

**AMPARO UNDER REVIEW 51/2020
COMPLAINTS AND RECURRING
ADHESIVES:***** AND ***** , AS
INDIRECT VICTIMS OF THE ENFORCED
DISAPPEARANCE
OF*****EITHER***** AND*****
*EITHER*****EITHER*****.
RESPONSIBLE AUTHORITIES AND MAIN
RECURRING: AGENT OF THE PUBLIC
PROSECUTOR'S OFFICE OF THE
FEDERATION ATTACHED TO THE
SPECIALIZED PROSECUTOR'S OFFICE IN
INVESTIGATION OF THE CRIMES OF
ENFORCED DISAPPEARANCE, DEPENDING
ON THE OFFICE OF THE PROSECUTOR'S
OFFICE FOR HUMAN RIGHTS, CRIME
PREVENTION AND COMMUNITY SERVICES,
OF THE PROSECUTOR'S OFFICE GENERAL
OF THE REPUBLIC AND THE NATIONAL
DEFENSE SECRETARY**

SPEAKER: MINISTER ANA MARGARITA RIOS FARJAT

**SECRETARY: IRELAND DENISSE ÁVALOS NÚÑEZ
COLLABORATOR IVONNE KARILU MUÑOZ GARCÍA**

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Facts:On May 24, 2007, members of the Mexican Army attached to the Eighth Region military in Ixcotel, Oaxaca along with agents of the General Directorate of Public Security, the Ministerial Police, and of the Directorate of Public Security of the Municipality of Oaxaca de Juárez, carried out a joint operation in the vicinity of the hotel "*****" located in the city of Oaxaca, in which they arrested ***** either ***** and ***** either ***** either ***** . His whereabouts are unknown to date..

On the twenty-fourth of September two thousand and thirteen, ***** (daughter of the lord *****) and ***** (sister of the lord *****) as indirect victims filed an amparo against multiple authorities for the disappearance of their next of kin, as well as for the failure to investigate the facts.

On May 6, 2019, the Fourth District Judge of Amparo in Criminal Matters in Mexico City granted the amparo against the Ministry of National Defense, the Ministerial Police of the Oaxaca Attorney General's Office and the Special Prosecutor for the Investigation of Forced Disappearance Crimes, for the forced disappearance of the gentlemen ***** either ***** and ***** either ***** either ***** ,ordered to investigate the facts, find their fate or whereabouts, and imposed comprehensive reparation measures for the damage.

In disagreement, the Special Prosecutor for the Investigation of Crimes of Forced Disappearance and the Secretary of National Defense filed appeals for review. For his part, ***** and ***** they filed an appeal for adhesive review.

The Second Collegiate Court in Criminal Matters of the First Circuit reserved jurisdiction for this Supreme Court of Justice of the Nation to hear: i) the non-application ex officio of Article 15, third, fourth and fifth paragraphs of the Amparo Law; ii) the guidelines and attenuated evidentiary standard to define the margin of action of the amparo body; iii) the direct interpretation of articles 1 and 20, section C, section VII of the Political Constitution of the country, to implement the integral reparation of the violated human rights derived from the forced disappearance, carried out by the District Judge.

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		<p>progress of the investigation is partially founded. This, because investigations related to human rights violations cannot be considered as reserved information.</p> <ul style="list-style-type: none">• However, the amparo sentence is modified so that it can test the names of public servants, as long as there is no enforceable sentence.• The Prosecutor's Office must request the National Search Commission to create an interdisciplinary group in order to search for the disappeared complainants.• The Executive Commission for Attention to Victims must quantify the amount of compensation in accordance with the standards of this high court.	
v.	DECISION	<p>decisive</p> <p>FIRST.In the matter of the review, competence of this First Chamber, the appealed sentence is modified, under the considerations specified in this resolution.</p> <p>SECOND.The Justice of the Union protects and protects the complainants*****and***** ***** , in the terms indicated in the last section of this resolution.</p>	113-117

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YOU. BO.
MINISTER:

Mexico City. The First Chamber of the Supreme Court of Justice of the
Nation, in session on August 10, two thousand**twenty two**,issues the
following

JUDGMENT

By means of which the amparo under review 51/2020 filed by the Agent
of the Public Ministry of the Federation attached to the Special
Prosecutor for the Investigation of Crimes of Forced Disappearance,
dependent on the Human Rights, Crime Prevention and Services to the

Community, of the Attorney General of the Republic, and the Secretary of National Defense against the decision issued on May 6, two thousand and nineteen, by the Fourth District Judge of Amparo in Criminal Matters in Mexico City, in the amparo trial***** , as well as the adhesive review of the complainants***** and***** (indirect victims).

The legal problem to be resolved by this First Chamber of the Supreme Court of Justice of the Nation consists of determining what is the evidentiary standard that must be met in order to have the forced disappearance accredited in the amparo trial, as well as defining whether it is appropriate to establish damage reparation measures in said constitutional protection trial in cases of serious human rights violations, such as the forced disappearance of persons, in terms of the provisions of articles 1 and 20, Section C of the Political Constitution of the country¹.

I. BACKGROUND AND PROCESS

1. **Facts**². On May 24, 2007, at approximately eleven hours and thirty minutes, elements of the Mexican Army attached to the Eighth Region military in Ixcotel, Oaxaca along with agents of the General Directorate of Public Security³, the Ministerial Police⁴, and of the Directorate of Public Security of the Municipality of Oaxaca de Juárez,

¹It should be clarified from this moment that the legal problem in the present matter does not consist of analyzing the ex officio non-application of Article 15 of the Amparo Law decreed by the District Judge, despite the fact that the Collegiate Court has reserved jurisdiction for this Supreme Court of Justice of the Nation for this purpose, for the reasons that are developed in the section of origin of this execution.

²Facts that arise from the indirect amparo judgment*****.

³Formerly the Secretary of Citizen Protection

⁴Currently, Attorney General's Office.

carried out a joint operation in the vicinity of the hotel "*****" located on the driveway*****, Central colony, in the city of Oaxaca.

2. In said operation, they were detained*****⁵ and*****⁶ (who were apparently members of the***** [*****]), which were transferred to the facilities of the then Oaxaca Attorney General's Office and, after to Military Camp number one of the First Military Region of the Ministry of National Defense, located in Mexico City⁷. His whereabouts are unknown to date..
3. **Previous investigation.** Due to these facts, he then Deputy Attorney General's Office Specialized Investigation in Organized Crime (SIEDO) initiated the preliminary investigation *****. AND he October sixth two thousand and sixteen due to a query of incompetence by reason of specialty, the agent of Public Ministry of the Federation, attached to the Special Prosecutor's Office in Search of Missing Persons of the Office of the Deputy Attorney General for Rights Human, Crime Prevention and Community Services of the then Attorney General of the Republic took over the investigation and started the investigation *****.
4. He December second two thousand and sixteen, the agent of the Public Ministry specified that only it would hear of the crime of forced disappearance and declined competence to the Office of the Special Prosecutor for Organized Crime Investigation regarding the crimes of organized crime and kidnapping.

⁵Also known as*****. henceforth only*****.

⁶Also known as***** either*****. henceforth only*****.

⁷According to family members, the National Human Rights Commission in the Recommendation***** , various non-governmental organizations, journalistic media and the***** , who claimed the disappeared as members of that organization.

5. **Indirect protection (file*****).** On the twenty-fourth of September two thousand and thirteen, ***** (daughter of*****) and ***** (sister of*****), as indirect victims, filed an amparo lawsuit against multiple authorities⁸, for the forced disappearance of their relatives as direct complainants. In essence, the complainants exposed the following concepts of violation:

- a) Despite the fact that some actions have been carried out in the investigation folder, the truth is that the investigation has not been conducted effectively and with due diligence, so as to guarantee the restoration of the rights of the direct victims.
- b) Throughout the investigation, the hypothesis of participation of the federal authorities in the forced disappearance has not been explored. Nor has the line of investigation that emerged from the context in which the events occurred and the political and social

⁸As responsible authorities: a) Secretary of National Defense; b) Commander of the Mexican Air Force; c) Director of Military Flight Control; d) General Director of Military Justice; e) Chief of Staff of the National Defense Secretariat; f) Attorney General of Military Justice; g) Secretary of the Navy; h) Chief of the General Staff of the Navy; i) General Director of the Center for Investigation and National Security; j) Attorney General of the Republic; k) National Security Commissioner; l) General Director of Civil Aeronautics; m) General Director of Navigation Services in the Mexican Airspace; n) General Director of Federal Autotransportation; o) Secretary of Public Security of the State of Oaxaca; p) Attorney General of the State of Oaxaca.

For their part, as executing authorities: a) Chief of the Military Judicial Police; b) Chief of the Marine Corps; c) Director of the National Authority of the Center for Investigation and National Security; d) Head of the Federal Ministerial Police; e) Head of the Federal Police; f) In charge of the Intelligence Division of the Federal Police; g) In charge of the Investigation Division of the Federal Police; h) In charge of the Regional Security Division of the Federal Police; i) In charge of the Scientific Division of the Federal Police; j) In charge of the Anti-drug Division of the Federal Police; k) In charge of the Federal Forces Division of the Federal Police; l) Coordinator of the State Investigation Agency; m) General Commissioner of Public Safety and Municipal Roads of the City Council of Oaxaca de Juárez.

condition of the persons against whom the act was committed have been exhausted.

- c) The authorities in charge of the investigation have not used all the necessary means to promptly carry out those essential and timely actions and inquiries to clarify the fate or whereabouts of the victims and identify those responsible for the forced disappearance.
- d) The right not to be subjected to forced disappearance was violated, to the detriment of the gentlemen ***** and ***** , as well as various related rights.
- e) The necessary procedures have not been carried out for the location, release and appearance of the direct complainants.

6. Judgment of indirect protection. On May 6, 2019, the Fourth District Judge of Amparo in Criminal Matters in Mexico City issued a ruling in which, first, she dismissed the amparo trial regarding the forced disappearance attributed to various authorities who were indicated in the lawsuit as responsible, since they did not notice their participation in the facts or that they had at their disposal or received the direct complainants after the operation⁹.

7. Secondly, it granted protection to the complainants direct, as well as their relatives, against the Secretary of National Defense, the General

⁹Commander of the Mexican Air Force, Director of Military Flight Control, General Director of Military Justice, Chief of Staff of the National Defense Secretariat, General Attorney of Military Justice, President of the Supreme Military Court, Secretary of the Navy, Chief of General Staff of the Navy; General Director of the National Intelligence Center, Attorney General of the Republic, National Security Commissioner, General Director of Civil Aeronautics, dependent on the Undersecretary of Transportation of the Ministry of Communications and Transportation, General Director of Navigation Services in the Mexican Air Space , Decentralized Body of the Ministry of Communications and Transportation, General Director of Federal Motor Transport, under the Ministry of Communications and Transportation,

Directorate of Public Security and the then Ministerial Police (of the current Attorney General of the State of Oaxaca) and the Public Security Directorate of the municipality of Oaxaca de Juárez, for forced disappearance, deprivation of liberty and concealment of information on the whereabouts of the disappeared persons; and forced disappearance as a multiple violation of human rights and the duties of respect and guarantee, due to the participation of public servants who intervened in the events and depend on said institutions.

8. In addition, it granted the amparo against the Agent of the Public Ministry attached to the Special Prosecutor's Office for the Search for Disappeared Persons dependent on the Human Rights, Crime Prevention and Community Services Sub-Prosecutor's Office, as a substitute authority, in terms of refraining from carrying out the necessary procedures **for investigate the commission of the crime of forced disappearance.**
9. The federal judge considered, in a substantial way, the following:
 - a) Until the moment of the issuance of the sentence, the appearance of the direct complainants has not been achieved, nor the ratification of the amparo demand, in terms of the provisions of article 15 of the Amparo Law¹⁰. However, it is not feasible to make

¹⁰Article 15. In the case of acts involving the risk of deprivation of life, attacks on personal liberty out of procedure, solitary confinement, deportation or expulsion, proscription or exile, extradition, forced disappearance of persons or any of those prohibited by article 22 of the Political Constitution of the United Mexican States, as well as the forced incorporation into the national Army, Navy or Air Force, and the aggrieved party is unable to promote the amparo, any other person may do so on his behalf, even if he is a minor. . In these cases, the amparo court will order the suspension of the acts claimed, and will dictate all the necessary measures to achieve the appearance of the aggrieved party. Once the appearance is achieved, the aggrieved party will be required to ratify the amparo claim within a term of three days. If the latter ratifies it by himself or through his representative, the trial will be processed; Otherwise, the claim will be deemed not filed and the orders issued will be without effect.

the processing of the trial subject to the aforementioned ratification given the nature of the forced disappearance, otherwise the amparo trial would become an ineffective remedy, in contravention of the provisions of article 25 of the American Convention on Human Rights. In addition, the plaintiffs, as relatives of the directly aggrieved, also have the character of complainants in the amparo trial, because they are indirect victims.

- b) The dismissal must be decreed with respect to certain authorities indicated as responsible, because after a detailed analysis, no documentary, even at the indicative level, is found that shows that they have participated in the operation in which the direct complainants were probably arrested. However, the dismissal does not prevent them, within their sphere of competence, from collaborating in the search and location of the complainants in the event that any authority in charge of said entrustment requests it.
- c) Regarding the evidentiary standard regarding the accreditation of forced disappearance, it should be taken into account that the Inter-

If, despite the measures taken by the amparo court, the aggrieved party is not able to appear, it will resolve the final suspension, order the suspension of the proceeding in principle, and the facts will be brought to the knowledge of the Federal Public Ministry. In the event that the latter is the responsible authority, the Attorney General of the Republic will be notified. When there is an express request from the National Human Rights Commission, a certified copy of the proceedings in these cases will be sent.

After a year has elapsed without anyone appearing in person at the trial, the claim will be deemed not to have been filed.

When, due to the circumstances of the case or it is stated by the person filing the claim instead of the complainant, it is a possible commission of the crime of forced disappearance of persons, the judge will have a term of no more than twenty-four hours to process the amparo, dictate the suspension of the claimed acts, and request from the corresponding authorities all the information that may be conducive to the location and release of the probable victim. Under this assumption, no authority may determine that a specific period elapses for the aggrieved party to appear, nor may the authorities refuse to carry out the proceedings that are requested or ordered by them on the grounds that there are legal deadlines to consider the disappearance of a person. person.

American Court has held (when resolving the *Godínez Cruz vs. Honduras*, and *Blake vs. Guatemala* cases) that in cases of forced disappearance it is especially valid circumstantial evidence that supports a judicial presumption, since it can become the only instrument to comply with the object and purpose of the American Convention on Human Rights. Thus, the Inter-American Court considered that it is possible for the disappearance of a person to be proven with indirect and circumstantial evidence, added to pertinent logical inferences, as well as its link to a general practice of disappearances.

- d) In this sense, when dealing with cases of forced disappearance, there is an attenuated evidentiary standard by virtue of which, within the context and specific circumstances of the specific case, a high probative value can be attributed to indirect testimonies and circumstantial evidence. The foregoing, since this type of human rights violation is characterized by the use of the power of the State to achieve the destruction of all direct evidence that allows verifying the whereabouts or fate of the victim.
- e) Even though various responsible authorities denied the acts attributed to them when rendering their justified report, the truth is that from the evidence provided by the indirect complainant victims, as well as from the various evidence in the case file, it is possible to conclude that the direct complainants were probably arrested for public servants belonging to the Ministerial Police of the Attorney General's Office and the General Directorate of Public Security (at that time of the Secretariat for Citizen Protection), both of the State of Oaxaca, as well as the Directorate of Public Security of the Municipality of Oaxaca de Juárez, to later be taken to the facilities

of the then Oaxaca Attorney General's Office and ultimately to Military Camp Number One by members of the Mexican Army, since to date their whereabouts are unknown.

- f) Despite the refusal of the ministerial agent designated as responsible and the evidence in the case file, from which it can be deduced that the aforementioned ministerial authority has carried out a significant number of procedures in order to integrate the investigation and locate the complainants direct, the truth is that to date the investigation continues in integration, since the whereabouts of the complainants have not been found, nor has criminal action been brought against any person. Therefore, the act consisting of abstention in the investigation of the crime must be taken as true.
- g) In accordance with what was stated by the plaintiffs in their application for amparo, and in accordance with the investigation carried out by the National Human Rights Commission that culminated in the recommendation*****and the preliminary investigation in progress, there are sufficient indicative elements (at least for the purposes of the amparo trial) to conclude that on May 24, 2007, the direct complainants were forcibly disappeared by State agents belonging to the Mexican Army (of the eighth military region in Ixcotel, Oaxaca), to the General Directorate of Public Security (at that time of the Secretary of Citizen Protection of the state of Oaxaca), to the Ministerial Police of what is now the Attorney General's Office of the state of Oaxaca, and to the Directorate of Public Security of the municipality of Oaxaca de Juárez.

- h) Therefore, for the purposes of the amparo trial, and based on the attenuated standard that operates in these cases (by virtue of which, within the context and specific circumstances of the case, a high probative value can be attributed to indirect testimonies and evidence circumstantial), the aforementioned authorities are responsible for the violation of the right to liberty, to personal integrity and, where appropriate, to life of the direct complainants.
- i) The forced disappearance of the direct complainants has caused the plaintiffs, also complainants, an affectation in their mental and moral integrity, which has been shaped by the situations and circumstances experienced during the disappearance of their relatives.
- j) The forced disappearance of the direct complainants deserves a prompt, serious, diligent and exhaustive scientific investigation. However, after a thorough review of the investigation from which the claimed act derives, it is possible to note that neither the social representative who initially knew about said investigation, nor the agent of the Public Ministry attached to the Special Prosecutor for the Search for Disappeared Persons dependent of the Office of Human Rights, Crime Prevention and Community Services (currently in charge of the investigation) determined the axes on which their investigation is based. The foregoing is relevant, since the clarification of the facts that led to the disappearance of the complainants requires a systemic analysis with a comprehensive perspective.
- k) The Public Prosecutor's Office attached to the Specialized Prosecutor's Office for the Search for Disappeared Persons, dependent on the Deputy Attorney of Human Rights, Crime

Prevention and Community Services, has been deficient in the practice of the necessary actions to elucidate the probable perpetrators in the forced disappearance of the complainants.

- l) The federal ministerial agent has failed to promptly investigate the facts that are the subject of the investigation, since eleven years have elapsed from the moment of the events without having managed to locate the direct complainants or exercise criminal action against the probable perpetrators it is clear that he did not meet a reasonable deadline.
- m) From an interpretation of article 1, third paragraph, and 20 of the Political Constitution of the country, in relation to 77 of the Amparo Law, it is possible to consider that the victims of human rights violations and their families have the right to reparation damage, which must be specified through individual measures tending to restitute, compensate and rehabilitate the victim, as well as satisfaction measures of general scope and guarantees of non-repetition, which is not a graceful concession, but compliance with a legal obligation. This reparation in turn constitutes one of the phases of the right of access to justice.
- n) It is not unknown that the First Chamber of the Supreme Court of Justice of the Nation has indicated that the human rights violations heard by the courts of the Judiciary of the Federation due to amparo proceedings are not similar to the cases analyzed by the Inter-American Court of Human Rights that give rise to exceptional reparation measures, for which reason this type of measure cannot be issued in the amparo proceedings. This is not only because of the differences between the type of violations analyzed at the domestic and international levels, but also because there is no legal

basis to decree them. Likewise, it has established that, in terms of the provisions of article 77 of the Amparo Law, The measures that can be issued can only have the purpose of restoring the complainant to the full enjoyment of the violated right, admitting compensatory measures only under substitute compliance. In this sense, there is no legal precept that allows decreeing measures of satisfaction or non-repetition.

- o) However, the reparatory measures that must be established in this case must comply with the principles of suitability and congruence, and the purposes that each one must pursue must be aimed at restating the importance of access to justice through the amparo trial, to achieve the effectiveness of the constitutional instance, in relation to the magnitude of the violation of the human rights of the direct complainants and the promoters derived from the forced disappearance.
- p) Therefore, they must be imposed measures of satisfaction, restitution and non-repetition:
 - i. The sentence constitutes per se a form of reparation, by virtue of the fact that it recognizes the serious violation of the human rights of the gentlemen*****and*****by agents of the Mexican State.
 - ii. The agent of the Public Ministry must promptly, exhaustively, diligently and objectively investigate the forced disappearance in which the state agents of the aforementioned dependencies intervened; carry out, without limitation, all the procedures to locate the complainants alive or their mortal remains; keep the investigation ongoing until criminal action is taken against those

responsible; conform to the Approved Protocol for the Search for Disappeared Persons and the Investigation of the Crime of Forced Disappearance; communicate periodically (every ten business days) the progress in the integration of the investigation, as well as in the search for the complainants.

