The search must consider the dignity of the victims and the necessary protection of the people (Principles 6 and 14), the victims must not be ignored or stigmatized and they will be the center of the investigation and the search (Principle 2);
- iii. The State has obligations to search for, locate, release, or return the remains, as appropriate, of all persons subjected to disappearance, and must take into account the analysis of the various criminal modalities and patterns that generate disappearances in the country (Principle 3 );

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<sup>79</sup>Approved in the 16th. Period of sessions (8 to 18 April 2019).

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- iv. The search must be comprehensive, clear, transparent, visible and coherent, and it must promote the cooperation and collaboration of all instances of the State and international organizations. (Principle 3);
- v. The specific guidelines for the search must be built and implemented, in all its stages and with all its scope, with the participation of the victims and people and civil society organizations with experience in the subject; (Principle 5);
- vi. The search does not admit delays, it must be undertaken ex officio, no term will be conditioned and it will begin immediately (Principle 6);
- vii. The search does not end until there is certainty about the fate or whereabouts of the disappeared person and it is verified that they are under the protection of the law or have been fully identified and handed over to their relatives with dignity (Principle 7);
- viii. The investigation and search should consider information from relatives and attend to scientific reports (Principle 8);
- ix. Institutional efforts must be coordinated: criminal investigations must also be aimed at locating the person reported as missing (Principles 12 and 13), and
- x. The search for the disappeared person and the criminal investigation of those responsible for the disappearance should be mutually reinforcing (Principles 12 and 13).

107. Based on the aforementioned national and international standards, for this Chamber it is clear that the search and its results integrate the essential core of the right not to suffer forced disappearance and give content and substance to the duties to prevent, investigate and repair rights violations. rights and their correlative rights to truth, justice and reparation. This means that -in the area of the search for persons reported as missing-, the competent authorities of the Mexican State must determine, with reparatory and dignifying certainty, the fate or whereabouts of the persons reported as missing in order to reduce the anguish and anxiety of their close people, as a standard of fulfillment of those duties and as a standard of satisfaction of the rights to truth and justice.

108. Therefore, this Chamber concludes that there is a right to search. That is, the right of all disappeared persons and their loved ones to have all the authorities, within the scope of their respective competences, with all available resources and institutional means, and in complete coordination, execute without delay – even ex officio- impartially, dignified, diligent, exhaustive, continuous, without

stigmatization, with a differential approach and allowing the unreserved participation of the victims, all the necessary actions to determine the fate or whereabouts of the person reported as disappeared, under the presumption of that she is alive, unless there is evidence to the contrary; then,

109. It is convenient to clarify that, by differential approach, this Chamber alludes to the introduction of a diversity perspective in the search processes for people and in the attention and consideration of the people who search for them. The diversity perspective is the paradigm according to which the differentiated causes, consequences and impacts of the disappearance of people due to gender, ethnicity, disability status, age, among other exclusion factors that determine the form and patterns of disappearance, as well as the way in which indirect victims deal with this violation.
110. On this point, this Chamber insists that the search does not cease until the fate or whereabouts of the disappeared person is certain and it is verified that they are under the protection of the law, or they have been fully identified and handed over to their next of kin in conditions of dignity and respect for their suffering.
111. Once established that there is a right to search and how it can satisfy the right to truth, justice and reparation, this Chamber will study the obligation of urgent actions, issued by the Committee against Forced Disappearance, understanding its central role in the determination –by the authorities of the Mexican State and in particular by the authorities identified as responsible in this review– of the fate or whereabouts of the young Emiliano.

**Urgent actions and their mandatory nature**

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112. When a person disappears, there is a real and immediate risk to a host of human rights (personal liberty and integrity, legal personality, and even life).<sup>80</sup>, and the State must implement the entire appropriate institutional apparatus to prevent the materialization of the risk with the priority of quickly locating the victim alive, since the simple fact of their prolonged isolation and coercive incommunication are in themselves forms of cruel and inhumane treatment, which damages their freedom and integrity. The delay is particularly damaging to the victims; time becomes an aggravating factor for the risks and violations suffered.
113. Thus, in cases of disappearance of persons, the general obligations to respect, protect, guarantee and promote human rights are intensified. The Mexican State must react immediately and effectively to it and act with extreme or qualified due diligence to avoid irreparable damage. As stated in previous sections of this ruling, there is a right to search and international and national standards agree that the search requires States to resort to all useful national and international legal tools.<sup>81</sup> to establish the fate or whereabouts of a person reported missing.
114. In a context like that of our country where the disappearance of people has spread in an unfortunate and undesirable way, it is essential to supervise judicially and constitutionally that the search for people and the investigation into the violations and the identity of those responsible not only complement each other, but coordinate efficiently and with the use of all available institutional means, including those originating from international law.
115. Thus, this Chamber disagrees with the approach of the district judge in denying the obligation of urgent actions, issued by the Committee against Enforced Disappearance, as part of its powers stemming from the International Convention for the protection of all persons against forced disappearance, and

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<sup>80</sup>IHR Court. IHR Court. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202.

<sup>81</sup>Sandra Serrano and Volga de Pina: in "Lost in the process: the disappearance of people in Mexico", they insist on the need to make the mechanisms available for the search for missing persons operational and efficient.

thereby prevent judicial and constitutional supervision of compliance by the responsible authorities. Main argument of Mrs. Julia when filing this review.

116. The Vienna Convention on the Law of Treaties<sup>82</sup> honoring the resolution of the United Nations to create conditions to maintain justice and respect for the obligations arising from treaties and the principles of equal rights and self-determination of peoples, sovereign equality and independence of all States, non-interference in the internal affairs of States, the prohibition of the threat or use of force and universal respect for human rights, and vindicating the need and importance that disputes relating to treaties agreements are resolved peacefully and in accordance with the principles of justice and international law, establishes a series of guidelines to resolve eventual disputes and to indicate the general way in which international treaties must be interpreted so that the reasons for their adoption are effectively satisfied.
117. Article 26 of the Vienna Convention, based on the universally accepted principle that agreements must be fulfilled, ensures that the provisions of treaties must be fulfilled in good faith.<sup>83</sup>, while article 27 of the same instrument establishes that the internal provisions cannot be an excuse to except their compliance. It is also necessary to remember that the ratification of a treaty implies the commitment that it will have a concrete impact at the national level; that is to say that it has a useful effect.<sup>84</sup>

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<sup>82</sup>Adopted on May 23, 1969, ratified by Mexico on September 25, 1974, and published on January 27, 1980.

<sup>83</sup>Cf. International responsibility for the issuance and application of laws that violate the Convention (Articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and Case of Barrios Altos v. Peru. Supervision of compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 7, 2012, considering clause four. The foregoing has been included in "Resolution approved by the General Assembly [based on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83, Responsibility of the State for internationally wrongful acts, 85th plenary session, December 12, 2001, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigenda (A/56/10 and Corr.1 and 2). IHR Court. Resolution of compliance with judgment of March 20, 2013 in the case of Gelman vs. Uruguay, para. 59.

<sup>84</sup>Argumentation shared by this Chamber and the National Search Commission, who presented an amicus curiae to the interest in this matter since it is one of the authorities of the Mexican State obliged to comply with the Urgent Actions.

118. For its part, Article 1 of the Constitution prescribes the incorporation of international human rights norms into the internal constitutional order and, furthermore, requires that cohesion and coherence between constitutional norms of internal and international origin be preserved by inexcusably interpreting human rights protected by both sources in the sense of granting the broadest protection to people.

119. The greatest useful effect that should be given –then– to an international norm of human rights is to allow it to express with all its power the respect, protection and guarantee of human rights both internally and internationally. Thus, the Inter-American Court of Human Rights considers that:

[...] are not multilateral treaties of the traditional type concluded on the basis of a reciprocal exchange of rights, for the mutual benefit of the contracting States. Its object and purpose are the protection of the fundamental rights of human beings regardless of their nationality, both against their own State and against other contracting States. By approving these human rights treaties, States submit to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards the individuals under their jurisdiction.<sup>85</sup>

Consequently, for this Chamber there is a clear correlation between the principle of useful effect and the pro persona principle, as interpretative principles of the content of treaties and their regulatory consequences.

