

Amparo lawsuit 754/2022

<u>Judgment.</u> Having seen to resolve the amparo trial number 754/2022; and,

Resulting:

First. Amparo action.

By means of a writ filed on March twenty-seven of two thousand twenty-two in the judicial mailbox of the Common Correspondence Office of the District Courts in the State, with residence in this municipality and forwarded on the same date, by reason of turn, to this jurisdictional body, <u>Carlos Morales Sánchez</u>, in his own right, requested the protection and protection of the Federal Justice against the following claimed acts and responsible authorities:

a) The omission to follow up on the legislative process initiated with the presentation of the bill and the omission to issue a ruling on the citizens' initiative.

Attributed to the Congress of the Free and Sovereign State of Oaxaca.

b) Failure to rule on a bill or decree no later than thirty working days after the receipt of the file of the citizen's initiative presented.

c) Failure to submit to the Plenary of the Congress its opinions with draft law or decree no later than thirty working days after the receipt of the respective file.

Claiming the **Permanent Commission of Water and** DER Sanitation of the Congress of the State of Oaxaca. **Said complainant** narrated the facts or abstentions that constitute the background of the act complained of or that serve as basis for the concepts of violation; it invoked as violated fundamental rights Articles 1, 14 and 16 of the Political Constitution of the United States and expressed the concepts of violation that it considered pertinent.

Second. Registration and admission of the amparo action.

By order of **June twenty-eighth**, **two thousand twenty-two**, the amparo lawsuit was registered in the government book under number **754**/2022, it was admitted for processing, the agent of the Federal Public Prosecutor's Office assigned was given the intervention that she is entitled to and the responsible authority was requested to submit its justified report, setting a time and date for the constitutional hearing, which was held according to the preceding minutes.

Considerand:

<u>First. Jurisdiction.</u> This Tenth District Court in the State of Oaxaca is legally competent to hear and resolve this amparo trial, by reason of subject matter, grade and territory, in terms of Articles 103, section I, and 107, section XII, of the Federal Constitution; 37 and 107, section V, of the Amparo Law; and 48, 49 and 57, of the Organic Law of the Federal Judiciary, in relation to General Agreement 3/2013, of the Plenary of the Federal Judiciary Council, because it is a matter of an <u>administrative nature</u>, and the omission is claimed from an authority residing in San Raymundo Jalpan, Oaxaca, place in which this District Court in mixed matters exercises jurisdiction.



<u>Second. Precision of the challenged act. In</u> accordance with the provisions of articles 74, section I, and 76, of the Amparo Law, it is established that the act claimed by the plaintiff and for which the analysis will be carried out, as is evident from the amparo petition, is:

a) The omission to follow up on the legislative process initiated with the presentation of the bill and the omission to issue a ruling on the citizens' initiative.

Attributed to the Congress of the Free and Sovereign State of Oaxaca.

b) Failure to rule on a bill or decree no later than thirty working days after the receipt of the file of the citizen's initiative presented.

c) Failure to submit to the Plenary of the Congress its opinions with draft law or decree no later than thirty working days after the receipt of the respective file.

Claiming the Permanent Commission of Water and Sanitation of the Congress of the State of Oaxaca.

Third. Nonexistence of the challenged act. The act claimed against the Congress of the State of Oaxaca is not true.

In effect, when rendering his justified report, he stated that it was true that by means of official letter LXIV/A.L./COM.PERM./6686/2020, dated December 10, 1920, the Secretary of Parliamentary Services of the State Congress, by instructions of the members of the Permanent Deputation of the Sixty-Fourth Constitutional Legislature of the State of Oaxaca, in an extraordinary session, sent to the President of the Commission the following information The Senate of the then Sixty-fourth Legislature, for its study and corresponding opinion, the initiative with draft decree by which the Law for the Defense and Recognition of the Rights of Rivers and other Water Sources of the State of Oaxaca is enacted.

Now, the complainant claims the omission to follow up on the legislative process initiated with the presentation of the law initiative and the omission to issue a ruling on the citizen's initiative.

However, Articles 38 and 42 of the Internal Regulations of the Congress of the State of Oaxaca establish:

"Article 38. The commissions shall submit their opinions with draft laws or decrees to the Plenary, no later than thirty working days after receiving their files.

In the event of not being able to issue an opinion within the established term, the Commission shall so inform the Chairman of the Presiding Officers in writing, stating the reason for the delay and requesting a new term, which may not exceed a term equal to that granted for the issuance of the opinion.