- iii. Likewise, the ministerial authority must publish on the website of the Attorney General of the Republic the investigation and the evidence that is part of the preliminary investigation, which must be updated weekly according to the progress of said investigation, for which it must protect the personal data of the probable perpetrators (as long as they are individuals), the relatives of the direct victims, witnesses or third parties related to the investigation, as well as the names of the agents of the Public Ministry and public servants with operational functions. However, it will not be able to test the names of the public servants who participated in the events for which the direct complainants disappeared.
- iv. On the other hand, the ministerial agent must gather the records that make up the local inquiry; carry out an exhaustive review of the records that make up the preliminary investigation, in order to establish an investigation plan.
- v. Also, the agent of the Public Ministry must take the statement of the military commanders who had been in office in May of two thousand and seven in the state of Oaxaca, in order to elucidate their possible participation in the forced disappearance of the directly aggrieved or, even, to investigate the whereabouts of the latter ; The provision of February 16, two thousand and fifteen, through which the agent of the Federal Public Ministry

refused to recognize the formation and creation of the Special Search Commission to locate the direct complainants and, in its Instead, it must issue another in which it recognizes said working group.

- vi. Similarly, the agent of the Public Ministry The complainants must be summoned so that they state if they wish to start with the procedure for the special declaration of absence of the direct victims; and take the necessary actions to enroll to the direct victims in the National Registry of Victims;
- vii. He The Secretary of National Defense shall publish, for a single occasion, an extract of this resolution in a newspaper of circulation as well as the Secretary of Public Security and the Attorney General, both from the state of Oaxaca. The Director of Public Safety, Roads and Citizen Protection of the Municipality of Oaxaca de Juárez must do the same (in the same way for a single occasion) in a newspaper of state circulation of the entity. The foregoing, with the understanding that the personal and identification data of the parties will not be disclosed in the extract of the sentence, given that up to now there has not been the express consent of the complaining party for this purpose..
- viii. Likewise, the Secretary of National Defense must, through all the members of the Mexican army, provide the necessary facilities to the federal prosecutor in charge of integrating the original investigation, as well as to any authority entrusted with finding the whereabouts of complainants direct, in order to investigate their enforced disappearance.

ix. The women ***** and ***** have the right to receive specialized medical, psychological and psychiatric care in the event that therequest, and must be granted by the Executive Commission for Attention to Victims.

x. TheCommissionCustomer Service Executivevictimsmust initiate the respective procedure in order to pay acompensation,in a subsidiary manner, in charge of the respective Fund in favor of the ladies ***** and ***** , in the understanding that, in cases of forced disappearance of persons, the resolutions must be proportional to the seriousness of the damage suffered.

xi. The authoritiesinvolved in the observance of said measures must refrain from criminalizing and revictimizing the plaintiffs ***** and ***** .

10. Appeals for review (file***).**Dissatisfied with the previous resolution, on May 21, 2019, the Agent of the Public Ministry of the Federation attached to the Special Prosecutor for the Investigation of Crimes of Forced Disappearance and the Secretary of National Defense filed an appeal for review respectively.

11. TheAgent of the Public Ministry of the Federationnoted as grievances:

a) The measure of satisfaction,consisting ofthe publication of the preliminary investigation and the weekly progress on the website of the Attorney General of the Republic, forces it to violate constitutional attributions and facultiesalready publishsensitive information and personal data, whichwould result in administrative

and criminal liability. In addition, it is ignored that it is confidential information.

- b) Providing information about the preliminary investigation represents a real, demonstrable and identifiable risk, which would expose the investigations, which goes against the secrecy that must be kept for the success of the investigation and for the exercise of the action itself. penal; coupled with the fact that the integrity of the witnesses would be put at risk. Likewise, it represents a detriment that exceeds the public interest, since the supposed benefit would be limited solely and exclusively to the applicants, and the institution is due to society as a whole.
- c) The determination of the District Judge was incorrect in the sense that it should render insubsistent the one issued on February 16, two thousand and fifteen, with which it refused to recognize the conformation and creation of the Special Search Commission to locate the disappeared, and instead issue another to recognize said working group, because in accordance with article 53 sections XVIII and XXXI of the General Law on Forced Disappearance of Persons, Disappearance committed by Individuals and the National System for the Search for Persons¹¹, said power corresponds to the National Search Commission, which proves that the ministerial agent does not have the power to form said working group.

¹¹Article 53. The National Search Commission has the following powers:

[...]

XVIII. Integrate working groups to propose specific search actions, as well as analyze the phenomenon of disappearance, even at a regional level

[...]

XXXI. Establish specific search actions for the disappearances of people linked to political movements. In the event that during the search actions any indication of the probable commission of a crime is found, immediate notice will be given to the corresponding prosecutor's office;

12. In turn, the Secretary of National Defense indicated that the resolution causes him grievance,for the following reasons:

- a) The negativeof the claimed acts is not distorted by any means of conviction thatprovethat it was military elements who carried out the eventscriminals,butthatpresumably other public servants from public security institutions did it. Therefore, the amparo trial must be dismissed.
- b) The amparo judge acted outside the law and without legal support to fill the deficiency of the complaint, since until the moment of presenting the appeal for review there is no enforceable sentence of conviction issued by a trial judge, which would have resolved the guilt of a governed and, specifically, of elements of the National Army, for the commission of said crime of forced disappearance.
- c) The sentence is based on subjective arguments and not on proven facts about the participation of military elements in the operationofdetention of direct complainants. In the case there is not a single documentary or testimonial evidence that fully proves that elements of the army have detained the complainants.
- d) The District Judge points out that members of the army “probably” detained the complainants and thereby committed the crime of forced disappearance to their detriment; However, with this she ignored that the technique in the dictation of the sentences forces her to make her considerations on proven facts and not on subjective arguments. That is to say, in a judgment the claimed acts must be proven, demonstrated, accredited, so it cannot be dictated only under a probability since this is contrary to the principles of legality, legal certainty, due process and presumption of innocence.

- e) It must be considered false that the first and second elements constituting the crime of forced disappearance of persons are accredited, since there is no evidence that conclusively proves the participation of military personnel.
- f) It is illegal the imposition of the disclosure of the sentence in a medium of national importance without there being a criminal process involved or a conviction in which it translates into a direct participation of personnel in charge of that unit, in such a way that the Presumption of innocence.
- g) In addition, the Secretary of National Defense does not figure within this constitutional dispute as a responsible authority, since he denied the attributed acts, for which reason he cannot be forced to undertake certain actions in order to promote, respect, protect and guarantee the human rights of the direct complainants, since such a situation would be contrary to the basic rules and principles that govern its issuance and distorts the constitutional judgment, whose purpose is to protect from acts of authority that violate human rights, in terms of articles 103 and 107 constitutional.
- h) The District Judge ignored that the sentence handed down in an amparo trial has the effect of restoring the plaintiff to the enjoyment of the violated guarantees and its purpose is not to impose satisfaction reparation measures, nor guarantees of non-repetition because the amparo authority It does not have the power to judge or sentence a person for the crime of forced disappearance of persons, because this is exclusive to the judicial authority in criminal matters, which can establish these measures.

- i) The right to due process of the authorities presumably identified as responsible for the crime of forced disappearance was violated, since it was not guaranteed that they would be heard and defeated in court.
- j) The imposition of the restitution measure focused on locating the complainants (by providing facilities to the prosecutor's office in order to investigate the disappearance) is illegal since the Organic Law of the Judiciary of the Federation does not allow the judge to issue this type of measures, since they are exclusive to the investigating authority.
- k) It hurts you thatThe judgeconclude without probative material that membersof theMexican Army detained the direct complainants, without determining which members of the ArmyHEaccuses them of such conduct.
- l) The judgeHEoverreachedin their duties andinvadedthe sphere of competence of the authorities in charge of the investigation, prosecution and punishment of the crime, since it was not authorized to establish responsibility in the commission of the crime of forced disappearance; butonly to order the authorities to carry out errandstending toachieve the location and appearance of the aggrieved, according towith the provisions of articlesfifteen, 109, 112, 126 and 143of the Amparo Law¹².

¹²Article 15. [...] When, due to the circumstances of the case or the person filing the claim instead of the complainant, it is a possible commission of the crime of forced disappearance of persons, the judge will have a term of no more than twenty-four hours to process the amparo, order the suspension of the claimed acts, and request from the corresponding authorities all the information that may be conducive to the location and release of the probable victim. Under this assumption, no authority may determine that a specific period elapses for the aggrieved party to appear, nor may the authorities refuse to

m)The Amparo Judge does not have the power to impose the measures of reparation of satisfaction and non-repetition since no provision of the Amparo Law or the Organic Law of the Judiciary of the Federation authorizes her for that purpose.

13. Sticky review resource. HeseventeenJune two thousand and nineteen*****and*****filed an appeal for adhesive review in which they argued that:

carry out the proceedings that are requested or ordered by them on the grounds that there are legal deadlines to consider the disappearance of a person. person.

Article 109.When the amparo is promoted under the terms of article 15 of this Law, it will be enough for the claim to be processed, which is expressed:

- YO.**The act claimed;
- II.**The authority that ordered it, if possible;
- III.**The authority that executes or tries to execute the act; and
- IV.**If applicable, the place where the complainant is located.

In these cases, the claim may be made in writing, by appearance or by electronic means. In the latter case, an electronic signature will not be required.

Article 112. Within a period of twenty-four hours from the date the claim was filed, or, where appropriate, turned over, the court must decide whether to reject, prevent, or admit. In the case of articles 15 and 20 of this Law, it must be provided immediately.

Article 126.The suspension will be granted ex officio and outright in the case of acts involving the risk of deprivation of life, attacks on personal liberty outside of procedure, isolation, deportation or expulsion, proscription or exile, extradition, forced disappearance of persons or any of those prohibited by article 22 of the Political Constitution of the United Mexican States, as well as the forced incorporation into the national Army, Navy or Air Force.

In this case, the suspension will be decreed in the order of admission of the claim, communicating without delay to the responsible authority, by any means that allows to achieve its immediate compliance.

The suspension will also be granted ex officio and flat in the case of acts that have or may have the effect of totally or partially depriving, temporarily or permanently, the property, possession or enjoyment of their agrarian rights to the ejidal population centers or communal.

Article 143.The court may request documents and order the proceedings it deems necessary, in order to decide on the final suspension.

In the case of suspension, only documentary evidence and judicial inspection will be accepted. In the case of the cases referred to in article 15 of this Law, testimonial evidence will be admissible.

For the purposes of this article, the provisions relating to the offering and admission of tests in the main notebook will not be applicable.

- a) The Head of the Legal Affairs Unit of the National Defense Secretariat does not have procedural legitimacy to file the appeal of revision acting on behalf of the Secretary of National Defense, since the substitution only operates for the undersecretary and senior officer. Due to the foregoing, the appeal must be dismissed as it does not have the powers to replace it or the powers to sign the documents that correspond to it by substitution.
- b) The dismissal argued by the Secretary of National Defense is inadmissible, by virtue of the fact that the amparo ruling respected the principles of consistency and completeness regarding the existence of the claimed acts.
- c) The arguments of the Ministry of National Defense, regarding the fact that statements should not be taken from military commanders or search for the complainants in military installations, are inoperative by virtue of the fact that the amparo ruling respected the principles of consistency and exhaustiveness in terms of the satisfaction measures consisting of the investigation of the crime of forced disappearance.
- d) The grievances of the Secretary of National Defense, with respect to the fact that it is inadmissible to disclose an extract of the amparo ruling in a newspaper with national circulation, are inoperative, by virtue of the fact that said resolution respected the principles of consistency and exhaustiveness in terms of the satisfaction measures. In addition, disclosure is essential so as not to leave the illegal actions of the responsible authorities in a state of opacity and to give symbolic recognition to the complaining victims of forced disappearance.

- e) What has been indicated by the Secretary of National Defense, regarding the fact that the restitution measure consisting of the head of said agency providing all the facilities to find the whereabouts of the complainants is illegal, allowing, for example, entry to any military installation to search for both disappeared persons or, rather, their mortal remains, are inoperative by virtue of the fact that said resolution respected the principles of consistency and exhaustiveness in terms of restitution measures.
- f) The arguments of the Public Prosecutor's Office, regarding the fact that it is inappropriate to publish the investigation on the main Internet page of the Attorney General's Office and the evidence that is part of the preliminary investigation, are inoperative since said resolution respected the principles of consistency and completeness. in terms of satisfaction measures. In addition, an exception is configured, since the cases in which the crime prosecuted is of such seriousness that the public interest in keeping the preliminary investigation confidential is outweighed by the interest of society in knowing the procedures carried out for the investigation. timely investigation, arrest, trial and punishment of those responsible.
- g) The arguments of the appellant authority, agent of the Public Prosecutor's Office, relating to the fact that he does not have the power to recognize the formation of the Special Search Commission to locate the direct complainants, are inoperative by virtue of the fact that said resolution respected the principles of congruence and exhaustiveness in terms of satisfaction measures.
- h) The reviewing body must specify the scope in terms of the exact amount of compensation that must be paid by the Executive

Commission for Attention to Victims, in favor of the plaintiffs.of
theprotection trial.

14. Jurisdiction reservation. On December 12, 2019, the Second Collegiate Criminal Court of the First Circuit saved the jurisdiction of this Supreme Court of Justice of the Nation for the study and ruling on three issues:

- a) The non-application ex officio of article 15, third, fourth and fifth paragraphs, of the Amparo Law.
- b) The guidelines and attenuated evidentiary standard to define the margin of action of the amparo body.
- c) The direct interpretation of articles 1 and 20, section C, section VII, of the Political Constitution of the country, to implement comprehensive reparation for violated human rights derived from forced disappearance, carried out by the District Judge.

15. Admission and turn.By agreement of March 4, two thousand and twenty, the Presidency of this Supreme Court of Justice of the Nationassumed the proposed competence, filed it with the file number 51/2020 and turned it over for its study to Minister Ana Margarita Ríos Farjat, as a member of the First Chamber.

16. Avocation.HeJune 9, 2020, the Presidency of the First Chamber considered the file received, ordered the referral of the matter and the sending of the records to the designated Minister for the elaboration of the draft resolution.

II. COMPETENCE

17. ThisThe First Chamber of the Supreme Court of Justice of the Nation is legally competent to hear and resolve this review appeal, in terms of the provisions of articles 107, section VIII, subparagraph a), of the Political Constitution of the country; 81, section I, subsection d) and 83, of the Amparo Law, and 21, section II, subsection a), of the Organic Law of the Judiciary of the Federation, as well as the provisions of the General Plenary Agreement 5/2013 , third point in relation to the second, section III, published in the Official Gazette of the Federation on May 21, two thousand and thirteen.
18. Indeed, ofaccordance with whatprovided in article 107, section VIII, subparagraph a) of the Constitution, the appeal for reviewproceedsagainst the judgments pronounced by the District Judges or the Unitary Circuit Courts in an amparo proceeding.Tothe Supreme Court of Justice of the NationIt is appropriate to know about these resourceswhen, having challenged in the application for amparo general regulations for considering them directly in violation of the Constitution,subsistson the resourceaconstitutionality problem¹³.
19. For his part, heArticle 83 of the Amparo Law reiterates that the Supreme Court of Justice of the Nation is competent to hear the appeal for review against sentences handed down in the constitutional court, when general norms have been challenged because they are considered unconstitutional, or when the sentence establishes the direct interpretation of a precept of the Constitution and the problem of constitutionality subsists in the appeal; Meanwhile interms of the

¹³Article 107. [...] VIII.- Against the sentences pronounced in amparo by the District Judges or the Unitary Circuit Courts, review is appropriate. The Supreme Court of Justice will know about it: a) When, having challenged in the petition for amparo, general norms for deeming them to be directly in violation of this Constitution, the problem of constitutionality subsists in the appeal.

numeral 84 of the same law, in unforeseen cases by provision previous, the Collegiate Circuit Courts are competent to hear the appeal review¹⁴.

20. In this case, we are facing an appeal for review filed against the sentence handed down in indirect amparo, in which only two constitutionality approaches subsist: i) the evidentiary standard applicable to accredit the forced disappearance of persons in the trial of amparo, and ii) the direct interpretation of articles 1 and 20, section C, section VII of the Political Constitution of the country, to establish comprehensive reparation measures for the violated human rights derived from forced disappearance. It should be noted that contrary to what was indicated by the Collegiate Court of knowledge, the ex officio non-application of article 15 of the Amparo Law does not subsist as a constitutional issue.
21. To explain the above statement, it should be remembered that ***** and ***** filed a claim for indirect amparo in their capacity as indirect victims and on behalf of ***** and ***** (direct victims), in which They indicated as acts claimed the forced disappearance of the last named, and the abstention of the ministerial agent to carry out the necessary steps to investigate those probably criminal acts.
22. In the amparo ruling, The District Judge noted that Up to the moment of the issuance of the sentence, the appearance of the direct complainants had not been achieved, nor the ratification of the amparo claim in terms of the provisions of article 15 of the Amparo Law.¹⁵. However, it considered that it was not feasible to make the processing of the trial

¹⁴Article 84. The collegiate circuit courts are competent to hear the appeal for review in cases not provided for in the previous article. The sentences handed down in these cases will not admit any appeal.

¹⁵Above, see note 10.

subject to the aforementioned ratification, given the nature of the forced disappearance, since otherwise the amparo trial would become an ineffective remedy, in contravention of the provisions of article 25 of the American Convention on Human Rights¹⁶.

23. In addition, it considered that accordance with the article 4th of the law General of Victims¹⁷, the promoters ***** and *****, also have the character of complainers, by directly resenting an affectation due to the isolation of their relatives and the ignorance of their whereabouts.

24. Besides, the Judge of District made reference to various criteria of the Inter-American Court of Human Rights¹⁸ to hold that in the cases of forced disappearance, circumstantial evidence that supports a judicial presumption is especially valid, since it may be the only instrument to comply with the object and purpose of the American Convention on Human Rights, since violations of human rights derived from instances of

¹⁶Article 25. Judicial Protection

1. Every person has the right to a simple and prompt remedy or to any other effective remedy before the competent judges or courts, that protects them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed by persons acting in the exercise of their official functions.
2. The States Parties undertake:
 - a) to guarantee that the competent authority provided for by the legal system of the State will decide on the rights of any person who files such a remedy;
 - b) to develop the possibilities of judicial recourse, and
 - c) to guarantee the compliance, by the competent authorities, of any decision in which the appeal has been deemed appropriate.

¹⁷Article 4. Direct victims will be called those individuals who have suffered any economic, physical, mental, emotional damage or impairment, or in general any endangerment or injury to their legal assets or rights as a result of the commission of a crime or violations to their human rights recognized in the Constitution and in the International Treaties to which the Mexican State is a Party.

Indirect victims are the relatives or those natural persons in charge of the direct victim who have an immediate relationship with her. [...]

¹⁸Case of Godínez Cruz v. Honduras, Judgment of January 20, 1989 (Merits); and case of Blake v. Guatemala, Judgment of January 24, 1998 (Merits).

forced disappearance, are characterized by suppression of direct evidence of the facts.

25. Based on the foregoing, it determined the non-existence of the acts attributed to various authorities indicated as responsible, and the existence of sufficient indicative elements to establish the well-founded suspicion that ***** and ***** were subjected to forced disappearance, in which members of various agencies presumably participated, among which are the Ministerial Police of the Oaxaca State Attorney General's Office (current Oaxaca State Attorney General's Office) and the Mexican Army (attached to to the Eighth Military Region, military based in Ixcotel, Oaxaca).
26. The District Judge also considered that the agent of the Federal Public Ministry attached to the Special Prosecutor's Office for the Investigation of Crimes of Forced Disappearance, dependent on the Human Rights, Crime Prevention and Community Services Deputy Prosecutor's Office General of the Republic, did not duly carry out the investigation of the crime of forced disappearance.
27. By virtue of the foregoing, the Judge granted constitutional protection to the complainants, and imposed as effects of said concession, reparation measures consisting of measures of satisfaction, restitution, and guarantees of non-repetition, in terms of articles 1, 20, sections B and C, and 113, second paragraph, of the Political Constitution of the country and numerals 1, 7, 26, 61, section I, 65, subsection a), 67, 73 , 74 of the General Law of Victims.
28. Regarding said reparation measures, the District Judge indicated that from an interpretation of article 1, third paragraph, and 20 of the Political Constitution of the country, in relation to 77 of the Amparo Law, it was

possible to consider that the victims of human rights violations and their relatives have the right to comprehensive reparation for the damage, which must be materialized through individual measures aimed at restitution, compensation and rehabilitation of the victim, as well as measures of satisfaction of general scope and guarantees of non-repetition, which is not a graceful concession, but the fulfillment of a legal obligation, since this reparation constitutes, in turn, one of the phases of the right of access to justice.