120. On the other hand, Article 31.1 of the Vienna Convention on the Law of Treaties reaffirms that every treaty in force binds the parties and must be interpreted in good faith in accordance with the ordinary meaning that must be attributed to the terms of the treaty in the context of these and taking into account its object and purpose. The preamble of the International Convention for the Protection of All Persons against Enforced Disappearance, from which –among other documents– its object and purpose is precisely extracted (Article 31.2 of the Vienna Convention on the Law of Treaties), states:

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<sup>85</sup>IHR Court. The effect of reservations on the entry into force of the American Convention on Human Rights (articles 74 and 75), advisory opinion OC-2/82 of September 24, 1982, Series A No. 2, para. 29. Information obtained from the Amicus Curiae presented by Idheas, a civil association dedicated to strategic litigation.

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Preamble: I. The States Parties to this Convention,

*Considering* that the Charter of the United Nations imposes on States the obligation to promote universal and effective respect for human rights and fundamental freedoms,

*Given* the Universal Declaration of Human Rights, Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other relevant international instruments on human rights, humanitarian law and international criminal law,

*remembering* too the Declaration on the protection of all persons against forced disappearances, approved by the General Assembly of the United Nations in its resolution 47/133, of December 18, 1992,

*Conscious* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined by international law, a crime against humanity,

*determined* to prevent enforced disappearances and fight against impunity for the crime of enforced disappearance,

*Bearing present* the right of every person not to be subjected to forced disappearance and the right of victims to justice and reparation,

*affirming* the right to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, as well as respect for the right to freedom to seek, receive and impart information for this purpose [...]

121. This reveals that the spirit of the International Convention for the protection of all persons against forced disappearance is to prevent, investigate, punish, and repair the forced disappearance of persons, as well as provide the latter with the broadest protection against its occurrence and effects. . The preamble also contains the acknowledgment of the signatory States of the seriousness of this violation of human rights and their commitment to the purposes of the treaty, which is confirmed by the full reading of the same, which was unconditionally accepted by the Mexican State, since did not make any reservation<sup>86</sup>.

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<sup>86</sup>Preparatory work: In a session held on April 23, 2001, the Human Rights Commission also decided to establish an intersessional Working Group to prepare a draft binding normative document for the protection of all persons against forced disappearances. The French representative, Bernard Kessedjan, was appointed special rapporteur. During 3 years of negotiations, around 70 States, as well as several NGOs, exchanged their views on the provisions of the future instrument and, based on the recommendations of Manfred Nowak's report, the Human Rights Council adopted in June 2006, by consensus, the text of the Convention [...] From the preparatory work it can also be deduced that Mexico was a prominent promoter of the adoption of the Convention.

122. The International Convention for the protection of all persons against forced disappearance contains the establishment of a mechanism for monitoring and supervising compliance with the provisions of the treaty: the Committee against Forced Disappearance. Articles 26 to 36 of the International Convention for the Protection of All Persons regulate the powers and powers of the Committee against Forced Disappearance<sup>87</sup>. Of this regime of faculties, only those referring

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<sup>87</sup>International Convention for the Protection of All Persons against the Enforced Disappearance of Persons

**Article 26**

1. For the application of the provisions of this Convention, a Committee against Enforced Disappearance (hereinafter referred to as "the Committee") shall be established, made up of ten experts of high moral integrity, of recognized competence in the field of human rights, independent, who will perform their functions in a personal capacity and will act with total impartiality. The members of the Committee shall be elected by the States Parties taking into account an equitable geographical distribution. The interest represented by the participation in the work of the Committee of persons having relevant legal experience and of a balanced representation of the genders will be taken into account.

2. The election shall be carried out by secret ballot from a list of candidates designated by the States Parties from among their own nationals, at biennial meetings of the States Parties convened for this purpose by the Secretary General of the United Nations. In these meetings, for which two thirds of the States Parties will form a quorum, the candidates who obtain the greatest number of votes and the absolute majority of the votes of the representatives of the States Parties present and voting will be considered elected.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations will address a letter to the States Parties inviting them to submit their candidatures within three months. The Secretary General shall prepare a list in alphabetical order of all the candidates so designated, indicating, for each of them, the State Party that has nominated him. This list will be communicated to all States Parties.

4. The members of the Committee will be elected for four years. They may be reappointed once. However, the terms of five of the members elected at the first election shall expire after two years; immediately after the first election, the names of those five members shall be drawn by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason is unable to continue to serve on the Committee, the State Party that nominated him shall propose, taking into account the criteria provided for in paragraph 1 of this article, another candidate, from among their own nationals, to serve for the remaining term of office, subject to the approval of a majority of the States Parties. Such approval shall be deemed granted unless half or more of the States Parties reply in the negative within six weeks from the time the Secretary-General of the United Nations communicates to them the proposed candidacy.

6. The Committee will establish its internal regulations.

7. The Secretary-General of the United Nations will provide the personnel and material means necessary for the effective performance of the functions of the Committee. The Secretary-General of the United Nations will convene the first meeting of the Committee.

8. The members of the Committee shall be entitled to the facilities, privileges and immunities recognized for experts on mission to the United Nations, in accordance with the provisions of the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

9. The States Parties undertake to cooperate with the Committee and assist its members in the exercise of their mandate, within the framework of the functions of the Committee accepted by said States Parties.

**Article 27**

A Conference of States Parties shall meet not earlier than four years and not later than six years after the entry into force of this Convention, to evaluate the functioning of the Committee and decide, according to the modalities provided for in paragraph 2 of the Article 44, if it is appropriate to entrust to another instance –without excluding any possibility–, with the powers provided for in Articles 28 to 36, the supervision of the application of this Convention.

**Article 28**



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1. Within the framework of the powers conferred on it by this Convention, the Committee shall cooperate with all United Nations bodies, offices, specialized agencies and funds, treaty committees created under international instruments, special procedures for Nations, appropriate regional intergovernmental organizations or institutions, as well as all relevant national institutions, agencies and offices working to protect all persons from enforced disappearance.

2. Within the framework of its functions, the Committee shall consult with other treaty committees established by the relevant human rights instruments, in particular the Human Rights Committee established by the International Covenant on Civil and Political Rights, with a view to ensuring the coherence of their respective observations and recommendations.

### Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures it has adopted to comply with its obligations under this Convention, within a period of two years from count from the entry into force of the Convention in the State Party in question.

2. The Secretary-General of the United Nations shall make the reports available to all States Parties.

3. Each report will be examined by the Committee, which may make any comments, observations or recommendations it deems appropriate. The State Party concerned shall be informed of said comments, observations or recommendations, to which it may reply, on its own initiative or at the request of the Committee.

4. The Committee may also request additional information from the States Parties on the application of this Convention.

### Article 30

1. The Committee may urgently examine any petition submitted by the relatives of a disappeared person, their legal representatives, their lawyers or persons authorized by them, as well as anyone who has a legitimate interest, in order to Search and locate a missing person.

2. If the Committee finds that the request for urgent action submitted under paragraph 1 of this article:

a) It is not manifestly without foundation;

b) It is not an abuse of the right to submit such requests;

c) It has been submitted previously and in due form to the competent bodies of the State Party concerned, such as the authorities in charge of conducting investigations, when such a possibility exists;

d) It is not incompatible with the provisions of this Convention; and

e) It is not being dealt with in another international instance of examination or settlement of the same nature; It will request the State Party concerned to provide it, within the period determined by the Committee, information on the situation of said person.

3. Taking into account the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit its recommendations to the State Party and include a request that it take all necessary measures, including precautionary measures, to locate and protect the person in accordance with this Convention, and may request that it report to the Committee, within the period determined by it, on the measures it takes, taking into account the urgency of the situation. The Committee will inform the person who submitted the request for urgent action about its recommendations and about the information transmitted by the State Party when it becomes available.

4. The Committee will continue its efforts to collaborate with the State Party as long as the fate of the disappeared person has not been clarified. The Committee will keep the petitioner informed.

### Article 31

1. Each State Party may declare, at the time of ratification or after ratification, that it recognizes the competence of the Committee to receive and examine communications submitted by persons under its jurisdiction or on behalf of them, who claim to be victim of violations by this State Party of the provisions of this Convention. The Committee will not admit any communication relating to a State Party that has not made such a declaration.