In the event of omission on the part of the Examining Committee, the Chairman of the Presiding Officers shall issue a motion to the Chairman of the Committee in question to issue an opinion within ten working days following the issuance of the motion.

Excepted from the provisions of the preceding paragraph are the Standing Committees which, due to the nature of the matters within their competence, are involved in the processing of ordinary and special proceedings provided for in other legal ordinances, in which case, they shall abide by the terms set forth therein.

In the case of preferential initiatives, they shall be ruled upon in accordance with the terms set forth in Article 51 of the Local Constitution.

"The Congress shall have the standing committees provided for in Article 65 of the Law, which shall analyze and rule on the initiatives derived from its denomination, and those corresponding to them within the scope of their competence, in accordance with the Agencies and Entities of the State Public Administration and the Autonomous Constitutional Bodies".



That is, legally, the Congress of the State of Oaxaca has no obligation to follow up on the legislative process initiated as a result of the presentation of the law initiative or the omission of the citizens' initiative.

The respective rulings are the sole responsibility of the Standing Committees.

Therefore, the amparo proceeding should be dismissed.

with respect to the acts complained of.

The following jurisprudence is applicable, since it deals with the subject matter:

"Suprema Corte de Justicia de la Nación" Digital registry: 2018110 Instance: Second Chamber Tenth Epoch Subject Matter(s): Common Thesis: 2a./J. 99/2018 (10a.) Source: Gaceta del Semanario Judicial de la Federación. Book 59, October 2018, Volume I, page 926. Type: Jurisprudence WHEN THE AUTHORITY DENIES ITS EXISTENCE, THE JUDGE MUST EXAMINE IT BY VERIFYING WHETHER THE RESPONSIBLE PARTY WAS LEGALLY ABLE TO COMPLY WITH THE REQUEST. In the claim of acts of omission, when the responsible authority denies them under the justification that it was not in a position to act, the amparo judge, in the chapter of existence of the respective judgment, must analyze precisely this aspect, that is, if the authority was in a position and time to answer the original request, or if the respective proceeding was in a state of resolution, which, if applicable, could result in the dismissal for non-existence of the acts claimed; This does not imply the study of the merits, since it does not involve the analysis of the constitutionality of the acts".

Fourth. Existence of the acts complained of. The responsible authority, Permanent Commission of Water and Sanitation of the Sixty-fifth Legislature, through its president, when rendering the justified report, <u>agreed with</u> the existence of the acts attributed to it.

In this regard, he stated that on December eight, two thousand twenty it was presented to the Secretariat of Parliamentary Services of the State Congress, who reported it to the Legislative Plenary of the Sixty-Fourth Legislature, in session of the following December ten, which agreed to turn it for its study and analysis to the Joint Permanent Commissions of Water and Sanitation, and Environment, Renewable Energies and Climate Change.

That the initiative was received by the **Presidency of** the Permanent Commission of Water and Sanitation of the Sixty-fourth Legislature on December sixteenth, two thousand twenty, corresponding to file number forty-nine of the index of that Commission, without the relative opinion having been issued, and they ceased to be in office as members on November thirteenth, two thousand twenty-one; In their place, the deputies of the Legislative Plenary of the Sixty-fifth Legislature took office, which by means of the of resolution number two. the Permanent approval Commissions were integrated, among them, the Permanent Commission of Water and Sanitation of the Sixty-fifth Legislature.

Commission that received the letter dated November twenty-ninth, two thousand twenty-one, from the Secretary of Parliamentary Services of the State Congress, with which it forwarded a list of the matters that were not ruled on by the previous Legislature, namely, sixteen initiatives and nine points of agreement.

Upon requesting the files, the person in charge received the one related to the initiative with a draft decree that enacts the Law for the Defense and Recognition of the Rights of Rivers and other Water Sources in the State of



Oaxaca, pending to be ruled on, since it is being studied and analyzed by the referred Committee, in order to issue the ruling to be submitted to the Legislative Plenary.

Fifth. Grounds of inadmissibility. Prior to the study of the issue raised, it is necessary to analyze whether any cause of inadmissibility is present, whether asserted by the parties or ex officio, as they are of public order and ex officio, in accordance with the provisions of Article 62 of the Amparo Act.

In this case, the Permanent Commission of Water and Sanitation of the Sixty-fifth Legislature of the Congress of the State of Oaxaca, upon rendering its justified report, asserted the cause of inadmissibility set forth in section XII of Article 61 of the Amparo Law, because, it says, the omissive acts are attributed to the Permanent Commission of Water and Sanitation of the Sixty-fourth Legislature.