- 29.** He indicated that he was not unaware that this First Chamber of the Supreme Court of Justice of the Nation has established that the human rights violations heard by the Courts of the Judiciary of the Federation, due to amparo proceedings, are not similar to the cases analyzed by the Inter-American Court of Human Rights that give rise to reparation of an exceptional nature, for which reason this type of measure cannot be issued in the amparo proceedings. This is not only because of the differences between the type of violations analyzed at the domestic and international levels, but also because there is no legal basis to decree them.
- 30.** Likewise, it indicated that this First Chamber has established that, in terms of the provisions of Article 77 of the Amparo Law, the measures that can be ordered can only have the purpose of restoring the complaining party to the full enjoyment of the violated right, admitting compensation only under substitute performance. In this sense, there is no legal precept that allows decreeing measures of satisfaction or non-repetition.
- 31.** However, it considered that the reparation in this case should comply with the principles of suitability and consistency and that the goals that each one should pursue was to reconsider the importance of access to

justice through the amparo trial, to achieve the effectiveness of the constitutional instance, in relation to the magnitude of the violation of the human rights of the direct complainants and the petitioners, derived from the forced disappearance.

32. By virtue of the foregoing, the Second Collegiate Court in Criminal Matters of the First Circuit determined that the considerations of the District Judge, developed in the preceding paragraphs, make it necessary for this high court to intervene in order to define and validate the procedural rules that amparo judges must observe for the processing of the trial, specifically on:

- a) The non-application ex officio of article 15, third, fourth and fifth paragraphs of the Amparo Law;
- b) The guidelines and attenuated evidentiary standard to define the margin of action of the amparo body, and
- c) The direct interpretation of articles 1 and 20, section C, section VII, of the Political Constitution of the United Mexican States, to implement the integral reparation of human rights, carried out by the District Judge.

33. This First Chamber notes that it is not legally competent to hear issue a), relating to the ex officio non-application of Article 15 of the Amparo Law, since from reading the review briefs it can be seen that none of the main appellants neither adhesives used an express grievance in which they discussed or confronted the non-application ex officio of the aforementioned article.

34. In this sense, if no appellant questions the conventional analysis carried out by the District judge regarding the ex officio non-application of Article

15 of the Amparo Law, it is evident that such a topic does not subsist and is not part of the subject matter of this appeal. review¹⁹.

- 35.** Therefore, contrary to what was indicated by the Collegiate Court of knowledge, this First Chamber is only competent with respect to the issues identified as b) and c) called, respectively, guidelines and attenuated evidentiary standard to define the margin of action of the amparo body. , and the direct interpretation of articles 1 and 20, section C, section VII, of the Political Constitution of the country regarding the integral reparation of the violated human rights derived from the forced disappearance.
- 36.** The foregoing, since, in his brief of grievances, the Secretary of National Defense disagrees with the standard used by the District Judge (attenuated) to consider forced disappearance up to date in the framework of an amparo trial. It considers that the amparo judge acted outside the law and without legal support when making up for the deficiency of the complaint, since up to the moment of presenting the appeal for review there is no enforceable sentence of conviction issued by a trial judge who had resolved the guilt of elements of the National Army for the commission of said crime of forced disappearance.
- 37.** In addition, it maintains that the sentence is based on subjective arguments and not on proven facts regarding the participation of military elements in the operation to arrest the direct complainants, since in the case there is not a single documentary or testimonial evidence that fully proves that elements of the army have arrested the complainants. That is to say, in a sentence the claimed acts must be proven, demonstrated,

¹⁹The First Chamber ruled in the same terms when resolving the amparo under review 315/2019 and 313/2020, resolved on February 3, two thousand and twenty-one, unanimously.

accredited, so it cannot be dictated only under a probability, since this is contrary to the principle of legality, legal certainty, due process and presumption of innocence.

38. Therefore, it considers that it must be considered false that the first and second elements constituting the crime of forced disappearance of persons are proven, since there is no evidence that irrefutably proves the participation of military personnel.
39. In the same way, both responsible authorities are hurt by the determination of the District Judge when considering that it exceeded its limits and that it violated the principle of legality by establishing comprehensive reparation measures for the damage, despite the fact that it has no competence to do so.
40. In his opinion, the sentence handed down in an amparo trial has the sole effect of restoring the complaining party to the enjoyment of the violated guarantees, so its purpose is not to impose reparatory measures of satisfaction, or guarantees of non-repetition, since the amparo court does not have the power to judge or sentence a person for the commission of the crime of forced disappearance of persons, which makes the imposition of reparatory measures valid.
41. For their part, the ladies*****and*****,In their appeal for adhesive review, they allege that the arguments of the appellant authorities in which they intend to challenge the restitution and satisfaction measures are ineffective, since the amparo ruling respected the principles of consistency and exhaustiveness since the District Judge did have powers to assume its position as guarantor of fundamental rights. This, since the amparo trial is a constitutional path whose purpose is the protection and restitution of violated human rights.

42. Therefore, this First Chamber concludes that the District Judge ruled on two issues of constitutionality in the amparo judgment, which were challenged via grievances by the main appellants in such a way that they subsist in the present review appeal, for which reason It is appropriate to resume jurisdiction only to know the evidentiary standard to have the forced disappearance proven in the amparo trial and the reparation measures for the forced disappearance as a serious violation of human rights, derived from the interpretation of articles 1 and 20 , Section C of the Political Constitution of the country.
43. Finally, noor it ignores that this First Chamber has resolved two similar matters in which the Collegiate Circuit Court reserved jurisdiction solely to hear the non-application **ex officio of article 15, third, fourth and fifth paragraphs, of the Amparo Law** and in which, this Chamber concluded that it was not competent.
44. Indeed, in the protections under review 315/2019 and 313/2020²⁰, this First Chamber determined that a constitutionality problem did not subsist, since none of the appellant authorities expressed grievance in this regard, but rather limited themselves to questioning that the amparo court violated article 15 of the Amparo Law by carrying out its own investigations, unofficially gathering evidence or invading the powers of the Public Ministry, that is, arguments of mere legality, which do not update the original competence of this high court.
45. However, this First Chamber notices a substantial difference between the present case and the aforementioned precedents.

²⁰Resolved on February 3, 2021 unanimously by five votes of Ministers Piña Hernández and Ríos Farjat, Ministers Gutiérrez Ortiz Mena, Pardo Rebolledo and González Alcántara Carrancá.

46. The foregoing is affirmed because in the present matter and the Second Collegiate Court in Criminal Matters of the First Circuit reserved jurisdiction for this Supreme Court of Justice of the Nation for the study and pronouncement not only of the unofficial non-application of the article 15, third, fourth and fifth paragraphs, of the Amparo Law, but also about the guidelines and attenuated evidentiary standard to define the margin of action of the amparo body, and on the direct interpretation of articles 1 and 20, section C, section VII, of the Political Constitution of the country, to implement comprehensive reparation measures in cases of enforced disappearance.
47. Therefore, unlike the precedents, in this case the Collegiate Court reserved jurisdiction with respect to two other diverse issues, which demand the analysis of a constitutional and conventional interpretation (particularly with respect to articles 1 and 20, section C, section VII, of the Political Constitution of the country, in relation to the different international treaties against forced disappearance, of which Mexico is a party), and are fought via grievances by the responsible authorities, which gives rise to the original competence of this First Chamber.
48. The aforementioned differences are evidenced by the following comparative table:

	AR 315/2019	AR 313/2020	AR 51/2020
Facts	enforced disappearance of a person. His wife filed an amparo lawsuit in her own right and on behalf of her husband.	enforced disappearance to a person His mother filed an amparo lawsuit in her own right and on behalf of her son.	enforced disappearance of two people. The daughter and sister, respectively, filed an amparo lawsuit in their own right and on behalf of their relatives.
Judgment	The District Judge:	The District Judge:	The District Judge:

	AR 315/2019	AR 313/2020	AR 51/2020
of protection	1. Inapplied art. 15 of the Amparo Law regarding the lack of ratification of the disappeared person. 2. It determined that the authorities are responsible for forced disappearance. 3. Established comprehensive reparation measures.	1. Inapplied art. 15 of the Amparo Law regarding the lack of ratification of the disappeared person. 2. It determined that the authorities are responsible for forced disappearance. 3. Established comprehensive reparation measures.	1. Inapplied art. 15 of the Amparo Law regarding the lack of ratification of disappeared persons. 2. It determined that the authorities are responsible for forced disappearance. 3. Established comprehensive reparation measures.
Resource review major	The responsible authorities	The responsible authorities	The responsible authorities
Resource adhesive patch	None	None	The complaining party (indirect victims) filed an adhesive review
Reservation of jurisdiction of the TCC	The TCC reserved original competence to the SCJN regarding: 1. Non-application ex officio of art. 15 of the Amparo Law	The TCC reserved original competence to the SCJN regarding: 1. Non-application ex officio of art. 15 of the Amparo Law	The TCC reserved original competence to the SCJN regarding: 1. Non-application ex officio of art. 15 of the Amparo Law. 2. Guidelines and attenuated evidentiary standard to define the margin of action of the amparo body. 3. Direct interpretation of the arts. 1 and 20, section C, section VII of the Political Constitution of the country, to implement the comprehensive reparation of

	AR 315/2019	AR 313/2020	AR 51/2020
			human rights made by the District Judge.

49. In addition to the aforementioned differences between the precedents and the present matter, this First Chamber considers that this case represents an extremely valuable opportunity to establish a criterion that makes it possible to generate uniformity in the decisions made by the amparo jurisdictional authorities regarding the evidentiary standard that must be be addressed to conclude that there is a forced disappearance, in its aspect of violation of human rights, and to that extent the powers that the aforementioned amparo judges have to establish comprehensive reparation measures in that means of constitutional control, which results from the greater relevance considering the multi-offensive nature of forced disappearance, its nature as a serious violation of human rights,as well as the impacts that said violation generates in the direct and indirect victims.
50. This is strengthened by the recent visit of the Committee Against Forced Disappearance to Mexico, carried out from November 15 to 26, 2021, from which a report was derived that emphasized the seriousness of the problem of forced disappearances in the country, since According to official figures, as of November 26, 2021, 95,121 missing persons were registered.
51. In addition, in the aforementioned report, the Committee indicated with concern that there is an incorrect application of the amparo proceeding in matters of forced disappearance, which, in accordance with the Amparo Law, authorizes the judiciary to order another authority to provide information and present the person in their power or go to the

places where the victim would presumably be to collect information directly. In addition, the Committee highlighted its deep concern about structural impunity in the country and about the legal and institutional obstacles that exist for victims to access truth, justice, and comprehensive reparation, with a differential approach.²¹

- 52.** To that extent, taking into account that the present case has substantial differences with the precedents resolved previously by this First Chamber (as highlighted in previous paragraphs) and that even after the resolution of said matters, the visit of the Committee against the Forced Disappearance of Persons to our country, this Chamber considers it essential to issue a ruling on the evidentiary standard to prove forced disappearance, in its aspect of violation of human rights, as well as to clearly define whether the amparo judges are empowered to issue comprehensive reparation measures in the amparo.

III. OPPORTUNITY, ORIGIN AND LEGITIMATION

- 53.** In this case, it is unnecessary to analyze whether the appeal for review was filed in a timely manner, by a legitimate party and whether or not it is appropriate, since the Collegiate Tribunal of Knowledge examined said assumptions in the resolution of December 12, 2019—in the that jurisdiction was reserved for the Supreme Court of Justice of the Nation—and considered them satisfied, without this First Chamber finding any reason to conclude that this analysis could be incorrect.

²¹Committee against Forced Disappearance, Report on his visit to Mexico under Article 33 of the Convention. Information on the visit, findings and first part of the recommendations, CED/C/MEX/VR/1 (Findings), April 26, 2022, pages 3, 5, 10 and 12.

IV. BACKGROUND STUDY

54. This section will analyze whether the grievances of the appellant parties are founded and sufficient to revoke, modify or confirm the sentence handed down by the Fourth District Judge of Amparo in Criminal Matters in Mexico City.
55. For methodological reasons and, in order to provide the greatest possible clarity in the resolution of this matter, the analysis will be carried out in accordance with the following sections:**T**O) Forced disappearance of persons as a serious violation of human rights;**B**) Applicable standard of proof to have the enforced disappearance proven in the amparo trial;**C**) Comprehensive reparation for damage in cases of serious human rights violations, and**D**) Analysis of the specific case.

A. FORCED DISAPPEARANCE OF PEOPLE AS A SERIOUS VIOLATION OF HUMAN RIGHTS

56. The forced disappearance of people is one of the most serious and cruel violations of human rights, since it implies a violation of various related rights such as freedom and personal integrity, life, recognition of legal personality, and identity. Likewise, it violates the rights of access to justice, to the truth and personal integrity of the next of kin. In this sense, at the international and national levels, the right of every person not to be subjected to forced disappearance has been enshrined. In addition, it has been established that forced disappearance can be analyzed from two perspectives, as a violation of human rights and as a crime.
57. At the international level, in accordance with article 1 of the International Convention for the Protection of all Persons against Enforced

Disappearances²², forced disappearance is the arrest, detention, kidnapping or any other form of deprivation of liberty that is the work of State agents or that is committed by persons or groups of persons acting with the authorization, support or acquiescence of the State. State, followed by the refusal to acknowledge said deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person, removing them from the protection of the law.

58. The International Convention for the Protection of All Persons against Enforced Disappearances establishes, in its preamble, that the object and purpose of the treaty is to prevent enforced disappearances and fight against impunity; establish the right of every person not to be subjected to a disappearance, and recognize the right of victims to justice, to reparation and to know the truth about the circumstances of said serious violation of human rights and the fate of the person. To this end, the Convention establishes various obligations for States in order to protect people against forced disappearances.
59. Notably, Article 12 of the aforementioned Convention states that the State will ensure that any person who alleges that someone has been subjected to forced disappearance has the right to report the facts to the competent authorities, who will promptly and impartially examine the complaint and, in your case, they will proceed without delay to carry out a thorough and impartial investigation. In addition, whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, the authorities are obliged to launch an ex

²²Adopted by the United Nations General Assembly on December 20, 2006. It was signed by Mexico on February 6, 2007 and ratified on March 18, 2008. Its entry into force both internationally and for Mexico was on December 23, 2010. For its part, the promulgation and publication of said Convention in the Official Gazette of the Federation was on June 22, 2011.

officio investigation. In other words, investigations into forced disappearance can be initiated at two times: 1) by a person's complaint or 2) informally, given the existence of reasonable grounds.

- 60.** In addition, the aforementioned article 12 establishes that the State will ensure that the authorities have access, with prior judicial authorization, to any place of detention and any other where there are reasonable grounds to believe that the disappeared person may be found.²³.
- 61.** Similarly, Article 24 of the aforementioned Convention establishes that the States shall adopt all appropriate measures to search for, locate, and release disappeared persons and, in the event of death, to search for, respect, and return their remains.²⁴.

²³Article 12

1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to report the facts to the competent authorities, who shall promptly and impartially examine the complaint and, where appropriate, proceed without delay to carry out an investigation. thorough and impartial investigation. Adequate measures will be taken, where appropriate, to ensure the protection of the complainant, witnesses, relatives of the disappeared person and their defenders, as well as those who participate in the investigation, against any mistreatment or intimidation due to the complaint filed or of any statement made.
2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 will initiate an investigation, even if no formal complaint has been filed.
3. States Parties shall ensure that the authorities referred to in paragraph 1 of this article:
 - a) Have the necessary powers and resources to carry out the investigation effectively, including access to documentation and other relevant information for the same;
 - b) Have access, with prior judicial authorization if necessary issued as soon as possible, to any place of detention and any other place where there are reasonable grounds to believe that the disappeared person may be found.
4. Each State Party shall take the necessary measures to prevent and punish acts that hinder the development of investigations. In particular, they must guarantee that the people who are supposed to have committed a crime of enforced disappearance are not in a position to influence the course of the investigations, exerting pressure and acts of intimidation or reprisals against the complainant, witnesses, relatives of the disappeared person and their defenders, as well as those who participate in the investigation.

²⁴Article 24
[...]

62. From the foregoing it can be deduced that the Mexican State, as part of the aforementioned Convention, has the obligation to exhaustively and impartially investigate the forced disappearance of a person, as well as to carry out search actions to find their whereabouts.
63. However, the Declaration on the Protection of All Persons against Enforced Disappearances²⁵, approved by the General Assembly of the United Nations in its resolution 47/133 of December 18, 1992, confirms that the forced disappearance of persons is a serious violation of human rights and indicates 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.
64. For its part, Article II of the Inter-American Convention on Forced Disappearance of Persons²⁶ considers as forced disappearance 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 report on the whereabouts of the person, which prevents the exercise of legal remedies and the pertinent procedural guarantees.

3. Each State Party shall adopt all appropriate measures for the search, location, and release of disappeared persons and, in the event of death, for the search, respect, and restitution of their remains.

²⁵United Nations General Assembly, Declaration on the Protection of All Persons against Enforced Disappearances, Resolution 47/133 of December 18, 1992. <https://undocs.org/es/A/RES/47/133>. Consultation: June 7, two thousand twenty-two.

²⁶Signed by Mexico on May 4, two thousand and one and ratified on April 9, two thousand and two. Its promulgation and publication in the Official Gazette of the Federation was on May 6, two thousand and two. It entered into force for Mexico on May 9, two thousand and two.

- 65.** In this regard, the Inter-American Court of Human Rights indicated, in its first contentious case, in 1998, that the forced disappearance of persons supposes the abandonment of the values that emanate from human dignity.²⁷ Said practice constitutes a betrayal of the primary function of the state organization, which must be oriented towards the protection of the people who are in its territory; On the other hand, in forced disappearance, the State uses its position in an abusive way, to eliminate any trace of the people whom it must protect, leaving a trail of human rights violations, not only with respect to those whom it disappears but also of their family and social environment²⁸.
- 66.** In this sense, the Inter-American Court of Human Rights has indicated that forced disappearance has a multi-offensive and continuous or permanent characterization, which has as concurrent and constitutive elements: a) the deprivation of liberty; b) the direct intervention of state agents or their acquiescence, and c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.²⁹

²⁷IHR Court. Case of Velásquez Rodríguez v. Honduras. Background. Judgment of July 29, 1988. Series C No. 4, para. 158.

²⁸Urrejola Noguera, Antonia and Pascual Ricke Tomás Ignacio, "The incorporation of the right to the truth in the Inter-American Human Rights System as an autonomous right based on the forced disappearance of persons", in Ibáñez Rivas, Juana María, Flores Pantoja, Rogelio and Padilla Cordero, Jorge (Coords.) *Forced Disappearance in the Inter-American Human Rights System, Balance, Impact and Challenges*, Inter-American Institute of Human Rights, 2020, p. 93.

²⁹IHR Court. Case of Radilla Pacheco vs. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 140; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010, para. 60; Case of Torres Millacura et al. v. Argentina. Reparations and Costs Fund. Judgment of August 26, 2011, para. 95; Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2011, para. 82; Case of Osorio Rivera and Family v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 26, 2013, para. 113.