2. The Committee will declare any communication inadmissible if:

a) It is anonymous;

b) Constitutes an abuse of the right to submit such communications or is incompatible with the provisions of this Convention;

c) The same issue is being dealt with in another international instance of examination or settlement of the same nature; or if

d) The effective domestic remedies available have not been exhausted. This rule does not apply if the appeal procedures exceed reasonable time limits. 3. If the Committee considers that the communication meets the conditions established in paragraph 2 of this article, it shall transmit it to the State Party concerned and request that it provide it, within a period to be set by the Committee, with its observations and comments.

to the receipt of individual petitions are subject to subsequent confirmation (which, by the way, was already carried out by the Mexican State<sup>88</sup>), while the interpretative competences<sup>89</sup>, to receive reports, issue general

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4. At any time after receiving a communication and before reaching a decision on the merits, the Committee may address to the State Party concerned, for the purposes of its urgent examination, a request that it adopt the necessary precautionary measures with a view to avoid possible irreparable harm to the victim or victims of the alleged violation. The exercise of this power by the Committee does not imply any judgment on the admissibility or on the merits of the communication.

5. The Committee will hold its sessions behind closed doors when examining the communications provided for in this article. The Committee will inform the author of the communication of the responses provided by the State Party concerned. When the Committee decides to end the procedure, it will communicate its opinion to the State Party and to the author of the communication.

**Article 32**

Each State Party to this Convention may declare at any time that it recognizes the competence of the Committee to receive and examine communications in which a State Party alleges that another State Party does not comply with its obligations under this Convention. The Committee will not admit any communication relating to a State Party that has not made such a declaration, nor a communication presented by a State Party that has not made such a declaration.

**Article 33**

1. If the Committee receives reliable information that reveals serious violations of the provisions of this Convention by a State Party, it may, after consulting with said State, request one or more of its members to visit it and inform the Committee. respect without delay. 2. The Committee shall inform the interested State Party in writing of its intention to carry out a visit, indicating the composition of the delegation and the purpose of the visit. The State Party will provide its response within a reasonable period of time.

3. Upon a reasoned request from the State Party, the Committee may decide to postpone or cancel the visit.

4. If the State Party grants its agreement to the visit, the Committee and the State Party in question will cooperate to define the modalities of the visit and the State Party will offer all the necessary facilities for its development.

5. The Committee shall communicate to the State Party concerned its observations and recommendations as a result of the visit.

**Article 34**

If the Committee receives information that, in its opinion, contains well-founded indications that enforced disappearance is practiced in a generalized or systematic manner in the territory under the jurisdiction of a State Party, and after having requested all pertinent information from the State Party concerned regarding this situation, it may urgently take the matter to the consideration of the General Assembly of the United Nations, through the Secretary General of the United Nations.

**Article 35**

1. The jurisdiction of the Committee only extends to forced disappearances that began after the date of entry into force of this Convention.

2. If a State becomes a Party to this Convention after its entry into force, its obligations towards the Committee will only extend to enforced disappearances that began after the Convention entered into force for that State.

**Article 36**

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

2. The publication in the annual report of an observation relating to a State Party must be previously announced to that State, which will have a reasonable response period and may request the publication of its comments or observations in the report.

<sup>88</sup>The competence for the Committee against the forced disappearance of persons to hear individual petitions regarding Mexico was referred to the Senate of the Republic by the President of the Republic on August 26, 2020, and the Senate, in turn, unanimously, approved the respective opinion on September 1, 2020.

<sup>89</sup>Well, they clarify, specify and shed light on the commitments assumed by the State Party freely by agreeing to give its final consent to that treaty. Coinciding argument between this Chamber and what was expressed in the Amicus curiae, presented by Idheas, a civil organization dedicated to strategic litigation.

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recommendations or final observations, and dictate and supervise urgent actions are unquestionably part of the normative content of the International Convention for the protection of persons against forced disappearances, so that they must be understood as part of the provisions that Mexico accepts by signing it, ratifying it and incorporating it into its internal legal regime. This means that the Mexican State ratified and added to its internal constitutional regime these powers and powers, as well as the resolutions issued in the exercise of those powers.

123. In fact, the Mexican State has responded to these recommendations, provided reports on compliance with the provisions of the treaty and the urgent actions issued in the case of Mexico. The Mexican State even has a procedure<sup>90</sup> and an internal legal regime to comply with those measures<sup>91</sup>, which includes the responsibility of the investigative agencies in its execution.

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<sup>90</sup>In accordance with article 29 section X of the Internal Regulations of the Ministry of Foreign Affairs, the General Directorate of Human Rights and Democracy is in charge of monitoring, in coordination with national agencies and international organizations, the implementation of precautionary measures and provisional ones issued by international and regional mechanisms for the protection of human rights. To this end, once the Mexican State receives a request from the Committee against Enforced Disappearance for the implementation of precautionary measures, the Ministry of Foreign Affairs forwards it to the Unit for the Defense of Human Rights attached to the Human Rights Undersecretary of the Secretariat of the Interior, Unit that in accordance with article 24 section IX is in charge of coordinating with federal and local authorities the attention of the requests for precautionary or precautionary measures necessary to prevent the violation of human rights, as well as implementing said measures. Subsequently, once the measures required in the request of the Committee or other international organizations are implemented, the Ministry of the Interior sends the Ministry of Foreign Affairs information regarding all the actions carried out so that it can prepare and send a report on the case, in particular the Committee against Enforced Disappearances of the United Nations. In the case of urgent actions, The Attorney General of the Republic (PGR) requests information from the substantive areas in order to identify if there is any circumstantial record or prior investigation related to the disappeared person. Requests to implement precautionary and protection measures, within the PGR, are sent for determination to the Committee for the Determination, Follow-up and Evaluation of Security and Protection Measures for People. Currently, the Committee against Enforced Disappearances has requested precautionary measures from Mexico on four occasions, of which, in three of them, escort services have been implemented; in one case, the protection was not accepted by the beneficiary. (Response to the list of questions regarding the report submitted by Mexico under article 29, paragraph 1, of the Convention,

<sup>91</sup>The Approved Person Search Protocol includes a chapter for compliance with urgent actions: 552. The CNB is the authority responsible for monitoring and complying, in coordination with the other competent authorities, with the determinations that, in terms of search for disappeared persons, issued by international human rights bodies, including recommendations, opinions, opinions, decisions, final observations, merits reports, rulings and international sentences, as well as urgent actions and precautionary or provisional measures. (underlining out of the original) 553. The SRE will transmit said determinations to the CNB so that it implements, in coordination with all the authorities involved in the search processes, the attention and response to them. By virtue of the emergency that implies the attention of urgent, precautionary and provisional measures, the SRE must send them immediately and directly to the CNB for due attention. 554. The CNB will carry out and promote the search, in coordination

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124. With regard specifically to urgent actions, article 30 of the International Convention for the protection of all persons against forced disappearances<sup>92</sup> clearly establishes the power of the Committee against Forced Disappearance to issue them:

1. The Committee may urgently examine any petition submitted by the relatives of a disappeared person, their legal representatives, their lawyers or persons authorized by them, as well as anyone who has a legitimate interest, in order to Search and locate a missing person. 2. If the Committee finds that the request for urgent action submitted under paragraph 1 of this article:

- a) It is not manifestly without foundation;
- b) It is not an abuse of the right to submit such requests;
- c) It has been submitted previously and in due form to the competent bodies of the State Party concerned, such as the authorities in charge of conducting investigations, when such a possibility exists;
- d) It is not incompatible with the provisions of this Convention; and
- e) It is not being dealt with in another international instance of examination or settlement of the same nature; It will request the State Party concerned to provide it, within the period determined by the Committee, information on the situation of said person.

3. Taking into account the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit its recommendations to the State Party and include a request that it take all necessary measures, including precautionary measures, to locate and protect the person in accordance with this Convention, and may request that it report to the Committee, within the period determined by it, on the measures it takes, taking into account the urgency of the situation. The Committee will inform the person who submitted the request for urgent action about its recommendations and about the information transmitted by the State Party when it becomes available.

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with the different corresponding authorities of the three orders of government, to create an action plan and schedule, which has information of interest and addresses the location hypotheses that translate into Actions aimed at finding the whereabouts and discovering the fate of the disappeared persons. 555. All the authorities responsible for the search must submit reports to the CNB on the follow-up and implementation of the search actions, in order to keep international organizations such as the Mexican State duly informed.