The aforementioned provision 61, section XII, of the Amparo Law refers:

"Article 61. The amparo proceeding is inadmissible:

Section XII. Against acts that do not affect the legal or legitimate interests of the plaintiff, in the terms established in Section I of Article 5 of this Law, and against general rules that require an act of application subsequent to the commencement of its effectiveness".

The aforementioned assumption of inadmissibility is **unfounded.**

The Legislature is a period of time established for the Congress to meet in ordinary or extraordinary sessions, since, in this regard, Articles 41 and 42 of the Political Constitution of the State of Oaxaca state:

"SECTION TWO

INSTALLATION AND OPERATION OF THE LEGISLATURE

"The elected deputies who have their majority and validity certificate issued by the State Electoral Institute or a resolution in their favor from the State Electoral Tribunal, shall attend the installation of the State Legislature in accordance with the provisions of Article 47 of this Constitution and the Organic Law of the Congress itself".

"The Legislature shall hold ordinary sessions twice a year; the first session shall begin on the fifteenth day of November and shall conclude on the thirty-first day of March, and the second session shall begin on the first day of June and shall conclude on the fifteenth day of August.

It shall also meet in extraordinary periods whenever summoned by the Permanent Deputation or by the Executive; but if the latter summons the meeting, it shall not be held before ten days from the date of publication of the summons".

"On November fifteenth, at eleven o'clock in the morning, in a solemn session, the first session shall be declared open by the President of the Legislature.

At the same session, the Governor of the State shall present a written report on the state of the Public Administration of the State".

This meeting shall have no other purpose than to celebrate the opening of the session and for the Governor of the State to present his report".

Therefore, the Legislature of the Congress of the State of Oaxaca, be it the Sixty-fourth or the Sixty-fifth, is one and the same authority; therefore, the assertion to the contrary is inaccurate.

Sixth. Analysis of the matter.

Concepts of violation. The plaintiff expressed its respective concepts of violation, which are deemed to be reproduced as if they were inserted verbatim, for the sake of procedural economy, since it is not necessary to transcribe them, nor is there any provision of the Mexican Constitution that would require a transcription.



Amparo Law that obliges this court to transcribe them1, without this leading to non-compliance with the principles of completeness and congruence that all amparo judgments must observe2.

The complainant states that the provisions of Articles 1, 14 and 16 of the Political Constitution of the United Mexican States were violated to his detriment, because:

Article 23 of the American Convention on Human Rights and Article 25 of the International Covenant on Civil and Political Rights establish that citizens have the right to take part in the conduct of public affairs, directly or through freely chosen representatives.

Articles 50, section IV, and 51 of the Constitution of Oaxaca provide for the human right of individuals to present initiatives for laws and decrees and the duty of Congress to rule on the citizen's initiative.

3° In this case, the responsible parties have not issued the opinion regarding the bill, at the latest, within thirty working days after the receipt of the respective file, in accordance with the provisions of Article 38, first and second paragraphs, of the Internal Regulations of the Congress of the Free and Sovereign State of Oaxaca.

4° The Commission has not submitted its opinion to the Plenary of Congress with a draft law or decree.

The aforementioned concepts of violation are deemed to be well founded.

The first paragraph of Article 1 of the Political Constitution of the United Mexican States states:

> "Article 1. In the United Mexican States, all persons shall persons shall enjoyof the rights human rights

¹According to the jurisprudence 2ª/J 58/2010, Second Chamber of the Supreme Court of Justice of the Nation, under the heading: "CONCEPTOS DE VIOLACIÓN O AGRAVIOS. IN ORDER TO COMPLY WITH THE PRINCIPLES OF CONGRUENCE AND COMPLETENESS IN AMPARO JUDGMENTS IT IS UNNECESSARY TO TRANSCRIBE THEM".

² Jurisprudence 2^a/J 58/2010, Second Chamber of the Supreme Court of Justice of the Nation, published on page 830, volume XXXI, May 2010, common matter, ninth period, of the Judicial Weekly of the Federation and its Gazette.

recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions established by this Constitution".

Precept that guarantees the free exercise of human rights.

By its part, the article 23 of of the

American Convention on Human Rights refers:

"Article 23. Political Rights

1. All citizens should enjoy the following rights and opportunities:

a) to participate in the conduct of public affairs, directly or through freely chosen representatives;

b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors, and

c) to have access, on general terms of equality, to public service in their country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph, exclusively for reasons of age, nationality, residence, language, education, civil or mental capacity, or conviction by a competent judge in criminal proceedings".