67. Likewise, the Inter-American Court has considered that forced disappearance constitutes one of the most serious and cruel violations of human rights, since it not only implies an arbitrary deprivation of liberty, but also endangers personal integrity, security and one's own life of the detained person, which places them in a state of complete defenselessness, for which the State must take all necessary measures to prevent the facts, investigate and punish those responsible, as well as inform the family of the whereabouts of the detainee. missing person and compensate them in their case³⁰.
68. In this same sense, the Inter-American Court has established that forced disappearance violates the rights to personal liberty, personal integrity, life (Article 4) and recognition of legal personality, protected by Articles 3, 4, 5 and 7 of the American Convention on Human Rights³¹.
69. For its part, article 7 (1) (i) of the Rome Statute of the International Criminal Court³²classifies the forced disappearance of persons as a crime against humanity when it is committed as part of a generalized or systematic attack against a civilian population and with knowledge of said attack.
70. The Elements of the Rome Statute Crimes³³establish that the forced disappearance of persons implies the apprehension, detention or

³⁰IHR Court. Case of Blake v. Guatemala. Background. Judgment of January 24, 1998. Series C No. 36, para. 66.

³¹IHR Court. Case of Velásquez Rodríguez v. Honduras. Background. Judgment of July 29, 1988. Series C No. 4; IHR Court. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C, no. 202.

³²It was signed by Mexico on September 7, two thousand and ratified on October 28, two thousand and five. It entered into force for the Mexican State on January 1, 2006 and its promulgation and publication in the Official Gazette of the Federation was on December 31, 2015.

³³These elements derive from article 9 of the Rome Statute, which provides that they will help the Court to interpret and apply articles 6, 7, 8 and 8 Bis (referring to international crimes).

kidnapping of one or more persons; followed by the refusal to acknowledge the deprivation of liberty or provide information on the fate or whereabouts of that person, and that said acts have been carried out by a State or political organization or with its authorization or support³⁴.

71. In other words, in accordance with the Rome Statute and its Elements of Crimes, enforced disappearance committed on a large scale against a significant number of people also constitutes an international crime, which defies the imagination and deeply moves the conscience of humanity.
72. At the national level, Article 27 of the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons³⁵ provides that the

They were adopted by the Assembly of States Parties to the Review Conference of the Rome Statute of the International Criminal Court, held in Kampala, from May 31 to June 11, 2010 (International Criminal Court RC/ eleven). It should be noted that Mexico is part of the Assembly of States parties.

³⁴Article 7 1) i) Crime against humanity of forced disappearance of persons

Items

1. That the author: a) Has apprehended, detained, or kidnapped one or more people; or b) Has refused to acknowledge the arrest, detention or kidnapping or to provide information on the fate or whereabouts of that person or persons.
2. a) That such apprehension, detention or kidnapping has been followed or accompanied by a refusal to acknowledge said deprivation of liberty or to provide information on the fate or whereabouts of that person or persons; or b) That said refusal has been preceded or accompanied by that deprivation of liberty.
3. That the perpetrator was aware that: a) Such an arrest, detention or kidnapping would be followed in the normal course of events by a refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of that person or people; or b) Said refusal was preceded or accompanied by that deprivation of liberty.
4. That such apprehension, detention or kidnapping has been carried out by a State or political organization or with its authorization, support or acquiescence.
5. That such refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of that person or persons has been carried out by a State or political organization or with its authorization or support.
6. That the perpetrator had the intention of leaving that person or persons outside the protection of the law for a prolonged period

³⁵Published in the Official Gazette of the Federation on November 17, two thousand and seventeen.

crime of forced disappearance of persons is committed by a public servant or individual who, 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 recognize said deprivation of liberty or provide information about it or their fate, fate or whereabouts.

- 73.** Said General 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 people alive. to the missing person. In addition, it 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.
- 74.** In the Miscellaneous file 912/2010³⁶, the Full Court stressed that forced disappearance does not cease until the fate or whereabouts of the disappeared person is not fully established. Although, at first, the discussion revolved around the criminal prosecution of the crime, this continuity also affects the search. In other words, at no time should the obligation to allocate all the necessary resources to find the fate or whereabouts of the disappeared person and identify the persons responsible for their disappearance be neglected or ignored.

³⁶Resolved by the Full Court of this Supreme Court of Justice of the Nation in session of July fourteen of two thousand and eleven, by unanimity of ten votes of the Ministers Aguirre Anguiano, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Ortiz Mayagoitia and Minister Sánchez Cordero de García Villegas.

- 75.** For its part, in the amparo under review 1077/2019³⁷ this First Chamber pointed out that it is undeniable that the disappearance of persons not only interrupts and definitively affects the full realization of a life project of the direct victim and of the indirect victims, but also places the life and personal integrity of the person disappeared at permanent risk and in constant uncertainty, since there is no legal protection for her or guarantee that she will be released. 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.³⁸
- 76.** In said precedent, this First Chamber recognized 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.
- 77.** In this sense, given the relevance of the aforementioned precedent (amparo under review 1077/2019), this First Chamber takes up as pertinent some of its main considerations on the right not to be subjected

³⁷Resolved in session of June 16, 2021, by unanimous vote of five votes of Ministers Piña Hernández, and Ministers Gutiérrez Ortiz Mena (Speaker), González Alcántara Carrancá, and Pardo Rebolledo, and Minister President Ríos Farjat.

³⁸In 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.”

to forced disappearance, as well as the obligations on the part of the State Mexican for search and investigation.

- 78.** The right not to be subjected to forced disappearance supposes the participation of the State, through its agents or of any person or group that works 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 lead to 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 missing person who is removed in this way from the protection of the law.
- 79.** 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.
- 80.** Thus, this First Chamber considers that the forced disappearance of persons is one of the most serious violations of human rights that exhibits the inability of the State to guarantee the right to integrity, security, liberty and dignity of the persons subject to its jurisdiction, whose The constitutional regularity parameter 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 available institutional force and with all the necessary institutional coordination. to achieve that task.

Right to search and obligation of the State to investigate

81. In the aforementioned amparo under review 1077/2019, this First Chamber determined that there is a right to search, that is, the right of all disappeared persons and their loved ones to all authorities, within the scope of their respective competences — with all the resources and institutional means available and in complete coordination— execute without delay, in an impartial, dignifying, diligent, exhaustive, continuous manner, 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 missing, under the presumption that they are alive, unless there is evidence to the contrary.
82. The right to search includes the obligation on the part of the State to develop and implement all the mechanisms and instruments required to find, identify and preserve the remains of the victims in conditions of dignity while they are handed over to their loved ones. The search does not stop 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 relatives in conditions of dignity and respect for their suffering.

- 83.** 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 human rights violations and their correlative rights to truth, justice and reparation. This implies that, in the field of the search for disappeared persons, the authorities must determine, with remedial and dignifying certainty, the fate or whereabouts of the disappeared persons in order to reduce the anguish and anxiety of those close to them as a standard of compliance with those duties. and as a standard of satisfaction of the rights to truth and justice.
- 84.** Thus, the investigation must be undertaken in an impartial, dignifying, diligent, exhaustive, continuous manner, without stigmatization, with a differential approach and allowing the unreserved participation of the victims. This differential approach implies introducing a diversity perspective in the search processes for people and in the attention and consideration of the people who search for them.
- 85.** The differential perspective is the paradigm according to which the differentiated causes, consequences, and impacts of the disappearance of persons are analyzed due to gender, ethnicity, disability status, age, among other exclusion factors that determine the form and patterns of the disappearance, as well as the way in which the indirect victims deal with this violation.
- 86.** In the same sense as the right to search, the Mexican State, through all the authorities of the different levels of government, have the obligation to investigate forced disappearance as a crime and as a serious violation of human rights.

87. However, when resolving the cases of Alvarado Espinoza and Rosendo Radilla, both against Mexico, the Inter-American Court determined 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 seek to reveal the structures of participation.
88. For this, the authorities must generate hypotheses and lines of investigation, according to the relevant contexts, to determine the people who, in various ways, allowed, designed and executed the act intellectually and materially, the patterns of joint action and the beneficiaries of the crime, according to their corresponding responsibilities³⁹.
89. The forced disappearance of people is undeniably 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 repair⁴⁰. These specific duties are correlative to the rights of victims of human rights violations to truth,

³⁹IHR Court. Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370; IHR Court. Case of Radilla Pacheco vs. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209.

⁴⁰When 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.

justice, and reparation. The search for 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.

- 90.** The right of access to justice, derived from articles 17 of the country's Political Constitution, as well as 8 and 25 of the American Convention on Human Rights, is a complex right with three dimensions. From the formal dimension, it implies unrestricted access to the courts and other institutional means of defending rights. In its substantive dimension, it refers to the protection granted by court decisions. Finally, in its structural dimension, it examines the social and economic context that determines whether or not one can resort to a court or other institutional means of defense, as well as the form and conditions to do so. This three-dimensional conception of access to justice looks at the existing inequalities in the country,
- 91.** In this sense, enforced disappearance, seen from this three-dimensional perspective of access to justice, imposes the obligation to carry out an exhaustive and impartial investigation, conducted based on the presumption of life of the disappeared person, committed and committed to their discovery and criminal prosecution of those responsible⁴¹. This conception of access to justice highlights the importance of the participation of victims in the investigation and search processes, as well as the right to know their progress in a timely, respectful and dignified manner.

⁴¹Even principles 12 and 13 of the Guiding Principles for the Search for Missing Persons insist on pointing out how the criminal investigation and the search must be combined at all times. Committee against Forced Disappearance, Guiding principles for the search for disappeared persons, CED/C/7, May 8, 2019.

- 92.** Thus, it is crucial that the victims' claims for justice and the information they provide are sufficiently considered in these processes, which must 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 right to access justice when it comes to the forced disappearance of persons. 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.⁴².
- 93.** In addition, it must include a study of the historical, political, social and economic context in which the disappearances have occurred, in order to establish patterns that allow those responsible to be identified and guarantee that the events are not repeated. In this sense, the search must take into account the analysis of the various criminal modalities and patterns that generate forced disappearances.⁴³.
- 94.** In this regard, the Committee against Enforced Disappearances has indicated that context analysis can be used to determine patterns, clarify the motives and modus operandi of the perpetrators, determine profiles of the disappeared persons, and establish the particularities in each region that reveal the disappearances.⁴⁴.
- 95.** 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

⁴²IHR Court. Case of Rosendo Radilla-Pacheco v. Mexico, op. cit. paragraph 169.

⁴³Committee against Enforced Disappearance, Guiding Principles for the Search for Disappeared Persons, op. cit., Principle 3, para. 3.

⁴⁴Ibidem, Principle, 8, para. 6.

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.

- 96.** In this regard, the Inter-American Court of Human Rights⁴⁵ 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 Inter-American Court has also ruled that the right of the victims and/or their next of kin 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.
- 97.** 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,
- 98.** 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, allow the participation of the victims in the search for their loved ones, and give satisfactory, convincing and dignifying results. A different approach violates the right to the truth, impedes access to justice and reparation, and compromises

⁴⁵IHR Court. Case of Bámaca Velásquez v. Guatemala. Background. Judgment of November 25, 2000. Series C No. 70.

the responsibility of the State and its agents, both internally and internationally.

99. Therefore, in the words of the Inter-American Court of Human Rights, the obligation of the State to investigate must be diligently fulfilled 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 "⁴⁶.
100. In this sense, in our country, based on the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons⁴⁷, the Approved Investigation Protocol for the Crimes of Forced Disappearance of Persons and Disappearance Committed by Individuals was issued⁴⁸ and the Approved Protocol for the Search for Missing and Unlocated Persons⁴⁹, whose purpose is to establish general parameters of action for all the authorities involved in the search for persons reported missing.
101. These instruments provide that the search for persons must involve all the competent authorities and that they must coordinate and collaborate with each other to achieve efficient search processes, which are the responsibility of both the search authorities and the investigative authorities, and , in general, of the institutions of the Mexican State.

⁴⁶See 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.

⁴⁷Above, note 35.

⁴⁸Published in the Official Gazette of the Federation on July 16, two thousand and eighteen.

⁴⁹Published in the Official Gazette of the Federation on October 6, two thousand and twenty.

According to these instruments, the degree of participation of the institutions differs according to the nature of their functions and attributions.

- 102.** It is true that the investigation of crimes and the exercise of criminal proceedings correspond to the Public Prosecutor's Office, but this First 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 reparation⁵⁰.
- 103.** So far the considerations taken up from the aforementioned precedent (protection under review 1077/2019).
- 104.** For its part, the "Guiding Principles for the Search for Disappeared Persons" of the Committee against Forced Disappearance state that victims have the right to participate in the search, so they must have access to information on the actions carried out, as well as on the progress and results of the investigation and the search⁵¹.
- 105.** The public policy on search, then, must promote the cooperation and collaboration of all State instances. Therefore, the competent authorities to carry out search actions must have full powers to have unrestricted

⁵⁰"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.

⁵¹Committee against Enforced Disappearance, Guiding Principles for the Search for Disappeared Persons, op. cit., principle 5, para. 1.

access and without the need for prior notice to all places where missing persons could be found, including military installations.⁵²

- 106.** Likewise, the search must be centralized in a body that guarantees effective coordination with the other entities, and whose cooperation is necessary for it to be effective, exhaustive, and expeditious.⁵³ Said search must continue until the fate and/or whereabouts of the disappeared person is determined with certainty, for which reason it is configured as a permanent obligation.⁵⁴

Right to the truth

- 107.** In relation to the right to the truth of the victims, it must be said that this implies the search and obtaining of information regarding: i) the causes that led to the victimization; ii) the causes and conditions related to the serious violations of international human rights law and international humanitarian law; iii) the progress and results of the investigations; iv) the circumstances and motives that led to the perpetration of the crimes; v) the circumstances surrounding the violations, and vi) determination of the whereabouts of the victims and the identity of the participants⁵⁵.

⁵²Ibidem, principle 10, para. 3.

⁵³Ibidem, principle 12, para. 1.

⁵⁴Ibidem, principle 7, para. 1.

⁵⁵Report of the OHCHR Office. Study on the right to the truth, E/CN.4/2006/91, of February 8, 2006, para. 38.

- 108.** Said right has two dimensions: an individual and a collective one. The individual one consists of the right of the victim and her family to know the truth about the events that led to the serious human rights violations and to know the identity of those who participated in them. The collective dimension implies the need to prevent such violations in the future⁵⁶.
- 109.** Thus, the right to the truth is one that restores the dignity of the victim of a gross violation of their human rights, ensuring that the atrocious acts do not happen again.⁵⁷.
- 110.** Based on the foregoing considerations, this First Chamber considers that the forced disappearance of persons is one of the most serious violations of human rights, since a person is removed from the protection of justice, and therefore constitutes a multiple and continuation of the rights to personal liberty and security, personal integrity, to legal personality and to life. Forced disappearance can even become a crime against humanity, depending on the generalized or systematic context in which it occurs.
- 111.** In other words, forced disappearance snatches a person from the protection of the law, completely nullifying all their rights, since there is

⁵⁶ibid., para. 14; Urrejola Noguera, Antonia and Pascual Ricke Tomás Ignacio, "The incorporation of the right to the truth in the Inter-American Human Rights System as an autonomous right based on the forced disappearance of persons", in Ibáñez Rivas, Juana María, Flores Pantoja, Rogelio and Padilla Cordero, Jorge (Coords.) *Forced Disappearance in the Inter-American Human Rights System, Balance, Impact and Challenges*, Inter-American Institute of Human Rights, 2020, p. 107.

⁵⁷Urrejola Noguera, Antonia and Pascual Ricke Tomás Ignacio, "The incorporation of the right to the truth in the Inter-American Human Rights System as an autonomous right based on the forced disappearance of persons", op. cit. p. 109.

no way in which they can go to a resource or authority in order to have their freedom restored.

112. The disappearance subjects the relatives of the person to acts comparable to torture and cruel and inhuman treatment by not knowing the whereabouts and fate of their loved one, and also by being compelled to carry out search and investigation actions on their own account and even to confront various institutional obstacles.
113. Forced disappearance is an extreme situation for families, who become indirect victims, since this situation causes them constant anguish and profoundly transforms their psyche and their life project.⁵⁸.
114. In this sense, this First Chamber cannot be oblivious to the enormous and deep pain caused by the disappearance of a person. His relatives and loved ones are experiencing an ordeal due to the lack of information about his whereabouts, and with the anxiety of not knowing if his life is in danger, and in what conditions of health and physical and emotional integrity he is. This suffering is deepened by the lack of an adequate and timely institutional response to locate the person because it generates a feeling of helplessness.
115. The life of the family and, in general, of those who were emotionally close to the disappeared person is strongly shaken by the grief indicated, but also because it also implies drastic alterations in their life projects, as

⁵⁸Molina Theissen, Ana Lucrecia, “We will not rest until we find you, beloved Marco Antonio”, in Ibáñez Rivas, Juana María, Flores Pantoja, Rogelio and Padilla Cordero, Jorge (Coords.) *Forced Disappearance in the Inter-American Human Rights System, Balance, Impact and Challenges*, Inter-American Institute of Human Rights, 2020, p. 574. Ana Lucrecia is the sister of Marco Antonio Molina Theissen, who in 1980, at the age of fourteen, was subjected to forced disappearance by a military intelligence command in Guatemala. The case led to the condemnation by the Inter-American Court of Guatemala. See I/A Court HR. Case of Molina Theissen v. Guatemala. Background. Judgment of May 4, 2004. Series C No. 106.

well as the vanishing of dreams due to achieve, the loss of common or even individual purposes. And this, both because of the uneasiness that the inexplicable absence of a loved one represents, and because from that fact, the affective circle of the person who is missing turns to spend their days finding them.

- 116.** In this sense, the search for the truth and effective access to justice are essential for victims in order to find answers about the fate of their disappeared loved ones and to see those responsible face the consequences. Therefore, this First Chamber recognizes that the next of kin of disappeared persons have the right to know the circumstances of the disappearance, what happened to their loved ones, and to know who was responsible.
- 117.** In this regard, the Committee against Forced Disappearance, in its recent visit to Mexico in the year two thousand twenty-one⁵⁹, in compliance with the provisions of article 33 of the International Convention for the Protection of All Persons against Enforced Disappearances, stated that in our country there is a generalized situation of disappearances in a large part of the territory, in which re-victimization prevails and impunity, which is structural and "almost absolute"⁶⁰.
- 118.** The international organization highlighted that according to official figures, the National Registry of Missing and Unlocated Persons indicates that there are 95,121 missing persons, of which more than a hundred were committed during their visit. and stressed that in the

⁵⁹The Committee carried out its visit from November 15 to 26, two thousand and twenty-one.

⁶⁰Committee against Forced Disappearance, Report on his visit to Mexico under Article 33 of the Convention. Information on the visit, findings and first part of the recommendations, CED/C/MEX/VR/1 (Findings), April 26, 2022, paras. 25-27.

second half of the last century, disappearances were characterized as mechanisms of political repression committed by government agents, while from two thousand and six, they reflect a great diversity of perpetrators, modalities, and victims.⁶¹.

119. Likewise, it pointed out that the lack of coordination between authorities and the limited powers of the National and State Search Commissions make it difficult to locate missing persons alive or to remove bodies from the places of discovery, among other procedures.
120. Similarly, the Committee against Enforced Disappearance specified that the search while alive is a priority task and thatThe State must ensure the effective implementation of the principles established in the Approved Search and Investigation Protocols, which are fundamental instruments to clarify the fate and whereabouts of the disappeared persons"⁶².
121. In addition, the CommitteeHe highlighted his concern that many of the available tools continue to be little known and applied, and pointed out that "few judges apply the seeking amparo provided for in the Amparo Law, which authorizes them to order another authority to provide information and present the person in question." their power or move to the places where the victim would presumably be"⁶³.

⁶¹ibid., para. 10.

⁶²Idem.

⁶³Committee against Forced Disappearance, Report on his visit to Mexico under Article 33 of the Convention. Information about the visit, findings and first part of the recommendations, op. cit. para. 59

It should be noted that the concept of "protective protection" used by the Committee refers to the informal denomination by which the amparo proceeding promoted specifically in cases of forced disappearance is known, in accordance with the provisions of the last paragraph of Article 15 of the the Law of Amparo, which explicitly states: "When, due to the circumstances of the case or the person filing the claim instead of the complainant, it is a possible commission of the crime of forced disappearance of persons, the judge will

- 122.** Regarding the victims of disappearance, the Committee highlighted its concern regarding the specific victimization of women, who in most cases are left in charge of their families and face the search for their relatives with their own means, while they suffer the serious social and economic effects of disappearances, and that they are even victims of violence, persecution, stigmatization, extortion and reprisals⁶⁴.
- 123.** In this sense, many victims face difficulties in accessing the medical services they need to treat the health problems they suffer as a result of the disappearance of their loved one. In addition, the Committee recognized that the transgenerational impacts of disappearance and the situation of the children of disappeared persons are particularly worrisome, since "multiple testimonies reported cases of depression and suicide."⁶⁵.
- 124.** For its part, regarding the lack of action in the search and investigation processes related to forced disappearance, the international organization specified that said practices lead to impunity for the perpetrators and force the relatives to look for their loved ones, assuming the search and exhumation of mass graves and other clandestine burial sites⁶⁶.

have a term no more than twenty-four hours to process the amparo, order the suspension of the claimed acts, and request from the corresponding authorities all the information that may be conducive to the location and release of the probable victim. Under this assumption,

In this regard, the Committee cites a document prepared in 2021, by the National Search Commission and the United States Agency for International Development, entitled: The search amparo: a tool against the forced disappearance of persons, a guide for relatives and persons judging.