<sup>92</sup>Ratified by Mexico on March 18, 2008 and published in the Official Gazette of the Federation on June 22, 2011.

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4. The Committee will continue its efforts to collaborate with the State Party as long as the fate of the disappeared person has not been clarified. The Committee will keep the petitioner informed.

125. The urgent actions and their terms have been complied with by the Mexican State, which has informed the Committee on successive occasions of the follow-up given to the urgent actions that have been decreed for compliance by the Mexican government. In its Final Observations on the report submitted by Mexico under Article 29, paragraph I, of the Convention, the Committee against Enforced Disappearances highlighted:

[...] the Committee notes with satisfaction that the State party recognizes the binding nature of the requests for urgent actions and precautionary measures issued by the Committee, pursuant to article 30 of the Convention, and the willingness to cooperate with the Committee in the future expressed by the State party.<sup>93</sup>

126. Regarding some of the concerns expressed by the Committee, accepted by Mexico and that are part of what is discussed in this matter:

[...] the Committee takes note of the expression of interest on the part of the State party to attend to the urgent actions and to follow up on the recommendations issued in the context of the procedure of Article 30 of the Convention. However, the Committee has observed and is concerned about the lack of knowledge [...] of the recommendations issued in this context by the State agents in charge of the search and investigation of the

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<sup>93</sup>Right there: [...] The Committee recommends that the State party: a) Establish a mechanism for the implementation, follow-up and evaluation of urgent actions, which guarantees coordination between authorities of the three levels of government, the response and immediate search, as well as the participation of victims and their organizations; b) Establish as soon as possible a mechanism to guarantee the communication of the Committee's recommendations to the federal, state and municipal authorities in charge of the search and investigation.

[...] The Committee wishes to recall the obligations assumed by the States upon ratifying the Convention and, in this regard, urges the State party to ensure that all the measures it adopts, whatever their nature and emanating from the power they emanate, comply fully with the obligations it assumed by ratifying the Convention and other relevant international instruments. In this regard, the Committee particularly urges the State party to guarantee the effective investigation of all forced disappearances and the full satisfaction of the rights of the victims as enshrined in the Convention. (United Nations Committee against Forced Disappearance, "Final observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention", November 19, 2018, available at <https://www.hchr.org.mx/images/CED C MEX FU 1 3306>. Cf. also "Response of Mexico to the questions of the Committee. International Convention for the Protection of All Persons from Enforced Disappearances", October 20, 2014.

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disappeared persons; for the delay in the implementation of urgent actions.<sup>94</sup>

127. An urgent action is issued by the Committee against Enforced Disappearance with the purpose of requesting the State to take the necessary measures for the prompt discovery of a disappeared person. In other words, it is a procedure through which the Committee takes charge of the need for a disappeared person to be searched for without delay. These actions, their compliance and judicial supervision of such compliance give specific content to the obligation of the State to guarantee the right of persons not to be subjected to forced disappearance and the obligation to search for and locate a disappeared person. Therefore, it is essential that their relatives, or other close people, access these –among other available resources– in order to determine the fate or whereabouts of the direct victim and to establish the responsibilities of those involved. Therefore, in the opinion of this Chamber, urgent actions, their enforceability, as well as their judicial and constitutional supervision, are part of the right to an effective remedy and, therefore, of the regulatory scope of the right of access to justice.
128. In the human rights treaties, the willingness of the signatory States to create a protection regime for the people subject to their jurisdiction and – in the specific case of Mexico – grant them constitutional status is stated. As already highlighted, human rights norms –whether from a national or international

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<sup>94</sup>Right there: [...] The Committee recommends that the State party: a) Establish a mechanism for the implementation, follow-up and evaluation of urgent actions, which guarantees coordination between authorities of the three levels of government, the response and immediate search, as well as the participation of victims and their organizations; b) Establish as soon as possible a mechanism to guarantee the communication of the Committee's recommendations to the federal, state and municipal authorities in charge of the search and investigation.

[...] The Committee wishes to recall the obligations assumed by States upon ratifying the Convention and, in this regard, urges the State party to ensure that all the measures it adopts, whatever their nature and emanate from the power they emanate, comply fully with the obligations it assumed by ratifying the Convention and other relevant international instruments. In this regard, the Committee particularly urges the State party to guarantee the effective investigation of all forced disappearances and the full satisfaction of the rights of the victims as enshrined in the Convention. (United Nations Committee against Forced Disappearances, "Final observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention", November 19, 2018, available at <https://www.hchr.org> .

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source— must be interpreted to maximize –and not to limit– the protection of people<sup>95</sup>.

129. In the amparo under review 375/2013<sup>96</sup>, this Chamber said that the decisions of the Inter-American Court of Human Rights that generate a subjective right and indicate specific obligations to the Mexican authorities destined to the realization of that subjective right are susceptible to judicial and constitutional supervision. By verifying the actions or omissions of the authorities obliged to abide by those determinations, the international treaty on human rights is recognized as a source of constitutional rights. Rights whose content and scope would be, in any case, delineated -in use of his powers- by the authorized interpreter of the treaty who, based on this definition, identifies specific and concrete obligations for the Mexican authorities in a specific case and before a specific subject,
130. In that same matter, it was pointed out that the possibility of judicial supervision of the decisions of the Inter-American Court of Human Rights -specific matter of the precedent- in the domestic sphere, is not absolute and abstract, since it corresponds to the Inter-American Court, as an authorized jurisdictional body. , decide on compliance with their sentences, particularly due to the diversity of actions and authorities of the Mexican state involved. However, in this case, we must assume that urgent actions or, possibly, precautionary measures, do not imply a substantive solution issued by an international organization in the face of a dispute, but preventive orders for immediate execution. In particular, Urgent actions against the forced disappearance of persons are aimed at protecting the legal sphere of a perfectly delimited person or persons against a violation of human rights that can have the worst effects if prompt action is not taken. These actions suppose, then, the access to a reinforced protection.

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<sup>95</sup>The adoption of the International Convention for the Protection of All Persons from Enforced or Involuntary Disappearances (hereinafter the International Convention or the Convention) by the United Nations General Assembly in December 2006 represents a milestone in the fight against this phenomenon and has come to fill the existing legal vacuum in the matter. It is, in effect, the first legally binding instrument with a universal claim in the fight against forced disappearances and is the result of years of work promoted by a group of States but also by civil society actors.

<sup>96</sup>Resolved by the First Chamber on November 27, 2013 unanimously.

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131. Urgent actions in the matter of forced disappearance are designed to be operated and carried out especially by the bodies in charge of the search for disappeared persons. Deny the obligation of urgent actions, dictated by the Committee against forced disappearance in exercise of express powers granted by the International Convention for the protection of all persons against the forced disappearance of persons, and prevent their compliance from being judicially and constitutionally reviewed, It turned out to be the most restrictive interpretation of a mechanism included in an international treaty and aimed precisely at guaranteeing its essential purpose: the urgent search –that is, without inadmissible delays– of the people reported as missing.
132. Assuming that urgent actions do not establish obligations for the responsible authorities, capable of being constitutionally or judicially supervised, is to reduce the useful effect of the International Convention for the protection of all persons against forced disappearances, unjustifiably reduce the sphere of protection of persons subject to the jurisdiction of the Mexican State and contradict the determinations of the Mexican government, which not only adopted, ratified and incorporated the specific content of the treaty into its internal legal regime, but has also reiterated its commitment to comply with urgent actions.
133. Based on the foregoing, this Chamber has no doubts regarding the mandatory nature of the urgent actions, issued by the Committee against Forced Disappearance, and considers that the district judge, whose sentence is being reviewed, erred on the nature granted to this preferential mechanism, guarantee of the immediate and effective fulfillment of the commitments of the treaty and that serves to collaborate in and supervise the search actions undertaken by the Mexican State. The urgent actions issued for the benefit of the young Emiliano and others contain precise search and investigation guidelines clearly related to the powers of the authorities indicated as responsible. Thus,
134. This decision unduly affected the right of access to justice – among others already mentioned in this judgment – of Mrs. Julia and her son, Emiliano, by depriving them of an effective remedy to combat non-compliance with these actions by the responsible authorities. Therefore, that decision must be revoked