The aforementioned precept enshrines freedom of expression, freedom of assembly and freedom of association, which together make democracy and political pluralism possible.

On the other hand, the numbers 50 and 51 of the Political Constitution of the Free and Sovereign State of Oaxaca, and 38 and 42 of the Internal Regulations of the Congress of the State of Oaxaca, refer:

"Constitución Política del Estado Libre y Soberano de Oaxaca" (Political Constitution of the Free and Sovereign State of Oaxaca).



"Article 50.- The power, attribution and right to initiate laws and decrees corresponds to the following: - - - - ...

VI.- To the citizens of the State;

"Article 51.- The discussion and approval of laws shall be subject to the provisions of this Constitution and the regulations of the State Congress; all initiatives shall be referred to the competent committees to be ruled on in accordance with the provisions of the Organic Law and the Internal Regulations of the Congress The Governor of the State may submit a constitutional reform initiative and up to two law or decree initiatives with preferential character; he shall do so during the first fifteen calendar days of each ordinary period of sessions of the State Congress. Said initiatives must be ruled on and voted on by the Plenary before the end of the period.

If the commissions to which the preferential initiatives were referred do not present the corresponding opinion within thirty calendar days, the Board of Directors of the Congress shall issue a public call for them to do so within the following ten days. In the event that they do not present the report, the Presiding Officers shall present the statement of reasons for the initiative as a report and submit it to the consideration of the Plenary of the Congress of the State, so that it may discuss and vote on it no later than the following session of the same ordinary period, under the same terms and conditions provided by law.

In the event that the Board of Directors does not comply with the provisions of the preceding paragraph, its members shall cease to hold such office, regardless of the penalties provided by the Constitution for deputies".

"Reglamento Interior del Congreso del Estado de Oaxaca" (Internal Regulations of the Congress of the State of Oaxaca).

"Article 38. The commissions shall submit their opinions with draft laws or decrees to the Plenary, no later than thirty working days after receiving their files.

In the event of not being able to render an opinion within the established term, the Commission shall so inform the Chairman of the Presiding Officers in writing, stating the reason for the delay and requesting a new term, which may not exceed a term equal to that granted for rendering an opinion.

In the event of omission on the part of the Examining Committee, the Chairman of the Presiding Officers shall issue a motion to the Chairman of the Committee in question to issue an opinion within ten working days following the issuance of the motion.

Excepted from the provisions of the preceding paragraph are the Standing Committees which, due to the nature of the matters within their competence, deal with the processing of ordinary and special proceedings provided for in other

legal ordinances, in which case, the terms set forth therein shall apply.

In the case of preferential initiatives, they shall be ruled upon in accordance with the terms set forth in Article 51 of the Local Constitution.

"The Congress shall have the standing committees provided for in Article 65 of the Law, which shall analyze and rule on the initiatives derived from its denomination, and those corresponding to them within the scope of their competence, in accordance with the Agencies and Entities of the State Public Administration and the Autonomous Constitutional Bodies".

Thus, every person who formally holds political rights has the real opportunity to exercise them, since citizens have the right to participate democratically in the management of public affairs directly, through the initiatives of law that they submit to the State Congress, thus exercising their political human rights, whose purpose is to place limits on state power, highlighting the freedom and equality of persons.

Initiatives that, once submitted by citizens, will be turned to the competent commissions, which must present their opinions with draft law or decree before the plenary, no later than thirty working days after receiving the file of the same.

In the event of not being able to render an opinion within the established term, the Commission shall so inform the Chairman of the Presiding Officers in writing, stating the reason for the delay and requesting a new term, which may not exceed a term equal to the term granted for the opinion.

In the event of omission on the part of the Examining Committee, the Chairman of the Board of Directors shall formulate

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The Chairman of the Commission, to issue an opinion within ten working days after the request has been made.

Exceptions to this term are those standing committees which, due to the nature of the matters within their competence, are involved in the processing of ordinary and special proceedings provided for in other legal ordinances; in <u>which case, the terms set forth therein shall</u> <u>apply.</u>

And in the case of preferential initiatives, it shall be ruled upon in accordance with the terms set forth in Article 51 of the Local Constitution.