⁶⁴ibid., para. fifteen.

⁶⁵Committee against Forced Disappearance, Report on his visit to Mexico under Article 33 of the Convention. Observations and second part of the recommendations, CED/C/MEX/VR/1 (Recommendations), April 26, 2022, para. 87

⁶⁶ibid., para. 3.

- 125.** Therefore, in relation to access to justice, the Committee urged the Mexican State to remove the obstacles that limit its access and promote the prosecution of cases.⁶⁷.
- 126.** In this sense, taking up what was said by the Committee against Forced Disappearance, this First Chamber considers that the amparo trial is a very important mechanism to achieve access to justice and access to an effective remedy in cases of forced disappearance.
- 127.** In the case of Alvarado Espinoza et al. Mexico, the Inter-American Court held that States have the responsibility to establish effective remedies and guarantees of due legal process before the competent authorities, which protect all persons under their jurisdiction against acts that violate their fundamental rights. In the case of forced disappearance of persons, the duty to adapt domestic law to the provisions of the Convention is essential for the effective eradication of this practice. States "must adopt the necessary measures so that the writ of habeas corpus can be exercised effectively in situations of forced disappearance."⁶⁸.
- 128.** In said case, the Inter-American Court determined that the Mexican State was internationally responsible for the violation of Article 2, in relation to Articles 8 and 25 of the American Convention on Human Rights, to the detriment of the disappeared victims, since the trial of Amparo, at the time of the facts, did not constitute an effective remedy in cases of forced disappearance, since the ratification of the petition for amparo was requested. However, said regional court considered that the issuance of the "new" Amparo Law in two thousand and thirteen could be articulated as a guarantee of non-repetition, considering that its

⁶⁷ibid., para. 3. 4.

⁶⁸IHR Court. Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, para. 258.

article 15 no longer requested the ratification of the amparo petition by the missing person⁶⁹.

129. In this sense, this First Chamber considers that in the amparo proceeding, the disappeared person is not required to ratify the claim, since this constitutes a material impossibility that, if requested, constitutes an obstacle to the right of access to justice and to a effective remedy.

130. Once it has been established that the forced disappearance of persons is a serious violation of human rights, from which the right to search is inferred, the obligation of the State to investigate, and the right of the victims to truth and justice, this The First Chamber proceeds to analyze the applicable evidentiary standard to have it proven in the framework of an amparo trial, as well as the comprehensive reparation measures when said violation has been committed.

B. APPLICABLE EVIDENCE STANDARD TO HAVE PROVEN THE FORCED DISAPPEARANCE OF PERSONS IN THE AMPARO TRIAL

131. In accordance with article 103 of the Political Constitution of the United Mexican States and the provisions of article 1 of the Amparo Law, the amparo trial is a constitutional control mechanism whose object and purpose is to resolve controversies related to general norms. , acts or omissions of authority that violate the human rights provided for in the

⁶⁹IHR Court. Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, paras. 206-213, 257-259, 316-319, 322-324.

Political Constitution of the country, as well as in the international treaties to which Mexico is a party.

132. In this sense, the promotion of an amparo trial for the forced disappearance of a person has the purpose of proving, according to the records in the case file, the existence of the serious violation of human rights that this conduct entails and the establishment of measures that tend to locate the disappeared person alive, in order to respect and guarantee the right of access to justice, to an effective judicial remedy, to the truth and to reparation of the disappeared persons and their families.
133. It is clear then that, when an amparo proceeding is promoted against the forced disappearance of a person, the analysis in the aforementioned means of constitutional control is limited to the determination of the existence of the conduct from the aspect of violation of human rights and not from his criminal side. This distinction is relevant, since the accreditation standard in each case is different.
134. Indeed, when it comes to crime, the Public Prosecutor's Office has the obligation to initiate a criminal investigation, even informally, when it learns that a person has been forcibly disappeared, therefore, as it is a typical, unlawful conduct. and guilty, is obliged to prove beyond any reasonable doubt the criminal responsibility of the accused person.
135. For its part, when the amparo proceeding is promoted against the forced disappearance of a person, the purpose of this constitutional process is to analyze the existence of the violation of human rights in order to dictate measures aimed at locating the person alive. disappeared person, as well as the reparation measures that correspond to the person and their family. Therefore, in these cases, the accreditation

standard is attenuated, so evidence will suffice to reasonably sustain its existence, which is in accordance with the paradigm of respect, protection, and guarantee of human rights.

- 136.** The foregoing is not unrelated to what was resolved by this First Chamber in relation to other cases of human rights violations. For example, when solving the Adirect protection under review 1651/2019⁷⁰, it was indicated that torture can be analyzed as a crime and as a violation of human rights, and that in the latter case the standard must be attenuated, for which reason only evidence is required that reasonably allows us to consider that it occurred.
- 137.** This has been shared by the Inter-American Court of Human Rights, which has indicated that, in proceedings on human rights violations, the defense of the State cannot rest on the impossibility of the plaintiff to provide evidence, when it is the State that has control of the media to clarify the events that occurred. Therefore, circumstantial or presumptive evidence is of special importance, particularly when it comes to complaints about forced disappearance, since this is characterized by seeking the suppression of all elements that allow corroborating the detention, whereabouts and fate of the victims.⁷¹.
- 138.** Likewise, the Inter-American Court has indicated that the special seriousness of the fact that a State party to the Convention is attributed

⁷⁰Resolved in session of March 4, two thousand and twenty, by a majority of four votes of the Ministers Pardo Rebolledo, Gutiérrez Ortiz Mena, González Alcántara Carrancá (Speaker) and Minister Ríos Farjat. Against, Minister Piña Hernández. It should be noted that in said matter, reference was made to previous precedents in accordance with which the doctrine that this Supreme Court has issued on the subject was developed.

⁷¹IHR Court. Case of Velásquez Rodríguez v. Honduras. Background. Judgment of July 29, 1988. Series C No. 4, paras. 130, 131 and 135, and I/A Court HR. Case of Munárriz Escobar et al. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 20, 2018, Series C, no. 355, para. 67.

to having carried out or tolerated in its territory a practice of disappearances cannot be ignored, which forces an assessment to be applied. of evidence that takes this point into account and that is capable of creating conviction of the truth of the alleged facts⁷².

139. Thus, the Inter-American Court has indicated that, in cases of forced disappearance of persons, circumstantial evidence that supports a judicial presumption is especially valid, since it is a means of proof used in all judicial systems and could even be the only instrument so that the object and purpose of the American Convention is fulfilled, because these violations of human rights imply the use of State power to destroy the direct means of proof of the facts, with the intention of generating total impunity or the crystallization of a perfect crime⁷³.

140. For this reason, it has been pointed out that the forced disappearance of a person can be demonstrated through indirect and circumstantial testimonial evidence, in addition to the pertinent logical inferences, linked to a general practice of disappearances. Said tests can be used whenever they allow to infer consistent conclusions about the facts⁷⁴.

C.COMPREHENSIVE REPAIR FOR DAMAGE IN CASES OF SERIOUS HUMAN RIGHTS VIOLATIONS

1. Right to comprehensive reparation for damage at the international level

⁷²Ibidem, paragraph 129.

⁷³IHR Court. Case of Godínez Cruz v. Honduras. Background. Judgment of January 20, 1989. Series C No. 5. Paragraph 155

⁷⁴IHR Court. Case of Blake v. Guatemala. Background. Judgment of January 24, 1998. Series C No. 36. Paragraphs 49 and 51.

- 141.** In International Law, the principle governs that any violation of an international obligation that has produced damage entails the duty to adequately repair it, it is even considered a general conception of law⁷⁵. It is based on the premise that the highest aspiration in reparation for the damage caused consists of full restitution (*restitutio in integrum*), which includes the reestablishment of the previous situation, the reparation of the consequences that the infringement produced and the payment of compensation as compensation for patrimonial and non-patrimonial damages including non-pecuniary damage⁷⁶.
- 142.** The concept of comprehensive reparation for damage arose in the Universal Human Rights System with the report of the Special Rapporteur of the United Nations Commission on Human Rights, Theo Van Boven, in 1989. In said report, it was established that the different forms of reparation consisted of restitution (principle 19), compensation (principle 20), rehabilitation (principle 21), satisfaction (principle 22) and guarantees of non-repetition (principle 23).⁷⁷.
- 143.** In 1999, the Special Rapporteur Mahmoud Cherif Bassiouni⁷⁸, presented to the then United Nations Commission on Human Rights⁷⁹, a report to unify the terminology and restructure the scheme of

⁷⁵International Permanent Court of Justice. Chorzow Factory Case. Merits. Judgment 9. 1927, series A, no. 17, p. twenty-one.

⁷⁶I/A Court HR, Case of Velásquez Rodríguez vs. Honduras. Reparations and Costs. Judgment of June 21, 1989, series C, no. 9, paragraphs 25 and 26.

⁷⁷United Nations Audiovisual Library of International Law. Available in: http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_s.pdf (accessed June 21, 2021).

⁷⁸The Special Rapporteur Cherif Bassiouni was appointed by the then Commission on Human Rights of the United Nations Economic and Social Council, in order to prepare a revised version of the basic principles and guidelines elaborated by Theo van Boven, taking into account the opinions and comments to States, intergovernmental and non-governmental organizations, in order for them to be adopted by the General Assembly.

⁷⁹The Commission was replaced by the United Nations Human Rights Council on March 15, 2006.

reparation measures to be adopted by the General Assembly⁸⁰, entitled “Basic principles and guidelines on the right of victims of violations of international human rights law and international humanitarian law to file remedies and obtain reparations”⁸¹.

144. Said report constituted the background of the document "Basic principles and guidelines on the right of victims of violations of international human rights and international humanitarian law to file remedies and obtain reparations", adopted by the United Nations General Assembly through the Resolution 60/147 of December 16, two thousand and fifteen⁸². Principle IX establishes the scope of full and effective reparation, which includes measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
145. Based on these principles, in the Inter-American Human Rights System, the matter of reparations has reached great development. The Inter-American Court of Human Rights has established that in accordance with Article 63.1 of the American Convention on Human Rights, any violation of an international obligation that has produced damage entails the duty to adequately repair it and that this provision includes a

⁸⁰Commission on Human Rights, “Report of Mr. M. Cherif Bassiouni, independent expert on the right to restitution, compensation and rehabilitation of victims of serious violations of human rights and fundamental freedoms”, February 8, 1999, Doc. UN E/CN.4/1999/65.

⁸¹Commission on Human Rights, “The right to restitution, compensation and rehabilitation of victims of serious violations of human rights and fundamental freedoms”, Final Report of the Special Rapporteur, Mr. M. Cherif Bassiouni, January 18, 2000, Doc UN E/CN.4/2000/62.

⁸²General Assembly of the United Nations Organization, “Resolution 60/147 approved by the UN General Assembly on December 16, 2005”, March 21, 2006, UN Doc. A/RES/60/147.

customary norm that constitutes one of the Fundamental principles of contemporary International Law on the responsibility of a State⁸³.

- 146.** Thus, the Inter-American Court has considered the need to grant various reparation measures in order to fully compensate the damages, so that in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition are of special relevance. for the damages caused⁸⁴.
- 147.** Restitution consists of returning the victim, whenever possible, to the situation prior to the manifest violation of international human rights standards or the serious violation of international humanitarian law.⁸⁵
- 148.** Rehabilitation implies the need to provide medical assistance and/or psychological help, including the provision of medicines, to the victims of a human rights violation to repair what concerns the physical, mental or moral affectations.
- 149.** Compensation, which is of an economic nature, is the most frequent measure of reparations in the jurisprudence of the Inter-American Court and the one with the most compliance by the countries.⁸⁶ Its nature and its amount depend on the characteristics of the violation and the damage caused at the material and immaterial levels, so they cannot imply

⁸³Calderón Gamboa, Jorge F. Comprehensive reparation in the jurisprudence of the Inter-American Court of Human Rights: standards applicable to the new Mexican paradigm. Supreme Court of Justice of the Nation. Konrad Adenauer Foundation. 2013, p. 150 and 151.

⁸⁴Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 226, and Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351, para. 371.

⁸⁵Vine. Principle 19 of the Basic Principles and Guidelines on the Right of Victims of Gross Violations of International Human Rights Laws and of Grave Violations of International Humanitarian Law to File Appeals and Obtain Reparations. loc. cit.

⁸⁶Calderón Gamboa, Jorge F., op. cit., p. 200.

enrichment or impoverishment for the victim or her successors, and must be related to the violations declared in the judgment.

- 150.** The guarantees of non-repetition are a commitment by the authorities that said situation will not be repeated; These types of measures include training, legislative reforms, adoption of internal law measures, among others.
- 151.** The obligation to investigate, prosecute and, where appropriate, punish has been widely studied by the Inter-American Court and, despite the fact that in the Universal System this measure of reparation has been included within the measures of satisfaction, in the Inter-American System, the Inter-American Court of Human Rights has given this an independent character, which is analyzed autonomously and in many cases as the first measure to be carried out for the State⁸⁷. In the case law of the Inter-American Court, this measure can be grouped into three types of investigations: a) criminal; b) administrative or disciplinary; and c) determination of the whereabouts of the victim⁸⁸.
- 152.** In particular, regarding matters of forced disappearance, the case of *Alvarado Espinoza et al. vs. Mexico*⁸⁹, in which the Inter-American Court determined as measures of reparation: that the State must carry out an effective search for the whereabouts of the victims, which must be carried out systematically and rigorously, with adequate and suitable human, technical and scientific resources; and that the State must effectively and diligently conduct the investigation of the facts in order to

⁸⁷ibid., p. 194.

⁸⁸ibid., p. 195.

⁸⁹IHR Court. Case of *Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, paras. 298-302.

determine those responsible and effectively apply the sanctions and consequences provided by law.⁹⁰.

153. In this sense, the generation of damage resulting from a violation of human rights entails the obligation to adequately and fully repair it, for which each of the measures described above must be addressed (restitution, rehabilitation, compensation, satisfaction and guarantees of non-restitution). repetition), according to the particularities of each case and the specific requirements and needs of each victim.

⁹⁰The Court establishes the following criteria to carry out the investigation:

- a) carry out the pertinent investigations taking into account the context of the case, avoiding omissions in the collection of evidence and in the follow-up of the logical lines of investigation, as well as integrating them into a single investigation that allows specific results to be achieved;
- b) investigate with due diligence, comprehensively covering the elements that make up the forced disappearance;
- c) identify and identify the perpetrators and masterminds of the forced disappearance of the victims;
- d) ensure that the competent authorities carry out the corresponding investigations ex officio, and that for this purpose they have at their disposal and use all the logistical and scientific resources necessary to collect and process the evidence and, in particular, have the powers to access the relevant documentation and information to investigate the facts denounced and that the persons participating in the investigation, among them the victims or their representatives, witnesses and justice operators, have the due security guarantees;
- e) Because it is a serious violation of human rights, and considering the permanent nature of forced disappearance, the effects of which do not cease until the whereabouts of the victim are established or their remains are identified, the State must refrain from resorting to figures such as amnesty for the perpetrators of this type of violation, as well as any other similar provision, non-retroactivity of criminal law, res judicata, ne bis in idem or any similar exemption from liability, to excuse themselves from this obligation;
- f) guarantee that the investigations into the facts constituting the forced disappearance of the present case are maintained, at all times, under the knowledge of the ordinary jurisdiction; and
- g) Initiate disciplinary, administrative or criminal actions, in accordance with domestic legislation, against possible State authorities that have hindered and impeded the proper investigation of the facts, as well as those responsible for the acts of harassment and threats.

2. Right to comprehensive reparation for the damage in accordance with the Political Constitution of the country and the General Law of Victims

- 154.** Once the international regularity parameter has been established regarding the right to comprehensive reparation, this First Chamber proceeds to specify said right in accordance with the Political Constitution of the country and the General Law of Victims.
- 155.** Article 1 of the Constitution establishes that all authorities, within the scope of their powers, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressivity. Consequently, the State must prevent, investigate, punish and repair violations of human rights, in the terms established by law.
- 156.** As noted in the previous section, international bodies have promoted the reformulation of the scope of reparation for damage, through financial compensation, and have evolved to the concept of comprehensive reparation for damage, as a human right for victims of crime and human rights violations.
- 157.** In direct amparo under review 1068/2011, this First Chamber held that "the right to comprehensive reparation allows, to the extent possible, to annul all the consequences of the illegal act and restore the situation that should have existed in all probability, if the act had not been committed"⁹¹.

⁹¹Resolved in the session of October 19, 2011 unanimously with five votes of Ministers Pardo Rebolledo, Cossío Díaz, Ortiz Mayagoitia and Zaldívar Lelo de Larrea, as well as Minister Sánchez Cordero de García Villegas. From this precedent he derived thesis 1a. CXCv/2012 (10a.), under the heading: "FUNDAMENTAL RIGHT TO FULL REPAIR OR FAIR COMPENSATION. CONCEPT AND SCOPE."

- 158.** However, in order to regulate the provisions of article 1, third paragraph, 17 and 20 of the Political Constitution of the country, on January 9, two thousand and thirteen, the General Law on Victims was promulgated.
- 159.** Article 1 of said law states that comprehensive reparation includes measures of restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, in its individual, collective, material, moral and symbolic dimensions. Each of these measures must be implemented in favor of the victim taking into account the seriousness and magnitude of the victimizing act committed or the seriousness and magnitude of the violation of her rights, as well as the circumstances and characteristics of the victimizing act.
- 160.** Article 5 of the General Law on Victims states that the mechanisms, measures and procedures must be implemented applying the principles of dignity, good faith, complementarity, due diligence, differential and specialized approach, transformative approach, free of charge, equality and non-discrimination, integrity, indivisibility and interdependence, best interests of the child, maximum protection, existential minimum, non-criminalization, secondary victimization, joint participation, progressiveness and non-regressiveness, publicity, accountability, transparency and preferential treatment.
- 161.** The General Law of Victims establishes in its article 26 that victims have the right to be repaired in a timely, full, differentiated, transformative, integral and effective manner for the damage they have suffered, as a consequence of the crime or victimizing act that has affected them or of the human rights violations they have suffered⁹².

⁹²Article 26. Victims have the right to be repaired in a timely, full, differentiated, transformative, comprehensive, and effective manner for the damage they have suffered

- 162.** In this regard, in the amparo under review 1133/2019⁹³, this First Chamber indicated that the Executive Commission must assess the reparation measures that some other authority has given, related to the assistance, help, protection and attention to the victims, to add them with those that it eventually determines, in order to achieve reparation full of damage. The foregoing, since everything granted to the victims by any authority complements their reparation since "they are part of a whole that, together, form a wholeness or integrity."
- 163.** Therefore, in accordance with the General Law on Victims, in order to speak of true comprehensive reparation for the damage, the five measures recognized therein must be considered: restitution, rehabilitation, satisfaction, compensation and non-repetition measures.⁹⁴.

as a consequence of the crime or victimizing act that has affected them or of the human rights violations they have suffered. , including measures of restitution, rehabilitation, compensation, satisfaction and measures of non-repetition.

⁹³Resolved in the session of July 1, two thousand and twenty, by a majority of four votes of Ministers Piña Hernández and Ríos Farjat, and Ministers Gutiérrez Ortiz Mena and President González Alcántara Carrancá. Against, Minister Pardo Rebolledo.

⁹⁴Article 1. (...)

