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JURISPRUDENTIAL RESTRICTION TO EXERCISE THE ACCORDING INTERPRETATION CLAUSE (THE CASE OF THE RESTRICTION CONTAINED IN FRACTION XIII OF SECTION B OF ARTICLE 123 OF THE CONSTITUTION)

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ABSTRACT

The purpose of this research is to study from the perspective of Human Rights, the breach of the interpretation clause as enshrined in article 1 of the Constitution, by virtue of the jurisprudential determinations issued by the highest Court of the Mexican state, regarding the restriction contained in section XIII of article 123 of the Political Constitution of the United Mexican States. To demonstrate it, the hypothetical-deductive method and the interpretive method are used, which allow analyzing the legal phenomenon, its origin, determination and interpretation; the foregoing from the legislation, the legal doctrine and various rulings on amparo (as an empirical framework), which will allow studying the origin of the interpretation clause according to its hermeneutical tool “the pro person principle”, the jurisprudential determinations and its scope, as well as the restrictions that have affected a specific sector, these being the Police, Public Ministries, etc.

KEYWORDS

Constitution, reform, conforming interpretation, restrictions, hierarchy

Summary: I. Justification. II. Problem statement. III. Objective. IV. Hypothesis. V. Constitutional Reform of 2011. VI. Conforming interpretation vs. jurisprudential criteria of the SCJN. 1. The principle of conforming interpretation. 2. Constitutional restrictions, its jurisprudential study (contradiction of thesis 293/2011). VII. Restriction enshrined in article 123, section B, section XIII, of the CPEUM. VIII. Case analysis. IX. Conclusions. Bibliography.

I. JUSTIFICATION

This study is attractive for academia because it carries out the analysis of the application of the law by legal operators, regarding the new models of interpretation of human rights.

But it is especially attractive for society in general and for public servants who belong to the police forces (in particular) who demand unjustified dismissals in order to be restored in the enjoyment of their violated human rights.

It is necessary to carry out studies of how new phenomena are born, how they have been incorporated into our legal system, how they are applied by the jurisdictional

authorities, etc. Although it is true that, even though the June 2011 reform on human rights obliges judges to make the conforming interpretation of human rights norms, legal operators are limited by the criteria established by the Supreme Court of Justice of the Nation (hereinafter SCJN), making it impossible to carry out a conforming interpretation without being able to exercise human rights fully and the ideal is that the maximization of human rights is achieved in all the decisions issued by the courts.

With the study of the determinations of the SCJN it is possible to know the framework of interpretation of human rights that legal operators must apply; Therefore, the present study also provides these new models. Allowing them to be confronted with the sentences, in order to be able to clarify whether or not the conforming interpretation clause is disabled.

II. STATEMENT OF THE PROBLEM

The framework discussion of this study is located from the perspective of the protection of human rights, not only through respect for the fundamental rights recognized in the Constitution itself, and in the international treaties on the subject to which the Mexican State is a party, but also through the application of the clause of conforming interpretation, interpretation tool for the jurisdictional bodies when resolving the conflicts that arise when these human rights are violated, which is impossible to apply due to the jurisprudential determinations issued by the SCJN.

The legal operators of the Mexican State, when resolving matters submitted to their jurisdiction, must apply the new model of protection of human rights, which not only comes from the constitutional reform on human rights, of 2011, which allowed the constitutionalization of international treaties on human rights, forming a block of constitutionality. as established in the first paragraph of article 1 of the CPEUM, as well as the incorporation of the interpretation clause in accordance with human rights standards, in relation to the Constitution and international treaties and the pro persona principle, as established in the second paragraph of the article in question; rather, it also attends to the practice of control of conventionality and to the determinations taken by the SCJN, when resolving the file several 912/2010 regarding the Radilla Pacheco case.

However, the exercise carried out by legal operators with respect to conforming interpretation is carried out under restrictions established by the jurisprudential work carried out by the SCJN, without there being a true protection of human rights, because this jurisprudential work contradicts the will of the constituent that carried out the multi-cited reform of 2011.

Some legal operators have been unable to grant the greatest protection to the person when deciding on human rights violations, because they are forced to respect the restrictions contained in the Constitution itself, such is the case of police officers who are dismissed from their position for not passing the confidence control exam carried out by the State Center for Evaluation and Control of Trust. and in resolving amparo proceedings submitted to their jurisdiction, they grant amparo limited only to ordering compensation, without being able to grant broader protection. Therefore, the inefficiency of judges as a result of the jurisprudence work of the SCJN must be studied and considered.

III. OBJECTIVE

Verify the need to establish the non-application of jurisprudence under registration number 2006224, so that it ceases to constitute a limit to the judicial exercise of judges, and thus be able to fully exercise the conforming interpretation.

IV. ASSUMPTIONS

With the application of jurisprudence under registration number 2006224, with the heading “HUMAN RIGHTS CONTAINED IN THE CONSTITUTION AND INTERNATIONAL TREATIES. THEY CONSTITUTE THE PARAMETER OF CONTROL OF CONSTITUTIONAL REGULARITY, BUT WHEN IN THE CONSTITUTION THERE IS AN EXPRESS RESTRICTION TO THE EXERCISE OF THOSE, IT MUST BE THOSE ESTABLISHED BY THE CONSTITUTIONAL TEXT”, issued by the SCJN, the clause of conforming interpretation by the legal operators is no longer applied.