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and the search guidelines contained in this judgment and the necessary compliance with urgent actions should be added to the granting of the judge's amparo \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\* and \*\*\*\*\*<sup>97</sup>, all from 2016, in the terms contained therein and in accordance with the powers of each of the responsible authorities:

1. Immediately carry out a comprehensive search process and a serious, exhaustive and impartial investigation to establish the fate and whereabouts of Messrs. Daniel, Karlo, Luis, Julián, Emiliano, Héctor, in accordance with the Articles 12, 24 and 30 of the Convention.
2. Ensuring inquiries are conducted with context in mind in which the aforementioned disappearances occurred. In particular, the Committee requires the State party to ensure that the investigation carried out takes into account the indications about the possible participation of the municipal, state, ministerial police and military elements that could be involved.
3. Investigate the disappearances of the alleged victims, guaranteeing the full independence and impartiality of the bodies in charge, gathering the necessary forensic and expert evidence, as well as the statements of witnesses to the facts and family members, guaranteeing their safety and physical and psychological integrity.
4. Order all the actions aimed at fully identifying all the remains found in the graves located in Veracruz and in those places where the investigating authority has identified it, as well as those that are located by the search teams and the authorities in charge, with in order to establish if there is a relationship with any of the disappeared persons.
5. In case the whereabouts of Messrs. Daniel, Karlo, Luis, Julián, Emiliano, Héctor cannot be confirmed, please inform the Committee:
  - a) On the actions taken by the competent authorities of the State party to locate them; to clarify his supposed disappearance; and to ensure that they are under the protection of the law;
  - b) About the result of these actions.
6. Please also inform the Committee about the actions taken by the State party to allow the full participation of the next of kin and relatives of Messrs. Daniel, Karlo, Luis, Julián, Emiliano, Héctor, in the investigation of their disappearance, giving them direct access to the

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<sup>97</sup>The urgent actions – although different – make up a single document. Therefore, the obligation of all is confirmed. It should be clarified that the urgent actions directed specifically at Emiliano are \*\*\*\*\*.

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information available on the evolution and results of the ongoing investigation, in accordance with article 24 of the Convention.

135. On May 1, 2017, the Committee against Forced Disappearance also requested the Mexican State:

1. Design and immediately implement a comprehensive investigation and search strategy, ensuring the analysis of the context and the patterns that are identified in the cases;
2. Report to family members on the strategy undertaken;
3. Inform the families of the disappeared youth in a timely, clear and accessible manner about the inquiries and provide them with copies of the proceedings carried out;
4. Take all necessary measures for the full investigation of the Guadalupe Reyes operation;
5. Ensure the investigation of the possible participation of members of the state and municipal police and the Veracruz Agency for Investigation in the disappearance of the young people;
6. Guarantee that the exhumations and procedures for the identification of bodies are governed by international standards on the matter to guarantee that the comparisons carried out with the fingerprints of the disappeared persons and the DNA samples of their relatives yield scientifically reliable results;
7. Communicate to the next of kin of the disappeared youth and their representatives about the reason why immediate action has not been taken based on the information provided by two of the mothers of the disappeared, and ensure that all relevant steps take place immediately, and
8. Ensure that the authorities consider all available information; the authorities must integrate and use this information immediately and in a timely manner, as well as take the relevant actions to search for and locate the disappeared youth and clarify the circumstances of their disappearance.

### effects

136. By virtue of what is expressed in this ruling, this Chamber deems that the granting of constitutional protection determined by the district judge was correct, with respect to the assistant prosecutor in charge of the preliminary investigations, against the omissions incurred during the investigation of the events that occurred on the day of Emiliano's disappearance and the

deficiencies in his actions to successfully establish the fate or whereabouts of Mrs. Julia's son. However, the Chamber considers that its effects should be extended and also link the Attorney General of the State of Veracruz and the Specialized Prosecutor for the Attention of Complaints for Missing Persons, Central Zone, Veracruz, as well as the Head of the Specialized Prosecutor's Office for Attention of Complaints for Missing Persons,

137. Thus, the Attorney General of the State of Veracruz and the Head of the Special Prosecutor's Office for the Attention of Complaints for Disappeared Persons must, within the scope of their competence, become involved in the investigation into the disappearance of the young Emiliano and participate in his search and location. . The holders must supervise the actions of the assistant prosecutor in charge of the first and eighth agencies of the investigative public prosecutor's office and the Specialized Prosecutor's Office for the Attention of Complaints for Missing Persons, Central Veracruz Zone.
138. The authorities indicated as responsible will abide, in their terms, the guidelines established by the district judge -already reproduced- and by this First Chamber in this resolution, which will complete with those ordered in the Guiding Principles for the search for disappeared persons of the Committee of the UN against Enforced Disappearance<sup>98</sup> and in the Approved Protocol for the Search for Missing and Unlocated Persons<sup>99</sup>, cited in this sentence in the section on "Justice and truth: right to search".
139. As stated by the district judge, it is essential that the responsible authorities consider the influence of the context in which the acts of disappearance occur in order to identify systematic patterns that have an impact on the solution of the present case and in other related ones, as well as so that eventually that Identification and solutions guide and support prevention policies by the State.
140. Authorities should develop rational avenues of investigation; carry out a detailed analysis of the facts, and obtain and present evidence that leads to the discovery

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<sup>98</sup>Approved from April 8 to 18, 2020.

<sup>99</sup>Entry into force on January 6, 2021

## AMPARO UNDER REVIEW 1077/2019

of young Emiliano alive, including the opinions of experts on the different components, background and consequences of the disappearance, as well as on the necessary and efficient elements for the search .

141. The responsible authorities will conduct the proceedings and investigations whose objective is to determine the fate or whereabouts of a person reported as missing based on a presumption of life, with depth, thoroughness and diligence, allowing the participation of the victims in the search for their persons. dear<sup>100</sup>, to give satisfactory, convincing and dignifying results<sup>101</sup>.
142. At this point, this Chamber warns about the importance of the authorities protecting and guaranteeing the integrity of the investigation into forced disappearance as a crime, as well as its results, undertaking the search for the young Emiliano promptly, due diligence and resorting to all institutional means. available without compromising the quality of the evidence and processing the necessary judicial authorizations for the performance of the actions that require it.
143. The authorities indicated as responsible will allow and promote the participation of Mrs. Julia in the search for her son and in the investigation into his disappearance.<sup>102</sup>; they will attend to the information that she and other witnesses suggested by her provide them about the possible whereabouts of Emiliano or about the circumstances surrounding his disappearance; they will admit all the evidence that she offers<sup>103</sup>, and will inform you, in a timely manner

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<sup>100</sup>"In accordance with this criterion, the Court attributes a high probative value to the statements of the witnesses, within the context and circumstances of a case of forced disappearance, with all the difficulties that derive from it, where the means of proof they are essentially indirect and circumstantial testimonies due to the very nature of this crime, added to pertinent logical inferences, as well as its link to a general practice of disappearances." Cf. Inter-American Court of Human Rights. Case of Alvarado Espinoza v. Mexico. Op.cit.

<sup>101</sup>Regarding cases of forced disappearance, the [Inter-American] Court has confirmed the existence of a right of the next of kin of the victim to know what their fate was and, where appropriate, where they are or, where appropriate, his rests". In these cases, impunity must be eradicated by determining the responsibilities, both general –of the State– and individual –criminal and of another nature of its agents or individuals. Cf. Inter-American Court of Human Rights. Case of Rosendo Radilla-Pachecho v. Mexico. Op.cit.

<sup>102</sup>Amparo under review 168/2011, resolved by the First Chamber in session of November 30, 2011, by unanimous vote.

<sup>103</sup>Approved Search Protocol: "1.4 INFORMATION AND PROTECTION OF VICTIMS:

and with respect to the anguish and suffering you are experiencing, the progress in the search for and location of your child.