Comprehensive reparation includes measures of restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition, in its individual, collective, material, moral, and symbolic dimensions. Each of these measures will be implemented in favor of the victim taking into account the seriousness and magnitude of the victimizing act committed or the seriousness and magnitude of the violation of her rights, as well as the circumstances and characteristics of the victimizing act.

Article 27.For the purposes of this Law, comprehensive reparation will include:

- I. Restitution seeks to return the victim to the situation prior to the commission of the crime or the violation of their human rights;
- II. Rehabilitation seeks to make it easier for the victim to face the effects suffered as a result of the punishable act or human rights violations;
- III. Compensation must be granted to the victim in an appropriate manner and proportional to the seriousness of the punishable act committed or the human rights violation suffered and taking into account the circumstances of each case. This will be granted for all damages, suffering and economically assessable losses that are a consequence of the crime or the violation of human rights;
- IV. Satisfaction seeks to recognize and restore the dignity of the victims;

164. The foregoing has been recognized by this First Chamber, when resolving the amparo under review 476/2014, in which it held that, given the limited possibility that all human rights violations are fully repaired due to the very nature of some of them, the doctrine has developed a wide range of reparations that attempt to compensate the victim of human rights violations through rehabilitation measures; compensation, satisfaction, and guarantees of non-repetition”⁹⁵.

3. Reparation measures in the amparo trial in cases of forced disappearance of persons

165. Article 77 of the Amparo Law establishes different effects of the granting of an amparo. Thus, when the act claimed is of a positive nature, the complainant will be restored to the full enjoyment of the violated right, restoring things to the state they kept before the violation; while when the act claimed is of a negative nature or implies an omission, the responsible authority will be obliged to respect the right in question and comply with what it requires.

166. In this sense, when resolving the amparo under review 706/2015, this First Chamber concluded that the Amparo Law itself grants broad

V. Non-repetition measures seek to ensure that the punishable act or violation of rights suffered by the victim does not occur again;

⁹⁵ Amparo under review 476/2014, resolved by the First Chamber in session of April twenty-two, two thousand and fifteen unanimously with five votes of the Ministers Zaldívar Lelo de Larrea, Cossío Díaz, Pardo Rebolledo, Gutiérrez Ortiz Mena (rapporteur) and the Minister Sánchez Cordero García Villegas. From the preceding derived thesis 1a. CCCXLII/2015 (10a.) of heading: “ACCESS TO JUSTICE. THE DUTY TO REPAIR THE VICTIMS OF HUMAN RIGHTS VIOLATIONS IS ONE OF THE ESSENTIAL PHASES OF SAID RIGHT.”

powers to the amparo bodies to dictate the necessary measures to achieve the restitution of the violated right.⁹⁶.

167. In said precedent, this Chamber indicated that, as a general rule, it is not possible to decree in amparo judgments measures of satisfaction or guarantees of non-repetition to repair human rights violations, such as those determined by the Inter-American Court of Human Rights. The foregoing, not only because of the differences between the type of violations analyzed at the international and domestic level, but also because there is no legal basis to decree them.
168. However, although in said precedent it was established that the measures issued by the courts in accordance with article 77 of the Amparo Law, can only have the purpose of restoring the complainant to the full enjoyment of the violated right, the truth is that this interpretation it was done under a broad understanding of the concept of restitution, even admitting the subsidiary and extraordinary origin of compensatory measures under the figure of substitute compliance.
169. Therefore, this First Chamber considers that said precept must be analyzed in accordance with the most recent constitutional and conventional framework and in particular with respect to the case of serious human rights violations.
170. In this regard, in the case of forced disappearances, the Committee against Forced Disappearances, in its "Final Observations on the report presented by Mexico", recommended that, in order to guarantee the effective exercise of the right to reparation and prompt, fair

⁹⁶Resolved in a session held on June 1, 2016 unanimously with five votes from Ministers Zaldívar Lelo de Larrea (Speaker), Cossío Díaz, Pardo Rebolledo, Gutiérrez Ortiz Mena and Minister Piña Hernández.

compensation and adequate protection of all persons who have suffered direct harm as a result of a forced disappearance, the Mexican State must guarantee that access to reparation and compensation is not hindered by formal issues, such as the lack of implementation of the law, statewide⁹⁷.

171. Likewise, in the "Follow-up observations on the complementary information presented by Mexico in accordance with article 29, paragraph 4 of the Convention"⁹⁸, said international organization recommended that the Mexican State guarantee effective equality in access to rights in terms of reparation and attention to the victims of disappearance, regardless of the federal or state nature of the agency in charge of their attention and whether or not there is a sentence conviction or final determination of a national, regional or international human rights body.
172. Recently, the Committee against Enforced Disappearance, during its visit to Mexico in November 2021, highlighted the need for Mexico to adopt a national prevention policy to eradicate disappearance, which involves all authorities and makes the rights effective. of the victims to the truth, justice, reparation and guarantees of non-repetition, for which he specified that "it is not just about the victims, since forced disappearance is a problem for everyone, for Mexican society as a whole and for the entire humanity". Thus, the international organization pointed out that the adoption of comprehensive care and reparation measures

⁹⁷Committee against Enforced Disappearance, Final observations on the report submitted by Mexico under article 29, paragraph 1 of the International Convention for the Protection of All Persons against Enforced Disappearances, CED/C/MEX/CO/1, five of March two thousand and fifteen.

⁹⁸Committee against Forced Disappearance, Follow-up Observations on the complementary information submitted by Mexico pursuant to Article 29, paragraph 4, of the Convention, CED/C/MEX/FAI/1, September 6, two thousand and nineteen.

for victims, with a gender and multicultural approach, is particularly relevant.⁹⁹.

173. However, taking into account what was previously developed in section "A. Forced Disappearance of Persons as a Serious Violation of Human Rights" of this judgment, in that forced disappearance constitutes one of the most serious violations of human rights, due to its multi-offensive nature (that is, for violating different rights such as freedom, personal integrity, identity, life, recognition of legal personality), as well as the profound and painful impact it generates on the relatives of the disappeared persons, in particular, on their mental integrity and on their rights to the truth and access to justice, and the consequent reinforced duties that are imposed at the international and national level for the Mexican State,
174. Indeed, in cases of serious human rights violations, such as the forced disappearance of persons, this First Chamber concludes that an exception to the general rule established in the aforementioned precedent is updated, regarding the limitations of the amparo proceeding for set comprehensive reparation measures beyond restitution or compensation (via substitute compliance); that is, measures of satisfaction, rehabilitation and non-repetition.
175. Therefore, in these cases, the amparo courts have the power to impose comprehensive reparation measures, in order to restore the disappeared persons and their families, in full enjoyment of their violated rights, for which reason they can validly impose measures of restitution, which include the restoration of freedom in cases of forced

⁹⁹Press conference after the visit of the Committee against Forced Disappearance to Mexico, November 26, 2021.

disappearance; rehabilitation measures, consisting of medical, psychological and psychiatric care so that the indirect victims can face the victimizing facts and the whole context that involves the search for their next of kin; Satisfaction measures, which imply the search for the disappeared persons, and for the bodies or bones, as well as help to recover them, identify them and bury them again; guarantees of non-repetition, such as not revictimizing or criminalizing the victims; and compensation measures in view of the seriousness of the damage suffered.

- 176.** This First Chamber considers it important to remember that our constitutional control parameter has been modified to ensure that the amparo trial is effective as a judicial remedy to repair human rights violations.
- 177.** Indeed, through the June 2011 reform on human rights, the control parameter was reconfigured to replace "individual guarantees" for human rights. In the same way, constitutional articles 103 and 107 were amended to adjust the amparo trial in the direction of protection of the renewed control parameter.
- 178.** In this way, when resolving the contradiction of thesis 293/2011¹⁰⁰, the Full Court determined that the parameter is constituted with an interrelation of sources of the same hierarchy applicable based on the

¹⁰⁰Resolved on September 3, two thousand and thirteen, by a majority of six votes of Ministers Gutiérrez Ortiz Mena, Cossío Díaz, Zaldívar Lelo de Larrea, Valls Hernández, Minister Sánchez Cordero de García Villegas and President Silva Meza, the determination consisting of that, as jurisprudence, the criteria upheld by the Full Court in the sense that the jurisprudence issued by the Inter-American Court of Human Rights is binding on Mexican judges should prevail as long as it is more favorable to the person. Minister Luna Ramos, Ministers Franco González Salas, Pardo Rebolledo, Aguilar Morales, who recognized that the sentences that condemn the Mexican State are binding, and Pérez Dayán voted against.

pro persona principle, consisting of the constitutional text, the international treaties to which the Mexican State is a party in which they recognize human rights , as well as the jurisprudence of the Inter-American Court of Human Rights.

179. Thus, this high court has recognized in various precedents that the amparo proceeding is subject to the high requirements of Article 25 of the American Convention on Human Rights, which recognizes the right to an effective judicial remedy to remedy human rights violations, the which requires that the mechanisms or procedural means intended to guarantee human rights be effective¹⁰¹.
180. In this sense, this First Chamber determines that in accordance with the new current constitutional order, serious violations of human rights (such as the forced disappearance of persons) constitute an exception to the general rule established in the aforementioned precedent, for which reason the organsAmparo jurisdictions have powers to impose comprehensive reparation measures, in order to restore the disappeared persons and their families, in full enjoyment of their violated rights.
181. The exception that now arises does not respond to an internal change in the rules of the amparo trial contained in the regulatory law, but to an external one: the modification in the parameter of constitutional control to which the amparo trial must serve. This interpretation makes it possible to advance in the configuration of the amparo trial so that it is an effective judicial remedy that serves to comprehensively repair

¹⁰¹Jurisprudence thesis 12/2016 of the Second Chamber, visible on page 763 of Book 27 (February 2016), Volume I of the Federal Judicial Weekly Gazette, under the heading: “EFFECTIVE JUDICIAL REMEDY. THE AMPARO TRIAL MEETS THE CHARACTERISTICS OF EFFICACY AND SUITABILITY IN THE LIGHT OF ARTICLE 25 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

serious human rights violations, such as the one that concerns us in this case.

- 182.** Therefore, this First Chamber notes that only by establishing comprehensive reparation measures can the victims of forced disappearance be restored to the enjoyment of their many violated rights, in accordance with the provisions of the third paragraph of Article 1 of the Political Constitution of the country.

4. Judicial Power of the Federation to calculate the compensation amounts for the compensation measures

- 183.** Once it has been established that in cases of serious violations of human rights, the amparo courts can order comprehensive reparation measures, this First Chamber proceeds to determine if it is possible to quantify the compensation measure.
- 184.** When resolving the amparo under review 394/2020, this First Chamber held that the authorities of the Federal Judiciary are not competent to calculate amounts of compensation¹⁰². Although financial compensation is a measure that seeks to compensate victims of the damages caused by human rights violations, it is not appropriate for it to be calculated through an amparo proceeding.¹⁰³.
- 185.** This criterion was adopted with regard to the solution of the amparo under review 706/2015, whose act claimed was the refusal to celebrate

¹⁰²Resolved on November 3, 2021, by unanimous vote of Ministers Piña Hernández and Ríos Farjat (rapporteur), and Ministers González Alcántara Carrancá, Pardo Rebolledo and Gutiérrez Ortiz Mena.

¹⁰³Resolved on June 1, 2016, by unanimous vote of Ministers Zaldívar Lelo de Larrea (rapporteur), Cossío Díaz, Pardo Rebolledo, Gutiérrez Ortiz Mena and Minister Piña Hernández.

a marriage between two people of the same sex, and in which the payment of compensation for damages was requested. , both material and immaterial caused, as well as measures of satisfaction and guarantees of non-repetition. When resolving said appeal, this First Chamber did not order the compensation measures claimed by the complainant, since it considered that the amparo trial was not the appropriate way to determine it, so it had to resort to other procedures.

186. Subsequently, when resolving the protections under review 1133/2019¹⁰⁴, 337/2020¹⁰⁵, 393/2020¹⁰⁶ and 394/2020¹⁰⁷, related to the events that occurred in the *****, this First Chamber held that the Amparo Law does not authorize the constitutional judges to calculate the amount of compensation, although they do have the power to review or analyze the amounts already decreed by another authority and thus be able to requantify them, in attention to the constitutional mandate established in article 1, third paragraph.

187. Based on what was resolved in the previous precedents, in the opinion of this First Chamber, the restriction of the calculation of the compensation measures is reasonable as long as it attends to the characteristics of the amparo trial in which the courts do not have the information necessary (such as medical, psychological and social work opinions) to be able to adequately quantify the amount of compensation,

¹⁰⁴Resolved on July 1, 2020, by a majority of four votes of Ministers Piña Hernández and Ríos Farjat, and Ministers Gutiérrez Ortiz Mena and González Alcántara Carrancá (rapporteur). Against, Minister Pardo Rebolledo.

¹⁰⁵Resolved on March 24, 2021, by unanimous vote of Ministers Piña Hernández (rapporteur) and Ríos Farjat, and Ministers González Alcántara Carrancá, Pardo Rebolledo and Gutiérrez Ortiz Mena.

¹⁰⁶Resolved on May 12, 2021, by unanimous vote of Ministers Piña Hernández and Ríos Farjat, and Ministers González Alcántara Carrancá (rapporteur), Pardo Rebolledo and Gutiérrez Ortiz Mena.

¹⁰⁷Supra note 101.

taking into account the seriousness and magnitude of the event, as well as the damages caused in a particular way to each of the parties involved.

- 188.** In addition, a position, in cases such as the present, could generate a disproportionate burden for the victims by having to provide said documentation at the time of filing the amparo claim, particularly in cases of serious human rights violations, such as the enforced disappearance, in which time is a determining factor in finding missing persons.
- 189.** Thus, this Chamber observes that, in the absence of evidence necessary to decide on the calculation of the amount of compensation, the jurisdictional authorities for amparo are prevented from issuing a pronouncement in this regard, since otherwise it could generate damage to the complaining party, since it would be an arbitrary determination that could ignore the differentiated impacts generated by human rights violations according to the particular situation in which each victim finds himself.
- 190.** Thus, in accordance with articles 84 and 95 of the General Law on Victims¹⁰⁸, the competent authority to be able to carry out the necessary

¹⁰⁸Article 84. The Executive Commission is a body with its own legal personality and patrimony; with technical and management autonomy and will have the resources assigned by the Federation Expenditure Budget.

[...]

The Executive Commission will have the purpose of guaranteeing, promoting and protecting the rights of victims of crime and human rights violations., especially the rights to assistance, protection, care, truth, justice, comprehensive reparation and due diligence, in terms of article 2 of the Law; as well as acting as the operating body of the System and the others that this Law indicates.

Article 95.The Executive Commissioner shall have the following powers:

VIII.Guarantee the registration of victims who go directly to the Executive Commission to request their registration in the National Registry of Victims, as well as the help, assistance, attention, access to justice, access to the truth and comprehensive reparation services that they request from through the competent instances, following up until the final stage to guarantee the effective fulfillment of the functions of the institutions;

studies in order to adequately determine the amount of compensation derived from human rights violations is the Executive Commission for Attention to Victims.

- 191.** Indeed, said Commission is empowered to carry out social work studies in which a list of the conditions of victimization faced by the victim and the needs that need to be satisfied to face the consequences of the event is carried out; the medical report specifying the effects suffered, the sequelae and the necessary treatment; the psychological opinion in case the victim requires it; and any other information that helps determine the intensity and severity of the damage suffered.
- 192.** It should be noted that, in order to obtain said documentation, the Executive Commission must comply with the principles of dignity, good faith, due diligence, differential, specialized and transformative approach, non-criminalization and non-revictimization, as well as the others contemplated by the General Law. of Victims. In addition, the victims will only be obliged to deliver the documentation in their possession.¹⁰⁹.

¹⁰⁹Article 147. In the case of the request for help or support, the following must also be added:

- I. Social work study prepared by the Interdisciplinary Evaluation Committee in which a relationship is made of the conditions of victimization faced by the victim and the needs that need to be met to face the consequences of victimization;
- II. Medical opinion specifying the effects suffered, the sequelae and the treatment, prosthesis and other needs that the person requires for his recovery;
- III. Psychological opinion in the event that the victim requires mental health care, specifying the needs that need to be covered for the recovery of the victim, and
- IV. Proposed resolution that the Executive Committee proposes to adopt where the need for said aid is justified and legally argued.

The victim will only be obliged to deliver the information, documentation and evidence in their possession. It is the responsibility of the Committee to achieve the integration of the respective folder.

D. ANALYSIS OF THE CONCRETE CASE

1. Analysis of the grievances raised by the appellant authorities in the main review appeal in light of the previous considerations

193. As highlighted in previous sections, ***** and ***** filed a claim for indirect amparo, in their capacity as indirect victims, and on behalf of ***** and ***** (direct victims), in which They indicated as acts claimed the forced disappearance of the last named, and the abstention of the ministerial agent to carry out the necessary steps to investigate those probably criminal acts.
194. In the defense judgment, the Judge of District made reference to various criteria of the Inter-American Court of Human Rights to maintain that, in the cases of forced disappearance, the circumstantial evidence that supports a judicial presumption is especially valid, since violations of human rights resulting from instances of enforced disappearance are characterized by suppression of direct evidence of the facts.
195. Based on the foregoing, the District Judge determined the non-existence of the acts attributed to various authorities indicated as responsible, and the existence of sufficient indicative elements to establish the well-founded suspicion that ***** and ***** were subjected to forced disappearance, in which members of various agencies presumably participated, among which are the Ministerial Police of the Oaxaca State Attorney General's Office (current Oaxaca State Attorney General's Office) and the Mexican Army (attached to the Eighth Military Region military, based in Ixcotel, Oaxaca).

Study of the grievances of the Secretary of National Defense

196. In his brief of grievances, the Secretary of National Defense disagrees, in principle, with the standard used by the District Judge (attenuated) to consider forced disappearance up to date in the framework of an amparo trial.
197. The aforementioned responsible authority considers that the amparo judge acted outside the law and without legal support, since there is no enforceable sentence of conviction issued by a criminal trial judge in which the guilt of elements of the Army has been resolved. National in the commission of said crime of forced disappearance.
198. In addition, it maintains that the sentence is based on subjective arguments and not on proven facts, regarding the participation of military elements in the operation to arrest the direct complainants, since in the case there is not a single documentary or testimonial evidence that fully certifies that elements of the army have detained the complainants. That is to say, in a sentence the claimed acts must be proven, demonstrated, accredited, so it cannot be dictated only under a probability, since this is contrary to the principle of legality, legal certainty, due process and presumption of innocence.
199. Therefore, it considers that the first and second constitutive elements of the crime of forced disappearance of persons must be considered false, since there is no evidence that irrefutably proves the participation of military personnel.
200. This First Chamber considers that the responsible authority is not right, since as it was developed throughout this decision, forced disappearance can be analyzed as a violation of human rights and as a crime.

- 201.** When it is analyzed as a crime, its verification is subject to a more rigorous standard by the ministerial authority, since, in accordance with the principles that govern criminal matters, this authority must prove not only the existence of the conduct, but also the responsibility of the accused beyond all reasonable doubt. In other words, the evidentiary standard is high because the principle of presumption of innocence must overcome so that a person can be declared criminally responsible for the commission of a crime.
- 202.** For its part, when forced disappearance is indicated as an act claimed in an amparo lawsuit, it is clear that it must be analyzed as a violation of human rights, because it is precisely the object and purpose of this constitutional control mechanism. In this sense, the judging person must attend to an attenuated standard that allows him to analyze indications, indirect and testimonial evidence, in relation to the context, to make evidentiary inferences, in order to determine the violation of the rights of the disappeared person and of their next of kin and thus guarantee their search and immediate location while they are still alive, as well as their rights of access to justice and reparation for the damage.
- 203.** In this way, it is important to specify that when forced disappearance is analyzed as a crime, through criminal proceedings, the responsibility falls on the individual who committed the typical and unlawful acts to the detriment of the victim or offended party. Therefore, the standard of proof is high (beyond any reasonable doubt), since the consequence of the declaration of responsibility implies the deprivation of a person's liberty, as well as the restriction of other rights.
- 204.** Thus, in the case of the crime of forced disappearance, when the Public Prosecutor exercises criminal action against a public servant for this crime, during the process it must be proven that the accused person

deprived a person of liberty, abstained or refused to acknowledge said deprivation or, rather, did not provide information about his fate or whereabouts, which results in the imposition of a custodial sentence of between forty to sixty years, as well as dismissal in the performance of his position, in accordance with articles 27 and 30 of the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons¹¹⁰.