In this case, the complainant exercised his political right to present before the Secretary of Parliamentary Services of the Sixty-fourth Legislature of the Congress of the Free and Sovereign State of Oaxaca, on December eight, two thousand and twenty, the initiative with draft decree by which the Law for the Defense and Recognition of the Rights of Rivers and other Water Sources of the State of Oaxaca is issued; that, it should be clarified, this political right does not constitute an electoral right, because the political electoral rights are those that the Federal Constitution grants to citizens such as the right to vote, to be nominated for a position of popular election, to organize and to participate in the public affairs of the country.

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And by means of official letter LXIV/A.L./COM.PERM./6686/2020, the Secretary of Parliamentary Services turned the initiative to the President of the Permanent Commission of Water and Sanitation, which was received on **December seventeenth**, two thousand and twenty.

Up to the date of the filing of the amparo lawsuit - June twenty-seventh, two thousand twenty-two - and even up to the date on which this judgment is issued - September thirtythird, two thousand twenty-two - the opinion with the draft decree had not been presented before the Plenary of the Congress.

And although the penultimate paragraph of Article 38 of the aforementioned Internal Regulations states that the terms of thirty working days to submit the report to Congress are not applicable to the permanent commissions that, due to the nature of the matters within their competence, deal with the processing of ordinary and special procedures provided for in other legal ordinances, in which case the terms indicated therein shall apply, as the Permanent Commission responsible referred to when submitting its justified report, in which it said that it was determined to consult the indigenous peoples and communities that have rivers and water sources; however, the responsible does not indicate which is the term to present the opinion before the Congress, in the specific case and, therefore, it applies the provisions of Article 38 of the aforementioned Regulation.

Therefore, the concept of violation expressed by the plaintiff is **well-founded**.

Sixth. Effects of the concession.

For the foregoing reasons, based on Article 77 of the Amparo Law, the protection and protection of the Federal Justice is granted to the plaintiff, so that the **Permanent Commission of Water and Sanitation of the Sixty-fifth Legislature:**



Within a period of thirty working days, counted from the date this sentence becomes enforceable, present before the Plenary Congress of the State of Oaxaca the opinion with the draft decree of the initiative presented by the complainant.

20 The amparo is granted so that the responsible authority may proceed with each one of the stages of the legislative procedure corresponding to the initiative presented; in the understanding that the Permanent Commission enjoys sovereignty and freedom of criteria to decide on the substance or subject matter of the proposal.

Seventh. Publication of personal data.

As the plaintiff in this amparo lawsuit opposed the publication of its personal data, such aspect will be considered at the appropriate time; notwithstanding the foregoing, based on Articles 118 and 120 of the Federal Law of Transparency and Access to Public Information, this judgment will be available to the public for consultation, upon request and in accordance with the procedure for access to information, but since this Court is obliged to protect such information in the judicial records and proceedings, regardless of the fact that the parties did not exercise such right, the publication of the same will be made in public version, trying not to prevent to know the criterion sustained by this jurisdictional body, in accordance with the criterion issued by the Committee of Access to Information and Protection of Personal Data of the Federal Judiciary Council, or transparency obligations provided by law.

In view of the foregoing and based on Articles 1, 74 and 76 of the Amparo Law, it is hereby declared:

Resulting:

First. It is dismissed at the trial of amparo filed by Carlos Morales Sánchez, vs:

a) The omission to follow up on the legislative process initiated with the presentation of the bill and the omission to issue a ruling on the citizens' initiative.

Attributed to the **Congress of the Free and Sovereign**

State of Oaxaca.

At terms of recital **third** of of this judgment.

Second. The Federal Justice protects Carlos

Morales Sanchez, with respect to:

a) Failure to rule on a bill or decree no later than thirty working days after the receipt of the file of the citizen's initiative presented.

b) Failure to submit to the Plenary of the Congress its opinions with draft law or decree no later than thirty working days after the receipt of the respective file.

Claiming the Permanent Commission of Water and

Sanitation of the Congress of the State of Oaxaca.

In terms of the **fifth and sixth** recitals of this judgment.

Third. At	your	in due time
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go to compliance the last recital of this

decision.

Notify in person.



Thus resolved Ponciano Velasco Velasco, head of the Tenth District Court in the State of Oaxaca, and signed before Beatriz Bernardita Martínez Martínez, secretary of the Court who authorizes and attests, this thirtieth day of September, two thousand twenty-two, when the work of this jurisdictional body allowed it. For the record.

Reason. On this date, official letters **27792**, **27793** and **27794** were sent to the corresponding authorities. For the record.



PODER JUDICIAL DE LA FEDERACIÓN



CRYPTOGRAPHIC EVIDENCE - TRANSACTION

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