144. The authorities identified as responsible in this review will protect, respect and guarantee the rights of Mrs. Julia to search, truth and justice, the content and scope of which are defined in this sentence, and acting with the necessary institutional coordination between them and other authorities of search, prosecution and delivery of justice, will endeavor to locate the young Emiliano alive and will carry out this search with qualified due diligence, diligence, promptness, as well as with respect and in conditions of dignity for the adolescent and his loved ones, especially his mother, Mrs. Julia. This diligent, careful and coordinated attitude must be recorded in the investigation file so that its compliance is effectively supervised by the district judge.
145. Lastly, this Chamber considers that Julia and Emiliano must be granted constitutional protection against the omission of the authorities responsible for addressing the urgent actions issued by the Committee against Forced Disappearance of the United Nations. Thus, the authorities indicated as responsible must abide by the urgent actions \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\* and \*\*\*\*\*, in all its terms during the search for young Emiliano, since its binding nature for the Mexican State is unquestionable.
146. This Chamber is not unaware of the relative effect of amparo rulings. However, given the seriousness and extent of the phenomenon of the disappearance of persons in our country, it wishes to urge –as it has done in other means of constitutional control– all search, prosecution and justice administration authorities of the Mexican State to commit themselves, within the scope of their respective powers, to the diligent, exhaustive, and efficient search for persons reported missing.

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1.4.1 The Public Ministry will communicate with the next of kin to inform them about what has been done so far; to inform you that it will open a preliminary investigation or an investigation folder; and to agree on a personal interview in which they provide the necessary information for the second phase, and if they wish, to appear before them.

1.4.2 In this first communication, the Public Ministry will investigate and determine if the victims are at risk, that is, if they are suffering damage to their physical or psychological integrity.”

**X. DECISION**

147. The investigative and investigative guidelines imposed by the district judge are confirmed, which also bind the following responsible authorities: Attorney General of the State of Veracruz, Specialized Prosecutor's Office for the Attention of Complaints for Missing Persons, Central Veracruz Zone and the Head of the Special Prosecutor's Office for the Attention of Complaints for Disappeared Persons, for the reasons stated in this sentence. Added to these guidelines are those identified by this Chamber, which must be complied with by all responsible authorities as a consequence of the rights to search, truth and justice. These authorities must undertake the search to determine the fate or whereabouts of young Emiliano in an exhaustive, coordinated manner and with qualified due diligence, At the same time, they investigate the events that led to their disappearance and their possible perpetrators. The responsible authorities will abide, in all their terms, the urgent actions \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\*, \*\*\*\*\* and \*\*\*\*\*, issued by the Committee against Forced Disappearance regarding this case, since, as stated in this judgment, its binding nature for the Mexican State is unquestionable.

148. For the foregoing and well-founded reasons, this First Chamber of the Supreme Court of Justice of the Nation resolves:

**FIRST.**In the matter of the review, the judgment under appeal is modified.

**SECOND.**The dismissal regarding article 348 of the Penal Code of the State of Veracruz is firm.

**THIRD.**The Justice of the Union supports and protects Mrs. Julia and Emiliano, against the authority and for the acts indicated in this execution.

**Be notified;**With testimony of this resolution, return the records relating to the place of origin and, when appropriate, file the file as a closed matter.

This was resolved by the First Chamber of this Supreme Court of Justice of the Nation, unanimously by five votes of the ministers and the ministers Norma

## **AMPARO UNDER REVIEW 1077/2019**

Lucía Piña Hernández, Juan Luis González Alcántara Carrancá, Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena (speaker) , and Ana Margarita Ríos Farjat, president of this First Chamber. Minister Piña Hernández reserved the right to formulate a concurring vote, to which Minister Pardo Rebolledo adhered to remain as a minority vote.

The president of the Chamber and the rapporteur minister sign, with the secretary of agreements, who authorizes and attests.

**PRESIDENT OF THE FIRST ROOM**

**MINISTER ANA MARGARITA RIOS FARJAT**

**SPEAKER**

**MINISTER ALFREDO GUTIERREZ ORTIZ MENA**

**SECRETARY OF RESOLUTIONS OF THE FIRST ROOM**

**RAUL MENDIOLA PIZAÑA**

In terms of the provisions of articles 113 and 116 of the General Law on Transparency and Access to Public Information; 110 and 113 of the Federal Law on Transparency and Access to Public Information, as well as in General Agreement 11/2017 of the Plenary of the Supreme Court of Justice of the Nation, published on September 18, 2017 in the Official Gazette of the Federation, in this public version, the information legally considered as reserved or confidential that falls within these normative assumptions is deleted.

**JOINT CONCURRING OPINION MADE BY MINISTER NORMA LUCÍA PIÑA HERNÁNDEZ AND MINISTER JORGE MARIO PARDO REBOLLEDO IN THE AMPARO UNDER REVIEW 1077/2019, RESOLVED BY THE FIRST CHAMBER OF THE NATIONAL SUPREME COURT IN SESSION OF JUNE SIXTEENTH, TWO THOUSAND TWENTY-ONE**

Although we share the meaning of the sentence and many of its considerations to conclude that the urgent measures and actions issued by the Committee against Enforced Disappearances of the United Nations (hereinafter, "the Committee") based on article 30 of the International Convention for the Protection of all Persons against Enforced Disappearances (hereinafter, "the Convention"), must be mandatory and their compliance judicially and constitutionally supervised by the authorities of the Mexican State within the scope of their competence, we have the following observations.

**1. The amparo under review should have been known by the Plenary of the SCJN**

In the first place, it seems to us that, due to the importance and transcendence of the criterion and since the central issue discussed in this review appeal is a matter that corresponds, in principle, to be heard by the Plenary of the Supreme Court of Justice of the Nation (SCJN ) and not to this First Chamber, this matter should have been referred to the Plenary Session of this High Court.

The foregoing is due to the fact that, although the matter of origin has its genesis in a deficient investigation of the crime of forced disappearance in the State of Veracruz (which, in principle, is a criminal matter that corresponds to



this First Chamber), the issues that are analyzed and developed in the judgment are of great importance, the problems of which could arise in matters of all matters, namely, determining whether the urgent measures or actions issued by the Committee should be considered mandatory for the Mexican State or, on the contrary, , considered as non-binding recommendations, and establish the content and scope of the human right to search.

In addition, there is no consolidated doctrine in this High Court to determine when the resolutions of the international organizations provided for in the various international treaties ratified by the Mexican State should be considered binding and when not, taking into consideration that, for example, when both the miscellaneous file 912/2010<sup>1</sup> as the contradiction of thesis 293/2011<sup>2</sup> and the binding or mandatory nature of the precedents of the Inter-American Court of Human Rights (IDH Court) and its decisions or sentences when the Mexican State is a party to said international court was analyzed, this generated a wide debate and very diverse positions of the Ministers and Ministers.

It is true that, after these matters, the First Chamber resolved the direct protection under review 496/2014 in which it was held that "the content of human rights is not limited to the express text of the norm where said right is

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<sup>1</sup>Resolved on September 7, 2010. See isolated thesis P. LXV/2011 (9a.), whose heading is "JUDGMENTS ISSUED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS. THEY ARE BINDING IN THEIR TERMS WHEN THE MEXICAN STATE WAS A PARTY TO THE LITIGATION", published in the Semanario Judicial de la Federación and its Gaceta, book III, December 2011, volume 1, page 556, and the isolated thesis P. LXVI/2011 (9a.), under the heading "CRITERIA ISSUED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS WHEN THE MEXICAN STATE WAS NOT A PARTY. THEY ARE GUIDELINES FOR MEXICAN JUDGES PROVIDED THAT THEY ARE MORE FAVORABLE TO THE PERSON IN TERMS OF ARTICLE 1. OF THE FEDERAL CONSTITUTION", published in the Judicial Weekly of the Federation and its Gaceta, book III, December 2011, volume 1, page 550.

<sup>2</sup>Resolved on September 3, 2013. See case law P./J. 21/2014 (10th), under the heading "JURISPRUDENCE ISSUED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS. IT IS BINDING FOR MEXICAN JUDGES AS LONG AS IT IS MORE FAVORABLE TO THE PERSON", published in the Gaceta del Semanario Judicial de la Federación, book 5, April 2014, volume I, page 204.

recognized , but it is being strengthened with the evolutionary or progressive interpretation made by both the national constitutional courts, as ultimate interpreters of its fundamental norms, as well as with the interpretation made by international organizations, authorized interpreters in relation to specific treaties, in a relationship dialectics"<sup>3</sup>. Likewise, it maintained in the amparo under review 476/2014 that "the judicial authorities must apply the parameter of constitutional regularity -including, of course, the standards on human rights-, which, clearly, is not limited to the text of the norm - national or international- but it extends to the interpretation made by the authorized bodies -constitutional courts and international organizations as appropriate-"<sup>4</sup>.