205. On the other hand, when forced disappearance is studied as a violation of human rights in the amparo trial, the analysis of responsibility is not carried out with respect to a particular individual, but rather with respect to the different authorities that make up the State (such as the institution of the armed forces)¹¹¹, with the consequent obligation to repair the damage, which justifies attending to a lower standard of evidence.

206. In short, when an amparo proceeding is promoted against the forced disappearance of a person, the analysis that is carried out is from the perspective of violation of human rights, which leads to the determination of responsibility of a state entity, more not the criminal responsibility of an individual.

¹¹⁰Article 27. The crime of forced disappearance of persons is committed by a public servant or individual who, with the authorization, support or acquiescence of a public servant, deprives a person of liberty in any way, followed by abstention or refusal to acknowledge said deprivation of liberty or to provide information about it or their fate, fate or whereabouts.

Article 30. A penalty of forty to sixty years in prison will be imposed, and from ten thousand to twenty thousand days a fine to persons who engage in the conduct provided for in articles 27 and 28.

Additionally, when the person responsible has the character of a public servant, the dismissal and disqualification will be imposed, as appropriate, for the performance of any position, employment or public commission, up to twice the same period of the deprivation of liberty imposed, from that the prison sentence is served.

¹¹¹United Nations General Assembly, State Responsibility for Internationally Illegal Acts, AG/RES/56/83, December 12, 2001, Article 2 and 4.

- 207.** Therefore, contrary to what was indicated by the responsible authority, the District Judge was not obliged to determine the accreditation of the forced disappearance for the purposes of the amparo trial (that is, as a violation of human rights) only with documentary or testimonial evidence. direct, nor after there was a final sentence in criminal proceedings that determined the responsibility of elements of the army.
- 208.** Had it done so, the District Judge would have ignored the nature of the amparo trial, which in these cases has as its main purpose to find the disappeared person alive. In addition, it would have ignored the very nature of forced disappearance, as it is a violation of human rights that implies the use of the power of the State to destroy direct evidence, in order to generate impunity, prevent the deprivation of liberty from being verified and can find the whereabouts or determine the fate of the victim.
- 209.** This First Chamber even observes that, in the appealed ruling, the amparo judge clearly specified that the constitutionality analysis would do so in accordance with the purpose of the amparo trial (which has restorative or remedial effects in relation to the protected right, in accordance with articles 1 of the Constitution and 77 of the Amparo Law) and not in accordance with the nature of the prosecution of crimes that criminal proceedings hold, since constitutional proceedings have a purpose other than criminal action¹¹².
- 210.** In this sense, the amparo judge came to the conclusion that the evidence in the proceedingsthey were able to consider that State agents participated in the detention, in particular, public servants assigned to the Mexican Army (from the eighth military region in Ixcotel, Oaxaca); to the General Directorate of Public Security (then Secretary of Citizen

¹¹²Page 60 of the amparo ruling.

Protection of the state of Oaxaca); the then Ministerial Police of what is now the Attorney General's Office of the state of Oaxaca; and the Directorate of Public Security of the municipality of Oaxaca de Juárez, Oaxaca

211. The foregoing, based on the statements of*****and*****, owner and employee of the hotel "*****"respectively, that work in the records of the preliminary investigation*****in which they indicated that elements of said corporations participated in the arrest¹¹³, as well as what is indicated in the Recommendation*****of the National Human Rights Commission.

212. In this sense, the judge assessed that, after the arrestof the lords*****and*****, which occurred on May 24, 2007 at the hotel "*****", their whereabouts are unknown, which updates the forced disappearance, as a violation of the human rights of the direct victims and their families, as indirect victims.

213. In line with the foregoing, this First Chamber considers that the Secretary of National Defense is not right regarding the fact that his right to due process was violated by having considered said authority as responsible for the crime of forced disappearance, without having been heard and defeated. in trial.

214. As has been pointed out repeatedly in this section, the responsible authority starts from a false premise, while the amparo ruling did not analyze forced disappearance as a crime, but rather as a violation of human rights.

¹¹³Pages 95-96 of the amparo judgment.

- 215.** In addition, in the amparo judicial process, the right to a hearing of the aforementioned authority was respected, as long as it was duly notified and presented its respective justified report, in which it explained the reasons and grounds it considered pertinent, in terms of article 117 of the Amparo Law¹¹⁴.
- 216.** However, regarding the reparation measures established in relation to the Secretary of National Defense, it should be noted that the District Judge determined two measures of satisfaction and one of restitution.
- 217.** As a first measure of satisfaction, the judge indicated that the Secretary of National Defense must publish, for a single occasion, an extract of the sentence in a newspaper with national circulation, since the violation of the multiple human rights of the gentlemen was evidenced.*****and***** , in such a way that with said publication the illegal action of the responsible authorities would not be left in the opacity and a symbolic recognition of the victims would be made in a personal way.
- 218.** Similarly, as a measure of satisfaction, he ordered the Public Ministry agent to take the statement of the military commanders who had been in office in May 2007 in the state of Oaxaca in order to elucidate their possible participation in the disappearance. forced from the direct complainants or to investigate their whereabouts. This, with the understanding that if any statement reveals information, which even

¹¹⁴Article 117. The responsible authority must render its report with justification in writing or in magnetic media within a period of fifteen days, with which the parties will be seen. The court, taking into account the circumstances of the case, may extend the term for another ten days.

[...]

The report will state the reasons and grounds deemed pertinent to sustain the inadmissibility of the trial and the constitutionality or legality of the act claimed and will be accompanied, where appropriate, by a certified copy of the necessary records to support it.

hints at the use of military installations to hide the direct complainants, the Public Ministry of the Federation must order the procedures it deems pertinent to carry out the search. of said persons in them.

219. For its part, as a measure of restitution, it imposed that the Secretary of National Defense, through all the members of the Mexican army, must provide the necessary facilities to the federal prosecutor, in charge of integrating the investigation of origin, as well as to any authority entrusted with finding the whereabouts of the complainants in order to investigate their forced disappearance, such as allowing entry to any military installation to search for the men ***** and ***** or their mortal remains.
220. However, in his fourth, fifth and sixth grievances, the Secretary of National Defense disagrees with these measures, essentially stating that they are illegal, while the District Judge does not have the power to order them, nor to establish investigative actions, since this is in any case the responsibility of the Public Ministry.
221. Likewise, it indicates that it is not valid that the judge imposed said measures on him, since it has not been proven that elements of the Secretary of State, nor elements of the Army, were the ones who committed or materialized the acts of forced disappearance claimed, nor was it It has an enforceable sentence in which the criminal responsibility of some military element has been determined.
222. This First Chamber considers that said grievances are unfounded.
223. As noted in previous sections, When faced with cases of serious human rights violations, such as the forced disappearance of persons, the amparo courts have the power to impose comprehensive reparation

measures, in order to restore the disappeared persons and their families, in full enjoy your rights.

- 224.** In order to comply with the foregoing, restitution measures can be validly established to return the disappeared person to the protection of the law; rehabilitation measures that seek to alleviate the damage caused by the disappearance of loved ones, such as medical and psychological care; satisfaction measures that imply that the authorities search for the disappeared persons and for the bodies or bones, as well as help to recover, identify and bury them again; compensation measures consistent with the damage caused and measures of non-repetition so that such atrocious events do not happen to someone else.
- 225.** Thus, this Chamber considers that the action of the District Judge in the determination of the aforementioned comprehensive reparation measures was in accordance with the international obligations derived from article 1 of the Political Constitution of the country, in matters of forced disappearance of persons.
- 226.** Indeed, regarding the measure of satisfaction consisting of publishing for a single occasion an extract of the sentence in a newspaper with national circulation, derived from the serious violation of the human rights of Mr. ***** and *****, this First Chamber warns that the measure is aimed at compensating the pain of the victims, as relatives, through the reconstruction of the truth, the dissemination of historical memory and the dignity of the victims.
- 227.** In this sense, contrary to what was indicated by the appellant authority and as indicated in previous paragraphs, the measure imposed by the District Judge does not derive from the accreditation of criminal responsibility of any of the elements of the army in particular, but from

the institutional responsibility, as part of the State, taking into account that there are indications of the participation of military elements in the detention of both complainants; from which time his whereabouts are unknown.

228. Thus, in order to make the measure effective, this First Chamber considers that the responsible authority must publish, within a period of no more than thirty calendar days from the notification of this enforceable decision, an extract from Considering Seventh "Substantive analysis regarding the claimed act consisting of forced disappearance" of the appealed judgment, which incorporates the issues related to the claimed act of the Ministry of National Defense that includes at least points 7.7.2, 7.7.3 and 7.7.3.1 of the same.

229. It is important to specify that the publication of the sentence does not imply the recognition of criminal responsibility of military members because, as indicated, the nature of the amparo trial is to determine if human rights violations are proven, as in the present case.

230. On the other hand, regarding the different measure of satisfaction and restitution, this First Chamber determines that, without prejudging the responsibility of the Ministry of National Defense or of military elements in the probable commission of the crime of forced disappearance, said authority , within the scope of their respective powers, with all the resources and institutional means available and in coordination with other authorities, has the obligation to investigate and carry out all the necessary actions to determine the fate or whereabouts of the men*****and***** , under the presumption of life, unless there is evidence to the contrary.

- 231.** Said obligation derives from the right to search that all disappeared persons and their loved ones have, which includes that the State develop and implement all the mechanisms and instruments required to find the persons or to identify and preserve the remains of the victims in proper conditions. of dignity, while they are handed over to their families.
- 232.** Likewise, the aforementioned obligation emanates from the right to the truth. As noted, the next of kin of victims of serious human rights violations have the right to know the truth of what happened, which is part of the right of access to justice and constitutes, in turn, a form of reparation.¹¹⁵. Thus, through comprehensive reparation measures, victims can begin to face the impacts caused by the victimizing event in order to restore their life project.
- 233.** The foregoing is strengthened if it is taken into consideration that the Ministry of National Defense is a state body that, in accordance with article 1 of the Political Constitution of the country, has the obligation to promote, respect, protect and guarantee the rights in light of the International Convention for the Protection of All Persons against Enforced Disappearance, the Inter-American Convention on the Forced Disappearance of Persons, the Rome Statute of the International Criminal Court and the General Law on Enforced Disappearance of Persons , Disappearance committed by Individuals and the National System for the Search for Persons.
- 234.** Thus, this First Chamber determines that the measure consisting of the Ministry of National Defense, through all the members of the Mexican

¹¹⁵IHR Court. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 117; Urrejola Noguera, Antonia and Pascual Ricke Tomás Ignacio, “The incorporation of the right to the truth in the Inter-American Human Rights System as an autonomous right based on the forced disappearance of persons”, op. cit. p. 113.

army, provide the necessary facilities to the prosecutor's office in charge of the integration of the investigation of origin, as well as to any authority that has the task of finding the whereabouts of the complainants so that they can be investigated their forced disappearance, such as allowing entry to any military installation to search for the complainants, is in accordance with the international obligations of the Mexican State in the matter.

235. To this end, the inter-institutional search group referred to in the following section, immediately after joining, must design a comprehensive search plan, taking into account the circumstances and context of the disappearance of the complainants, to determine the personnel who It will carry out the corresponding procedures in the military installations, as well as the methodology to be implemented, in accordance with the Approved Protocol for the Search for Disappeared Persons.

236. Likewise, the measure of satisfaction consisting of the taking of statements from the military commanders who had been in office in May 2007 in the state of Oaxaca, by the agent of the Public Ministry, derives from the search obligations that they have. the responsible authorities. Therefore, considering the importance that the passage of time is crucial when it comes to a forced disappearance, this First Chamber determines that, immediately upon notification of this resolution, the Ministry of National Defense must collaborate with the Attorney General of the Republic in order to provide information regarding the people who held said positions, and their status in said corporation in order for them to appear within the preliminary investigation¹¹⁶.

¹¹⁶Under the premise that by military commanders it should be understood that it refers to Major, Lieutenant Colonel, Colonel, Brigadier General and Brigadier General, as well as Division General, among others.

Study of the grievances of the Agent of the Public Ministry of the Federation

- 237.** For her part, the District Judge imposed as a measure of satisfaction, the agent of the Public Ministry of the Federation, attached to the Special Prosecutor's Office for the Search of Disappeared Persons under the Human Rights, Crime Prevention and Community Services Sub-Prosecutor's Office , publish on the main website of the Office of the Attorney General of the Republic, the investigation carried out and the evidence included in the preliminary investigation*****which must be updated weekly, with the understanding that the authority will not be able to test the names of the public servants who participated in the events for which the complainants disappeared.
- 238.** The ministerial agent alleges, in her first grievance, that said measure forces her to violate constitutional powers and powers and to publish sensitive information and personal data, which would result in administrative and criminal liability. This First Chamber considers that said grievance is partially founded.
- 239.** Regarding the right to public information, the general rule contained in article 6 of the Political Constitution of the country is that in a democratic State of law, access and maximum publicity of information must prevail.
- 240.** However, the general rule presents some exceptions, which, by constitutional mandate, must be provided for in laws in a formal and material sense. One of these exceptions is the case of information whose publication obstructs the prevention or prosecution of crimes; violates the conduct of judicial files or administrative procedures followed in the form of a trial as long as they have not caused a state; is contained within the investigations of facts that the law indicates as crimes and are

processed before the Public Ministry in terms of the provisions of article 110, sections VII, XI, and XII of the Federal Law of Transparency and Access to Information public.

241. However, said limitation cannot be considered absolute either, since it presents an exception, since, in accordance with the provisions of articles 8 and 112, section I of the Federal Law on Transparency and Access to Public Information, it cannot be classified as Reserved information that is related to serious violations of human rights or crimes against humanity, in accordance with national law or international treaties to which the Mexican State is a party. In addition, no person will be subject to judicial or administrative inquisition for the exercise of the right of access to information, nor may this right be restricted by direct and indirect means or means.

242. The foregoing is reinforced by what is sustained by this First Chamber in thesis 1a. IX/2012 (10a.) of heading: “RIGHT TO INFORMATION. ACCESS TO PRELIMINARY INVESTIGATIONS THAT INVESTIGATE FACTS CONSTITUTING SERIOUS VIOLATIONS OF HUMAN RIGHTS OR CRIMES AGAINST HUMANITY”¹¹⁷, in which it is indicated that the

¹¹⁷*In terms of the right to public information, the general rule in a democratic State of law must be access and maximum publicity of information. However, the general rule presents some exceptions, which, by constitutional mandate, must be provided for in laws in a formal and material sense. One of these exceptions is the case of preliminary investigations, the content of which must be considered as strictly reserved, in terms of the provisions of article 16 of the Federal Code of Criminal Procedures, and of the articles 13, section V, and 14, section III, of the Federal Law on Transparency and Access to Public Government Information. However, this limitation cannot be considered absolute either and presents an exception -so that we are dealing with an exception to the exception- consisting in the fact that, in accordance with the provisions of the last paragraph of article 14 of the Federal Law on Transparency and Access to Government Public Information, the reserved nature cannot be claimed when the preliminary investigation investigates acts constituting serious violations of human rights or crimes against humanity. Preliminary investigations are kept confidential in view of the fact that the dissemination of the information contained in them could seriously affect the prosecution of crimes and, with it, the justice system. Despite the above, The law*

need to allow access to the information contained in preliminary investigations that investigate facts that constitute serious violations of human rights or crimes against humanity is of special relevance, since these assumptions not only affect the victims and offended directly by the unlawful acts, but they offend the whole of society, precisely because of their seriousness and the repercussions they imply.

- 243.** In this sense, the grievance of the appellant authority regarding the fact that publishing the information on the preliminary investigation would expose the investigations is unfounded, which goes against the secrecy that must be kept in the investigations. The foregoing, since the District Judge acted in accordance with the criteria of this First Chamber when determining that said responsible authority must publish the preliminary

*provided as an exception to the reservation of preliminary investigations those extreme cases in which the crime prosecuted is of such seriousness that the public interest in keeping the preliminary investigation confidential is overcome by the interest of society as a whole to know all the procedures that are being carried out for the timely investigation, arrest, trial and punishment of those responsible. These exceptional cases are investigations into serious human rights violations and crimes against humanity. This First Chamber of the Supreme Court of Justice of the Nation recalls that the Full Court recognized in the jurisprudential thesis These exceptional cases are investigations into serious human rights violations and crimes against humanity. This First Chamber of the Supreme Court of Justice of the Nation recalls that the Full Court recognized in the jurisprudential thesis These exceptional cases are investigations into serious human rights violations and crimes against humanity. This First Chamber of the Supreme Court of Justice of the Nation recalls that the Full Court recognized in the jurisprudential thesis **P./J. 54/2008**, the double character of the right of access to information, as a right in itself, but also as a means or instrument for the exercise of other rights. In this sense, the Full Court highlighted that the right of access to information is the basis for the governed to exercise control over the institutional functioning of public powers, for which reason it is outlined as a limit to state exclusivity in the management of information and, therefore, as a social requirement of all rule of law. By virtue of the foregoing, the need to allow access to the information contained in preliminary investigations that investigate acts that constitute serious violations of human rights or crimes against humanity, is particularly relevant.*

Thesis 1a. IX/2012 (10a.) of the First Chamber, published in the Federal Judicial Weekly and its Gazette, Book V, February 2012, Volume 1, p. 652.

investigation on the main Internet page of the Attorney General's Office, so that the company can access their right to the truth.

244. However, this First Chamber determines that his grievance is well-founded solely insofar as not testing the names of the public servants who participated in the events could cause irreparable damage in the investigation.

245. The foregoing, since although in terms of the right to public information, information that is related to serious violations of human rights or crimes against humanity cannot be classified as reserved, the truth is that this is not applicable to personal data such as is the name, because in accordance with article 113 of the Federal Law on Transparency and Access to Public Information, confidential information is considered to be that which contains personal data concerning a natural person, which will not be subject to any temporality and may only be have access to it the holders of the same, their representatives and public servants empowered to do so¹¹⁸.

246. In addition, the publication of the names of public servants could cause a violation of the right of access to justice of the victims, until there is no enforceable sentence, since those responsible would have the possibility of avoiding the action of justice by knowing that they are subjects. to a criminal investigation, coupled with the fact that a corrupting effect could be caused by the violation of the right to due process of the accused, with the consequence of making it impossible

¹¹⁸Article 113. Confidential information is considered:

I. The one that contains personal data concerning an identified or identifiable natural person; [...]

for the court to rule on the criminal responsibility of the person involved, which would prevent the victims to access their right to truth and justice.

247. Indeed, this First Chamber has already ruled in the sense that the claim of the victims of human rights violations to find the "truth" within the framework of a judicial proceeding is a crucial component of the validity and legitimacy of justice. . In this way, and taking into consideration that the Mexican legal system recognizes the duty to protect the fundamental rights of both the accused and the victim from the investigation stage, it is possible to maintain that the presumption of innocence and due process constitute the institutional guarantee of the right to the truth of the victims¹¹⁹.

248. In this way, the conduct of the criminal investigation must be carried out in a diligent, exhaustive manner and with strict adherence to the right to due process in order not to frustrate the legitimate claims and aspirations of the victims.

249. In this sense, this First Chamber emphasizes that respect for judicial guarantees and due process for persons accused of a crime also has the purpose of guaranteeing and respecting the right of access to justice and the right to the truth of the victims, because when these measures are not respected, the accused person is not the only one who suffers impairment but also those who cry out for justice.

250. Thus, in response to the right of access to justice and the right to the truth of the victims, this First Chamber modifies the sentence appealed

¹¹⁹ Amparo under review 1284/2015, voted in session of November thirteen of two thousand and nineteen, unanimously with four votes of the Ministers Alfredo Gutiérrez Ortiz Mena (rapporteur), Luis María Aguilar Morales, Jorge Mario Pardo Rebolledo, who reserved his right to formulate a concurring vote and Juan Luis González Alcántara Carrancá, who reserved his right to formulate a concurring vote. Minister Norma Lucía Piña Hernández was absent.

to the effect that the agent of the Public Ministry of the Federation, attached to the Specialized Prosecutor for the Search of Persons Disappeared dependent on the Office of Human Rights, Crime Prevention and Community Services, publish on the main website of the Office of the Attorney General of the Republic the investigation carried out and the evidence included in the preliminary investigation*****which must be updated weekly, with the understanding that the authority may test the names of the public servants who participated in the events for which the complainants disappeared, until there is no final judgment declaring their responsibility penal.