V. CONSTITUTIONAL REFORM OF 2011

The constitutional reform on human rights published in the Official Gazette of the Federation on June 10, 2011, has relevant precedents and has reached transcendent consequences, since it has changed the constitutional face of human rights in Mexico; In addition to being considered the most important in recent years. It is the beginning of the return to people of the appropriation of their rights, before a legal model that under the conception of “individual guarantees” closed the channels for their enforceability and justiciability.

Likewise, it represents a normative framework that could not be postponed to overcome the backwardness of several decades in a variety of issues with respect to other constitutional States and the strengthening of the concept of human rights in the Constitution: such as the opening of international human rights law, not only because of the first and second paragraphs of article one of the Constitution that expressly admit treaties as a source of constitutionalized rights, but also by the specific obligations of the State towards them, as well as by the principles of international law that are part of their recognition and protection (Caballero Ochoa, 2012 p: 103-105).

As noted, this reform highlighted the importance of international human rights law, and incorporated principles of interpretation such as *pro persona*, universality, interdependence, indivisibility and progressivity of human rights; in addition to expressly contemplating the concept of conforming interpretation, which consists in the fact that, without distinguishing hierarchies, the norms relating to human rights must be interpreted in the light of the Constitution itself and international treaties, applying the one that grants greater benefits to the human being; Therefore, it affected the central core of understanding what rights are.

This reform responded in large part to the international commitments assumed by the Mexican State; since, since our country has undertaken international commitments to protect human rights, when signing the Charter of the United Nations and subsequently the Universal Declaration of Human Rights, etc., they must be ensured by progressive measures of a national and international nature and thereby achieve their full recognition and safeguarding. In this sense, fundamental

rights ceased to be an internal matter of States, moving to the field of international relations.

International human rights law (through international treaties) marked the starting point of the historical process of generalization of the international protection of the rights of the human person, by virtue of which it establishes the obligations that States must fulfill, respect for which implies refraining from restricting human rights or interfering in their realization, adopting positive measures to be effective (Diez de Velazco, 2003 p: 583-584).

Due to the commitments acquired, states have the obligation to respect and enforce the international norms of fundamental rights contained in the treaties they have signed and that are incorporated into domestic law (Becerra Ramírez, Jesús, 2011 p: 112-113).

Therefore, and given the importance that the protection of human rights has acquired in the international order and the binding nature of the commitments assumed by the Mexican State in this area and in particular, with respect to the contentious jurisdiction of the Inter-American Court of Human Rights (hereinafter Inter-American Court of Human Rights), it can be inferred that said constitutional reform in the field of human rights, to a large extent, it has been the product of the influence of international law (Herrerías Cuevas, 2012 p: 21-27).

VI. CONFORMING INTERPRETATION VS JURISPRUDENTIAL CRITERIA OF THE SCJN

In this point, an in-depth study is carried out to understand the new paradigms of interpretation for the Mexican legal operator, which were born as a result of the reform in the field of human rights, specifying the content and meaning of the conforming interpretation clause and the pro person principle, since these contemplate the incorporation of a system that implies: on the one hand, the recognition of the nature of human rights, which can be extended through a system of referrals and integration with other legal systems according to the conforming interpretation clause; and on the other, with the application of the pro person

principle, which means the application of a norm that grants greater protection of human rights.

To finally land on the study of the constitutional restrictions that must be addressed based on the jurisprudential work of the SCJN and that make it impossible to apply these models.

1. THE PRINCIPLE OF CONSISTENT INTERPRETATION

In the reform process, the likelihood of difficulties for legal operators arising from the acquisition of international recognition and protection of human rights standards established in international treaties was visualized; However, it was the task of the constituent assembly to resolve the mechanism according to which possible conflicts of norms and in general the system of application could be resolved. For this reason, it was proposed to adopt the principle of “conforming interpretation”, arguing favorable experiences that were had in other countries, in which this guarantee system has been established and applied; Considering that this principle was more appropriate for achieving harmonization of domestic and external law.

By virtue of this, the principle of conforming interpretation gives a subsidiary application of international law, in order to complement the existing gaps, without implying the repeal or disapplication of the domestic norm. In addition to the fact that this system does not meet criteria of supra-subordination, it does not imply a system of hierarchy of norms, which was not considered convenient to modify, but, through the principle of subsidiarity, the possibility was opened that whoever carried out the interpretation of the Constitution, could resort to the human rights norms enshrined in the international treaties to which the Mexican State is a party.

The specific conforming interpretation clause serves to interpret the protective provisions of a fundamental right, observing criteria in the application of the norm. The conforming interpretation has been constructed by the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights (Caballero Ochoa, José L., 2012, p.110).