However, the fact that national courts can take into account in their judicial arguments the interpretation made by international organizations provided for in the respective international treaties, does not follow or follow that said interpretations should be considered obligatory or binding, as is the mandatory jurisprudence of this High Court or the binding precedents of the Inter-American Court.

On the other hand, it would be important for the Plenary to define the guidelines to establish the obligatory nature of the criteria or precedents issued by certain international organizations to justify their resolutions -such as the reasons and justifications contained in the precedents of the Inter-American Court- of the duty that the States parties to comply with the resolutions or decisions of some international organizations by virtue of which

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<sup>3</sup>Thesis1st. **CDV/2014 (10th)**. Published in the Federal Judicial Weekly Gazette, book 12, November 2014, volume I, page 714, under the heading "**HUMAN RIGHTS. ITS CONTENT IS NOT LIMITED TO THE EXPRESS TEXT OF THE STANDARD THAT PROVIDES IT, BUT IS EXTENDED TO THE INTERPRETATION THAT THE AUTHORIZED BODIES MAKE ABOUT IT**".

<sup>4</sup>Thesis1st. **CCCXLIV/2015 (10th)**. Published in the Federal Judicial Weekly Gazette, book 24, November 2015, volume I, page 986, under the heading "**CONSTITUTIONAL REGULARITY PARAMETER. IT EXTENDES TO THE INTERPRETATION OF THE NATIONAL OR INTERNATIONAL STANDARD**".

they were bound to do so by ratifying certain international treaties or adopting another instrument later.

## **2. Justification of the obligatory nature of the measures or urgent actions of the Committee against Enforced Disappearances of the United Nations**

On the other hand, it seems to us that the argumentation of the sentence by which it is concluded that said actions or urgent measures should be considered mandatory should have been more robust.

The majority view is based on the fact that, in accordance with articles 26, 27 and 31 of the Vienna Convention on the Law of Treaties<sup>5</sup>, international treaties such as agreements must be fulfilled in good faith, without the internal provisions becoming an excuse to except their compliance. Likewise, it is based on the fact that international treaties on human rights must have a useful effect, in such a way that they fully express the respect, protection and guarantee of human rights.

Immediately afterwards, it affirms that articles 26 to 36 of the Convention regulate the attributions and powers of the Committee and that of this regime of faculties, only those referring to the receipt of individual petitions are subject to subsequent confirmation (which, by the way, already was carried out by the Mexican State), while the interpretative powers to receive reports, issue general recommendations or final observations, and dictate and supervise urgent actions are unquestionably part of the normative content of the Convention, so that they must be understood as part of the provisions that Mexico accepts by signing it, ratifying it and incorporating it into its internal legal regime.

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<sup>5</sup>Adopted on May 23, 1969, ratified by Mexico on September 25, 1974, and published on January 27, 1980.

Finally, it concludes that urgent actions are mandatory and that to assume that urgent actions do not establish obligations for the responsible authorities, capable of being constitutionally or judicially supervised, is to reduce the useful effect of the Convention, unjustifiably reduce the sphere of protection of persons subject to the jurisdiction of the Mexican State and contradict the determinations of the Mexican government, which not only adopted, ratified and incorporated the specific content of the treaty into its internal legal regime, but has also reiterated its commitment to comply with urgent actions.

In this regard, it seems to us that, in order to determine whether certain resolutions of an international organization are binding or not, there are two ways: i) to analyze and interpret the international treaty as well as the context in which it was created, to determine if in accordance with the powers of a certain international organization, it can be concluded that its resolutions are binding and that a certain party accepted said obligation, or ii) analyze whether, after the ratification of the treaty, the State party has carried out acts or actions where it is recognizing it -of expressly or implicitly - the binding or obligatory nature of those resolutions.

According to the first way, although it is true that the Mexican State must comply with the principles contained in the Vienna Convention on the Law of Treaties, it is not very clear that, according to the content of the treaty and the context according to which States parties ratified it, it can be concluded that the urgent actions provided for in Article 30 of the Convention have a binding or obligatory nature similar to that of the sentences handed down by the Inter-American Court when it has held the Mexican State responsible for rights violations. persons or who have the provisional measures ordered by the

international court provided for in Article 63.2 of the American Convention on Human Rights (hereinafter, "the American Convention")<sup>6</sup>.

Article 30 of the Convention provides for the following:

**Article 30**

**1.** The Committee may urgently examine any petition submitted by the relatives of a disappeared person, their legal representatives, their lawyers or persons authorized by them, as well as anyone who has a legitimate interest, in order to seek and locate a missing person.

**2.** If the Committee considers that the request for urgent action submitted under paragraph 1 of this article:

**a)** It is not manifestly without foundation;

**b)** It is not an abuse of the right to file such petitions;

**c)** It has been submitted previously and in due form to the competent bodies of the State Party concerned, such as the authorities in charge of conducting investigations, when such a possibility exists;

**d)** It is not incompatible with the provisions of this Convention; and

**and)** It is not being dealt with in another international instance of examination or settlement of the same nature;

It will request the State Party concerned to provide it, within the period determined by the Committee, information on the situation of said person.

**3.** Taking into account the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit its recommendations to the State Party and include a request that it take all necessary measures, including precautionary measures, to locate and protect to the person in accordance with this Convention, and may request that they report to the Committee, within the period determined by the Committee, on the measures it takes, taking into account the urgency of the situation. The

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<sup>6</sup> **Article 63**

**1.** When it decides that there was a violation of a right or freedom protected in this Convention, the Court will provide that the injured party be guaranteed the enjoyment of his violated right or freedom. It will also provide, if appropriate, that the consequences of the measure or situation that has configured the violation of those rights and the payment of fair compensation to the injured party be repaired.

**2.** In cases of extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons, the Court, in the matters that it is hearing, may take the provisional measures that it deems pertinent. In the case of matters that are not yet submitted to its knowledge, it may act at the request of the Commission.

Committee will inform the person who submitted the request for urgent action about its recommendations and about the information transmitted by the State Party when it becomes available.

4. The Committee will continue its efforts to collaborate with the State Party as long as the fate of the disappeared person has not been clarified. The Committee will keep the author of the petition informed (highlighting of this vote)

From a literal interpretation, the international treaty is referring to urgent actions as "recommendations" that apply to petitions relating to missing persons. This term is commonly used in various international treaties to refer to resolutions that, precisely, would not have a binding nature.<sup>7</sup> and that constitute what is called soft law<sup>8</sup>.

In addition, in general, the States parties do not ex professo make the resolutions of the committees provided for in international treaties binding due to the fact that they enter into force. This is different when it comes to international courts, whose regime is usually exceptional and the acceptance of its competence requires the ratification of an additional instrument in which the binding nature of its sentences is recognized.<sup>9</sup>.

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<sup>7</sup>For example, within the American Convention, articles 41, 50 and 51 use the term "recommendations" when referring to the Inter-American Commission on Human Rights, without the use of said term in other provisions of the treaty with respect to the functions of the Inter-American Court.

<sup>8</sup>Del Toro Huerta maintains that it is a term used by the doctrine, which "[...] seeks to describe the existence of legal phenomena characterized by lacking binding force, although not devoid of legal effects or at least with some legal relevance." See Del Toro Huerta, Mauricio Iván, "The phenomenon of Soft Law and the new perspectives of international law", in the Mexican Yearbook of International Law, 2006, vol. VI, pages 513 to 549.

<sup>9</sup>For example, Article 62 of the American Convention provides the following with respect to the I/A Court HR:

**Article 62**

1. Any State Party may, at the time of depositing its instrument of ratification or accession to this Convention, or at any subsequent time, declare that it recognizes as obligatory by operation of law and without a special convention, the Court's jurisdiction over all cases relating to the interpretation or application of this Convention. [...]

In this sense, we do not share the argument that seems to standardize the regime applicable to the Inter-American Court under the American Convention to the regime established in the Convention for the Committee and that seems to conclude, without sufficient elements, that the content of the treaty itself and the context After its ratification by the Mexican State, it has accepted that the Committee's recommendations are binding or obligatory.