- 251.** In the understanding that said measure must be complied with within a reasonable period of time, which may not exceed thirty calendar days, from the notification of this sentence to the responsible authority and which must remain on the internet portal of said authority as minimum until the fate or whereabouts of both missing persons is determined.
- 252.** It should be specified that said determination does not imply that the complainants do not have access to know the name of the public servants involved, since when they are offended and victims in the process they have the right to access the preliminary investigation, which is in accordance with their right to the true.
- 253.** However, in her grievances, the agent of the Public Ministry of the Federation alleges that the determination of the District Judge regarding the fact that the provision of February sixteenth of two thousand and fifteen should be rendered invalid, with which she refused to recognize the formation and creation of the Special Search Commission to locate the disappeared, since it does not have the powers to do so. This First Chamber considers that said grievance is unfounded.

- 254.** Article 40, sections XV and XVI of the Law of the Attorney General of the Republic establishes that it is the powers of the agents of the Public Ministry of the Federation to promptly issue the search and location order for disappeared persons when they receive a complaint of probable commission of a crime, as well as ordering and coordinating the carrying out of investigative acts, the collection of evidence and means of proof for the clarification of the criminal act.
- 255.** For its part, Article 70 of the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons states that the Special Prosecutor for the Search for Disappeared Persons has among its powers to coordinate efforts with the National Search Commission in order to locate a missing person.
- 256.** Among these attributions are: to immediately notify the National Search Commission about the initiation of an investigation in order to begin the actions corresponding to the search; provide you with ministerial and expert information that you request regarding the search for people; Maintain continuous and permanent communication with it in order to share information that contributes to the search for people, inform you about the location or identification of a person; request geographic location in real time and order the intervention of communications, among others¹²⁰.

¹²⁰Article 70. The Specialized Prosecutor's Office has, within the scope of its competence, the following attributions:

[...]

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;

257. Furthermore, section X of article 70 of the aforementioned General Law provides that the Specialized Prosecutor's Office may form inter-institutional and multidisciplinary working groups for the coordination of acts that probably constitute forced disappearance.¹²¹

258. In this sense, this First Chamber warns that contrary to what was indicated by the responsible authority, the Specialized Prosecutor for the Search of Persons does have powers to establish a commission to search for the men*****and*****.

259. Said measure should be interpreted as the formation of a multidisciplinary and inter-institutional working group in order to search and find the whereabouts of the gentlemen*****and*****, as well as finding those responsible, and not as the creation of a decentralized or autonomous administrative body such as the National Search Commission or the local Search Commissions created by the

III Bis. Provide the National Search Commission with the ministerial and expert information that it requests, tending to search for people for human identification purposes and deliver the corresponding information to the National Center under the approval criteria defined by the Commission;

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;

[...]

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;

¹²¹Form inter-institutional and multidisciplinary working groups for the coordination of the investigation of facts that probably constitute the crimes that are the subject of this Law, when the information available to the authority shows that they could have occurred in two or more Federative Entities or it is about a foreign person in a migration situation, regardless of their immigration status;

General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and of the National Person Search System.

- 260.** In this sense, in order to give effect to said measure of satisfaction, the agent of the Public Ministry of the Federation attached to the Special Prosecutor's Office for the Search of Disappeared Persons dependent on the Human Rights, Crime Prevention and Community Services Sub-Prosecutor's Office must request the creation of a multidisciplinary and inter-institutional working group, which will be headed by the National Search Commission¹²², and in which the local search commissions of the federal entities where there are indications that the disappeared persons can be located, the Federal Ministerial Police, the Ministry of

¹²²This is in accordance with the provisions of the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons, in its articles:

Article 53. The National Search Commission has the following powers:

[...]

XVIII. Integrate working groups to propose specific search actions, as well as analyze the phenomenon of disappearance, even at the regional level;

[...]

Article 65. The National Search Commission will have Search Groups made up of public servants specialized in the search for people.

Regardless of the foregoing, the National Search Commission may be assisted by persons specialized in the search for persons, as well as by specialized police forces that collaborate with the competent authorities, in terms of the applicable provisions.

Article 66. The Search Groups, for the proper fulfillment of their actions, have the following attributions:

I. Generate the methodology for the immediate search considering the Approved Search Protocol and other existing ones;

II. Request the competent Specialized Prosecutor's Office to carry out specific investigative acts on the probable commission of a crime that may lead to the search, location or identification of a person, as well as to clarify the facts in terms of the provisions of the National Code of Criminal Procedures. The foregoing, without prejudice to the direct exercise of the powers of the Search Commissions to carry out actions related to the search for persons provided for in this law;

III. Implement an agile and efficient mechanism that contributes to the prompt location of persons reported as missing and not located and safeguards their human rights, and

IV. Guarantee, within the scope of its powers, that the chain of custody is maintained in the place of the facts or discovery, as well as in those where they are found or have well-founded reasons to believe that corpses or human remains of Missing Persons are found.

National Defense, the Ministry of the Interior and other authorities deemed necessary will participate. for the search and location of the gentlemen*****and*****, which must be done within a period not exceeding thirty calendar days from the notification of this judgment.

- 261.** Said inter-institutional search group headed by the National Search Commission, in coordination with the agent of the Federal Public Ministry attached to the Special Prosecutor for the Search of Disappeared Persons, must design the comprehensive search plan in order to carry out the corresponding procedures in the military barracks, in accordance with the provisions of the previous section, allowing the participation, where appropriate, of international human rights bodies in order to accompany the victims in the aforementioned proceedings.

2. Study of the grievances raised by the complainants in the adhesive review appeal

- 262.** The women*****and*****,In their appeal for adhesive review, they allege that the arguments of the appellant authorities in which they intend to challenge the restitution and satisfaction measures are ineffective, since the amparo ruling respected the principles of consistency and exhaustiveness since the District Judge did have powers to assume its position as guarantor of fundamental rights, since the amparo trial is a constitutional path whose purpose is the protection and restitution of violated human rights.
- 263.** In other words, the plaintiffs uphold the constitutionality of the determination of the District Judge regarding the comprehensive reparation measures issued for the forced disappearance of the

gentlemen*****and*****, as well as abstaining from investigations of said facts.

- 264.** In view of the previously resolved, this First Chamber considers that the complainants are right, because as indicated when declaring unfounded the grievances of the appellant authorities, in cases of serious human rights violations, such as the forced disappearance of persons, the amparo courts have powers to impose comprehensive reparation measures, in order to restore the disappeared persons and their families, in the full enjoyment of their rights.
- 265.** Therefore, in order to avoid repetitions, no further pronouncement will be made regarding the measures challenged by the appellant authorities.
- 266.** However, in their grievances, the victims asked this reviewing body to specify the scope of the exact amount of compensation that must be paid in their favor by the Executive Commission for Attention to Victims; however, this First Chamber is not empowered to make said calculation.
- 267.** The foregoing, as indicated in Section C of this judgment, the jurisdictional authorities of the Federal Judiciary are not competent to calculate the amounts of compensation, since in addition to the fact that there is no legal precept that authorizes them for this purpose, what It is true that they do not have the necessary information to be able to adequately quantify said measure, taking into account the seriousness and magnitude of the fact in order to grant an adequate, differentiated, transformative and effective measure for the damage suffered as a consequence of the disappearance.
- 268.** In this sense, in accordance with the General Law of Victims, it will correspond to the Executive Commission for Victim Assistance to

quantify the amount of compensation, for which it must follow the standards of this high court in terms of reparations, developed in the amparo in Review1133/2019¹²³, 337/2020¹²⁴, 393/2020¹²⁵ and 394/2020¹²⁶.

V. DECISION

269. In accordance with the foregoing, since the grievances of the appellant authorities were found to be unfounded on the one hand and founded on the other, as well as the grievances of the adhesive appellant being partially founded, in the matter of review competence of this First Chamber, the judgment is modified challenged, in the terms of the previous section, for the following purposes:

1. Given that the only responsible authorities that resorted to the appeal for review are the Secretary of National Defense and the agent of the Public Ministry of the Federation attached to the Special Prosecutor's Office for the Investigation of Crimes of Forced Disappearance, dependent on the Human Rights Sub-Prosecutor's Office, Prevention of Crime and Services to the Community, of the Attorney General of the Republic, the reparation measures decreed by the District Judge (indicated in paragraph 9, subparagraph p of this decision) in relation to the various authorities responsible, as well as those that were not challenged by the two appellant authorities in their respective review briefs.

¹²³Above, note 104.

¹²⁴Supra, note 105.

¹²⁵Above, note 106.

¹²⁶Supra note 107.

2. In relation to the challenge of the Secretary of National Defense:

- a) **HE** confirms the measure of satisfaction dictated by the District Judge consisting of publishing for a single occasion an extract of the sentence in a newspaper of national circulation, derived from the serious violation of the human rights of the gentlemen*****and*****, which must be carried out within a period of no more than thirty calendar days from the notification of this enforceable decision and must constitute an extract of the Seventh recital "Analysis of merits regarding the claimed act consisting of forced disappearance" of the appealed judgment , in which the issues related to the claimed act of the Ministry of National Defense that includes at least points 7.7.2, 7.7.3 and 7.7.3.1 of the same are incorporated.
- b) **It is confirmed** the measure consisting of the Secretary of National Defense, through all the members of the Mexican army, provide the necessary facilities to the prosecutor's office in charge of the integration of the investigation of origin, as well as to any authority that has the task of finding the whereabouts of the complainants so that they can be investigated their forced disappearance, such as allowing entry to any military installation to search for the complainants.

To this end, the inter-institutional search group referred to in this judgment, immediately after joining, must design a comprehensive search plan, taking into account the circumstances and context of the disappearance of the

complainants, to determine the staff that will carry out the corresponding procedures in the military installations, as well as the methodology to be implemented, in accordance with the Approved Protocol for the Search for Disappeared Persons.

- c) **It is confirmed** the measure of satisfaction consisting of the taking of statements by the agent of the Public Ministry of the military commanders who had been in office in May of two thousand and seven in the state of Oaxaca. Therefore, taking into account the importance that the passage of time is crucial when it comes to a forced disappearance, immediately upon notification of this resolution, the Ministry of National Defense must collaborate with the Office of the Attorney General of the Republic in order to provide information regarding the people who held said positions, and their status in said corporation so that they appear within the preliminary investigation.

3. In relation to the challenge of the agent of the Public Ministry of the Federation attached to the Special Prosecutor's Office for the Investigation of the Crimes of Forced Disappearance, dependent on the Human Rights, Crime Prevention and Community Services Sub-Prosecutor's Office, of the General Prosecutor's Office of the Republic:

- a) **is modified** the judgment appealed to the effect that the aforementioned ministerial agent publishes on the main internet page of the Attorney General of the Republic the investigation that it carries out and the evidence that is part

of the preliminary investigation*****which must be updated weekly, with the understanding that the authority may test the names of the public servants who participated in the events for which the complainants disappeared until there is no enforceable sentence declaring their criminal responsibility . In the understanding that said measure must be complied with within a reasonable period of time, which may not exceed thirty calendar days, from the notification of this sentence to the responsible authority and which must remain on the internet portal of said authority as minimum until the fate or whereabouts of both missing persons is determined.

- b) **It is confirmed**the measure related to recognition for the formation and creation of the Special Search Commission to locate direct complainants. For this purpose, the aforementioned prosecutor's office must request the creation of a multidisciplinary and inter-institutional working group, which will be headed by the National Search Commission and in which the local search commissions of the federal entities where there are indications that the disappeared persons can be located, the Federal Ministerial Police, the Ministry of National Defense, the Ministry of the Interior and other authorities that it deems necessary for the search and location of the men*****and*****, which must be done within a period not exceeding thirty calendar days from the notification of this judgment.

Likewise, said inter-institutional search group headed by the National Search Commission, in coordination with the agent of the Public Ministry of the Federation attached to the Special Prosecutor's Office for the Search of Disappeared Persons, must design the comprehensive search plan in order to carry out the procedures in the military barracks, in accordance with the provisions of this executive order, allowing the participation, where appropriate, of international human rights bodies, in order to accompany the victims in the aforementioned proceedings.

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 competence of this First Chamber, the appealed sentence is modified, under the considerations specified in this resolution.

SECOND.The Justice of the Union protects and protects the complainants ***** and ***** , in the terms indicated in the last section of this resolution.

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

This was resolved by the First Chamber of the Supreme Court of Justice of the Nation by a majority of three votes of the Ministers Jorge Mario Pardo Rebolledo, who reserved the right to formulate a concurring vote,

Alfredo Gutiérrez Ortiz Mena and the Minister President Ana Margarita Ríos Farjat (Speaker). Against the vote cast by Minister Juan Luis González Alcántara Carrancá, who reserved the right to formulate a private vote. Minister Norma Lucía Piña Hernández was absent.

Signed by the Minister President of the Chamber and Speaker, with the Secretary of Agreements who authorizes and attests.

PRESIDENT OF THE FIRST ROOM AND SPEAKER

MINISTER ANA MARGARITA RIOS FARJAT

SECRETARY OF RESOLUTIONS OF THE FIRST ROOM

MASTER RAÚL MENDIOLA PIZAÑA

In terms of the provisions of articles 73, second paragraph, of the Amparo Law, 113 and 116 of the General Law of Transparency and Access to Public Information; 110 and 113 of the Federal Law on Transparency and Access to Public Information; and General Agreement 11/2017, of the Plenary of the Supreme Court of Justice of the Nation, published on September 18, two thousand and seventeen in the Official Gazette of the Federation, in this public version the information legally considered as reserved or confidentiality found in those regulatory cases.

CONCURRING VOTE

WHAT IS FORMULATED BY THE MINISTER JORGE MARIO PARDO REBOLLEDO, IN THE AMPARO UNDER REVIEW 51/2020.

In a session corresponding to August 10, two thousand and twenty-two, the First Chamber of this Supreme Court of Justice of the Nation resolved, by a majority of three votes, the appeal for review mentioned in the matter, in the sense of modifying the appealed judgment and grant the requested relief.

Although I respectfully agree with this sense, I consider it necessary to make some clarifications regarding the considerations expressed there, for the reasons that are explained in the body of this opinion.

I. Reasons for the resolution.

In the execution, it was determined to modify the sentence appealed by the responsible authorities. Said sentence granted the constitutional protection requested by the complainants, against the forced disappearance of which their respective relatives were victims; For this reason, various measures were issued to achieve full reparation for the violation suffered, by virtue of which the trial judge linked various authorities identified as responsible.

However, the resolution of the Chamber considered that it was necessary to make a modification with respect to one of the aspects for which it was granted. The modification of merit consisted in that the grievance of the ministerial authority –in which it states that linking it to making public the updates of the investigation carried out on the occasion of the forced disappearance subject of the amparo trial, could

hinder and obstruct the investigation– was considered essentially founded.

The foregoing given that, as stated by the aforementioned authority, publishing all the progress of the investigation, even without testing sensitive or personal data, could cause damage to the investigation, for which reason it was considered that, although it was feasible to subject the investigating authority to render public reports on the progress of its work, the truth is that it was necessary, in order to preserve the achievement of the process, to test the names of those involved.

Thus, except for this last precision, on the one hand, the aspects that were not controversial were left untouched and, on the other, the rest of the considerations that were the subject of the review were confirmed; All this in accordance with the provisions of section **V. DECISION**, of the resolution reached by this Chamber.¹

Finally, the judgment also responded to the grievances expressed in the adhesive review in accordance with the study that served to confirm most of the aspects submitted for consideration by this First Chamber and specifically dismissed the grievance in which the complainants sought to be quantified. , in this instance, the compensation amounts, since this was beyond the jurisdiction of the Judiciary.

II. Concurring vote considerations.

¹Paragraph 269.

In accordance with the foregoing, I share the meaning of the judgment reached, but with some clarifications that I respectfully allow myself to point out below.

At the outset, I consider it necessary to point out that this matter is related, in terms of litigation, to the various protections under review 315/2019 and 313/2020², in which this First Chamber determined that a constitutionality problem did not subsist³and, therefore, returned them to the collegiate court that prevented it from resolving what was appropriate in its area of competence.

The sentence maintains that the competence of this Chamber to hear the matter, unlike the precedents indicated, is provided by virtue of the need to review, due to its interest and significance, what is established by the district judge regarding the guidelines and standards attenuated evidence to define the margin of action of the amparo body, and the direct interpretation of articles 1 and 20, section C, section VII, of the Political Constitution of the country regarding the integral reparation of the violated human rights derived from the enforced disappearance⁴ which were two of the three issues for which the court that prevented reserved jurisdiction.

However, in my opinion, the substantial difference that arises in this matter and by virtue of which this Chamber can allow itself to hear the matter, is the filing of the adhesive review appeal presented by the complainants, since it allows carry out a study in substitution to analyze

²Resolved on February 3, 2021 unanimously by five votes of Ministers Piña Hernández and Ríos Farjat, Ministers Gutiérrez Ortiz Mena, Pardo Rebolledo and González Alcántara Carrancá.

³None of the appellant authorities expressed constitutional complaints, but rather limited themselves to questioning that the amparo court violated Article 15 of the Amparo Law by carrying out its own investigations, unofficially gathering evidence or invading the powers of the Public Ministry, that is, arguments of mere legality, which do not update the original competence of this high court.

⁴Paragraph 35.

AMPARO UNDER REVIEW 51/2020
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the sentence under appeal in the terms proposed by the final decision, including regarding legal issues.

However, in relation to the effects disputed by the appellants and which were validated in the review appeal, I also consider it necessary to express myself in this regard.

Inasmuch as it makes the ministerial authority stick to publishing the progress of the investigation, but testing the names of possible people involved, I must say that I do not entirely share the modification because, as a general rule, said progress is reserved information in accordance with the Article 218 of the National Code of Criminal Procedures⁵ without, in my opinion⁶, there may be room for an exception, in accordance with the last paragraph of the aforementioned precept, in the sense decreed by the district judge and validated by the Ministers of the majority in this matter.

⁵ **Article 218.** Reservation of investigation acts

The investigation records, as well as all documents, regardless of their content or nature, objects, voice and image records or things that are related to them, are strictly reserved, so only the parties may have access to them. the same, with the limitations established in this Code and other applicable provisions.

The victim or offended party and their Legal Advisor may have access to the investigation records at any time.

The defendant and his counsel may have access to them when he is in custody, is summoned to appear as a defendant or is subject to an act of nuisance and it is intended to receive his interview, from this moment the records may no longer be kept in reserve for the accused or his Defender in order not to affect his right of defense. For the purposes of this paragraph, the provisions of article 266 of this Code shall be understood as an act of nuisance.

In no case may the confidentiality of the records be enforced to the detriment of the accused and his Ombudsman, once the order linking the process has been issued, except as provided in this Code or in special laws.

For the purposes of access to public government information, the Public Ministry must only provide a public version of the determinations of non-exercise of criminal action, temporary file or application of an opportunity criterion, provided that a period equal to that of prescription of the crimes in question, in accordance with the provisions of the corresponding Federal or State Penal Code, without being able to be less than three years, nor more than twelve years, counted from the date that said determination has become final.

⁶Under similar considerations, a concurring vote was also expressed when ruling on the various amparo under review 484/2018, in a session of November 25, 2020, unanimously of five votes, in which the constitutionality of article 218 of the National Code was upheld. of Criminal Procedures under very specific guidelines.

Finally, I also consider it necessary to point out that I do not agree with what is supported by the judgment regarding the relationship that is made to the Secretary of National Defense to comply with various obligations (such as the publication of the amparo ruling and granting access to the areas military, for example) imposed as a result of the protective ruling, since the amparo determination does not contain sufficient elements to allow inferring, even indicatively, their participation in the facts from which the matter derives.

In this sense, I respectfully allow myself to differ from the considerations indicated in the sentence, however I agree with the meaning of the resolution.

MINISTER

JORGE MARIO PARDO REBOLLEDO

SECRETARY OF RESOLUTIONS OF THE FIRST ROOM

RAÚL MENDIOLA PIZAÑA

AVS

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This page belongs to the concurring vote formulated by Minister Jorge Mario Pardo Rebolledo in the amparo under review 51/2020, ruled by the First Chamber of this Supreme Court of Justice of the Nation on August 10, two thousand and twenty-two, by a majority of three votes. For the record.