However, Article 31 of the Convention provides that "cEach State Party may declare, at the time of ratification or after ratification, that it recognizes the competence of the Committee to receive and examine communications submitted by persons under its jurisdiction or on behalf of them, who claim to be victims of violations by this State Party of the provisions of this Convention".

In this regard, it is noted that the Mexican State, upon ratifying the Convention, issued a reservation in which it did not recognize the competence of the Committee. However, as the sentence indicates, the Mexican State recognized, after the ratification of the Convention, the competence of the Committee<sup>10</sup>, it would be necessary to precisely analyze the context of said acceptance to determine the scope of the mandatory nature of the urgent actions provided for in Article 30 of the Convention.

On August 26, 2020, the President of the Republic sent the declaration to the Senate of the Congress of the Union to recognize the competence of the Committee, whose opinion was approved on September 1 of that year and the

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<sup>10</sup>Declaration under article 31:

*In accordance with the provisions of article 31 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance, the United Mexican States declares that it recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of provisions of the Convention by the United Mexican States.*

decree was published on September 18. in the Official Gazette of the Federation<sup>11</sup>.

However, from the content of the decree it does not follow that “communications” are mandatory. Nor does this obligation emerge from the content of the opinion of the United Commissions on Human Rights and Foreign Relations of September 24, 2019.<sup>12</sup> Expressly acknowledging the competence of the Committee regarding the system of petitions established in the Convention does not necessarily imply acknowledging that the recommendations it issues are binding or obligatory.

So how can you justify that the urgent actions ordered by the Committee are mandatory for the Mexican State? We believe that this can be inferred precisely from the fact that the Mexican State has recently acted and recognized its obligation before the Committee, in addition to having issued regulations and public policies aimed at complying with these determinations, therefore, in accordance with the principle or rule of estoppel or the doctrine of own acts, the Mexican State and its authorities could not claim that they do not recognize the obligation of the Committee's recommendations in a given matter -in this case in an amparo proceeding- when they have unilaterally recognized in other forums their nature binding or has carried out acts and actions that can be presumed to be recognized as binding.

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<sup>11</sup> **SINGLE ARTICLE.**-The Declaration formulated by the United Mexican States to recognize the competence of the Committee against Forced Disappearance to receive and examine the communications presented by persons who are under its jurisdiction or on behalf of them, which literally says:

*"In accordance with the provisions of Article 31, paragraph 1, of the International Convention for the Protection of All Persons against Enforced Disappearances, the United Mexican States declares that it recognizes the competence of the Committee against Enforced Disappearance to receive and examine the communications submitted by persons under its jurisdiction or on behalf of them, who claim to be victims of violations of the provisions of the Convention by the United Mexican States".*

<sup>12</sup>The opinion can be consulted at the following electronic link:[http://comisiones.senado.gob.mx/relaciones\\_exteriores/reu/docs/dictamen3\\_240919.pdf](http://comisiones.senado.gob.mx/relaciones_exteriores/reu/docs/dictamen3_240919.pdf)



Indeed, according to said principle and doctrine, in the face of a repeated action or practice by a State, it cannot be subsequently contradicted or revoked by that same State precisely because it has generated international obligations whose rationale, in part, is eminently voluntarist. .

In this sense, if the Mexican State, as indicated in the sentence, has repeatedly recognized before the Committee itself from a certain moment on the obligatory nature of the recommendations related to the urgent actions of the Committee, it could not be alleged by the authorities later. , within the scope of its competence, that said resolutions are not binding.

Thus, as the judgment indicates, the Committee in 2019 referred to the express recognition by the Mexican State when rendering its final observations in accordance with Article 29 of the Convention, regarding the binding nature of its recommendations:

2.[...] the Committee notes with satisfaction that the State party recognizes the binding nature of the requests for urgent actions and precautionary measures issued by the Committee, pursuant to article 30 of the Convention, and the willingness to cooperate with the Committee in the future expressed by the State party<sup>13</sup>.

On the other hand, they highlight all the mechanisms implemented by the Mexican State to comply with the urgent actions ordered by the Committee. As the judgment highlights, there is a procedure and an internal legal regime to comply with these measures, which includes the responsibility of the investigative agencies in their execution. Legislating and creating public policies aimed at complying with the obligations constitute oriented facts that

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<sup>13</sup>Resolution **CED/C/MEX/FAI/1** of the Committee against the Enforced Disappearances of the Nations "Follow-up observations on the supplementary information submitted by Mexico pursuant to Article 29, paragraph 4, of the Convention" of September 6, 2019.

make it likely that the Mexican State has recently considered that the urgent measures or actions ordered by the Committee are indeed binding.

In addition, it should be mentioned that this conclusion is strengthened from what was indicated by the Committee itself in resolution CED/C/19/2 of October 5, two thousand and twenty.<sup>14</sup>, in which it determined that the mechanisms before the Inter-American Commission on Human Rights are not of the same nature as the urgent measures of the Committee, in addition to justifying why the Committee considers that its resolutions regarding the adoption of urgent measures do have a character binding.

Based on these data and other possible information to be collected, it could have been determined by this First Chamber that the Mexican State has recognized as a recent and reiterated practice that the Committee's recommendations are binding, in such a way that the judicial and ministerial

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<sup>14</sup>Resolution CED/C/19/2 of the Committee against Enforced Disappearances of the United Nations "Report on requests for urgent action submitted under article 30 of the Convention" of October 5, 2020, available at the following electronic link:<https://undocs.org/pdf?symbol=en/CED/C/19/2>

*22.[...] Unfortunately, in a number of the requests for urgent action, the authors reported that when the beneficiaries of interim measures had presented the Committee's decision to the competent authorities, they had been informed that such measures had no binding character, or that no action would be taken by the competent authorities to implement the measures. In such circumstances, the Committee reminded the State party concerned that the interim measures prescribed by the Committee were legally binding and imposed an international legal obligation on the State party to comply. The Committee also recalled its own role as the expert body established under the Convention to monitor States parties' implementation of their obligations. Under the Convention, the Committee had the authority to request the State party to take immediate action to search for a missing person, and States parties were obliged to consider in good faith the Committee's recommendations in such cases. [...]*

*37.In this context, the Committee wishes to make reference to the requests for urgent action registered on 10 October 2014 with regard to the disappearance of 43 students from Ayotzinapa on 26 September 2014, and recall its previous decisions to support the action of the Inter-American Commission on Human Rights, through both the group of independent experts and the follow-up mechanisms set up later, including the recently created interdisciplinary group of experts. In that context, the Committee highlights the importance of avoiding the duplication of interventions by human rights mechanisms. However, it wishes to underline that the mechanisms of the Inter-American Commission on Human Rights are not of the same nature as the urgent action procedure. The Committee further recalls that, in compliance with article 30 (4) of the Convention,(highlighted from this vote).*

authorities could not, in accordance with the estoppel principle and, at least since the competence of the Committee was recently expressly recognized, ignore the binding nature of its resolutions regarding the adoption of urgent measures in terms of Article 30 of the Convention.

Finally, it should be noted that, despite the fact that the binding nature of the recommendations or urgent actions ordered by the Committee had been recognized before the district judge heard this matter, since it deals with duties to search and investigate crimes whose compliance is successive tract, this First Chamber would not be prevented from ordering in the review that the responsible authorities abide, in all their terms, the urgent actions AU 276/2016, AU 277/2016, AU 278/2016, AU 279/ 2016, AU 280/2016 and AU 281/2016 issued by the Committee regarding this case.

However, the sentence does not justify the problem related to the temporality of the binding nature of said measures, since the majority started from the premise that the Mexican State was obliged to abide by them since it ratified the Convention, which is not shared. because we start from the premise that this recognition of obligation is subsequent to the moment in which the urgent measures whose compliance is successive tract were issued.

Due to the foregoing, we issue this concurring opinion in which we express the reasons why we differ with the methodology and various considerations to conclude that the urgent measures or actions ordered by the Committee in this case must be considered mandatory for the Mexican State. and, consequently, its compliance must be judicially and constitutionally supervised by the authorities of the Mexican State within the scope of its competence.

**MINISTER**

**NORMA LUCIA PIÑA HERNANDEZ**

**MINISTER**

**JORGE MARIO PARDO REBOLLEDO**

**SECRETARY OF RESOLUTIONS OF THE FIRST ROOM**

**RAUL MENDIOLA PIZAÑA**