Thus establishing criteria establishing a principle of a legal order open to a system of reference for the integration of domestic law and international law, as well as the adoption of a new paradigm for the interpretation of the norm in the field of human rights for legal operators, incorporating international doctrine and jurisprudence, which implies a renewal in the constitutional order, from the jurisdictional application that strengthens it.

Since, then, with the application of the conforming interpretation clause, as an essential element of the State's openness to international law, it includes a system of reference to international jurisprudence; and in this way not only international treaties on human rights are taken into account, but also their interpretation (Álvarez Cibrián, 2015 p: 78-79).

The use of the conforming interpretation clause tends to optimize the content of rights, and the pro persona principle is essential, since this activity of "interpretation, integration and extension" of human rights is intended to provide greater protection for the rights of individuals.

2. Constitutional restrictions, their jurisprudential study (contradiction of thesis 293/2011)

Article 1 of the Constitution under consideration, as has been pointed out in the 2011 reform, on the one hand, recognized the human rights enshrined in the Political Constitution of the United Mexican States and in the international treaties on human rights that the Mexican State has signed, and that its interpretation must be carried out favoring at all times the broadest protection for individuals; and on the other, that the exercise of human rights may not be restricted or suspended, except in the cases and under the conditions established by the Constitution itself. Dichotomy that produced a polarization among the Chambers of the SCJN themselves; given that, on the one hand, the First Chamber began to use the constitutional reform in the international opening of human rights and its effectiveness under the pro homine principle; otherwise, the Second Chamber emphasized the restrictions on human rights, provoking a double message to the Magistrates and Judges, as well as to the rest of the legal operators.

Article 1 (...) The norms relating to human rights shall be interpreted in accordance with this Constitution and with the international treaties on the subject, favouring at all times the broadest protection for individuals (...).

In the Contradiction of Thesis 293/2011, which was resolved by the Plenary of the SCJN regarding two antagonistic criteria, which had adopted divergent interpretative positions, on the scope of the first article of the Constitution; the Plenum was obliged to decide how domestic and international human rights are articulated in the light of the pro persona principle and express constitutional restrictions. It was also responsible for determining whether or not inter-American jurisprudence is binding in the Mexican legal system (Silva García, Fernando, 2014, pp. 251-252).

By virtue of the transcendence of the contradiction of thesis indicated above, it is necessary to study it in depth, let's start with its background.

The Plenary of the SCJN on September 3, 2013, met in order to resolve the contradiction of thesis 293/2011, which was generated by writing received on June 24, 2011 in the Office of Judicial Certification and Correspondence of the SCJN, through which the possible contradiction of theses between the criteria issued by the First Collegiate Tribunal in Administrative and Labor Matters of the SCJN was denounced. Eleventh Circuit, when resolving the direct amparo 1060/2008 and the criteria maintained by the Seventh Collegiate Court in Civil Matters of the First Circuit, when resolving the direct amparos 344/2008 and 623/2008.

The precedent resolved by the First Collegiate Tribunal in Administrative and Labor Matters of the Eleventh Circuit gave rise to the isolated theses of items:

“INTERNATIONAL TREATIES. WHEN CONFLICTS ARISE IN RELATION TO HUMAN RIGHTS, THEY MUST BE PLACED AT THE LEVEL OF THE CONSTITUTION.” and
“CONTROL OF CONVENTIONALITY IN INTERNAL HEADQUARTERS. MEXICAN COURTS ARE OBLIGED TO EXERCISE IT.”

On the other hand, the criterion issued by the Seventh Collegiate Court in Civil Matters of the First Circuit in the direct amparo 344/2008, gave rise to the isolated thesis of heading:

“HUMAN RIGHTS, THE INTERNATIONAL TREATIES SIGNED BY MEXICO ON HUMAN RIGHTS. IT IS POSSIBLE TO INVOKE THEM IN THE AMPARO TRIAL WHEN ANALYZING THE VIOLATIONS OF INDIVIDUAL GUARANTEES THAT IMPLY THEIRS.”

Likewise, when resolving the direct amparo 623/2008, it gave rise to the isolated thesis:

“INTERNATIONAL JURISPRUDENCE. ITS GUIDING USEFULNESS IN THE FIELD OF HUMAN RIGHTS.”

The Contradiction of Thesis 293/2011 of the Plenary of the Supreme Court of Justice of the Nation resolved (Silva García Fernando, 2014, pp 271-272):

- (a) Human rights of national and international sources constitute the parameter of validity of public action of all legal orders.
- b) International treaties on human rights have constitutional rank, and the jurisprudence of the Inter-American Court is binding, under the terms of the system from which it emanates.
- (c) The pro homine principle, in terms of its normative dimension. As a general rule, judges must choose the norm most favourable to human rights in the event of conflict. However, by exception, legal operators are prohibited from disapplying express constitutional restrictions, unless there is a conviction by the Inter-American Court against Mexico that declares the unconventionality of the acts of the State that incorporated them; or in the event that there is jurisprudence of the Inter-American Court that clearly disavows the content of the restrictions.
- (d) The pro homine principle, in terms of its interpretative dimension. As a general rule, all legal operators should interpret the entire domestic and external legal system in a manner more favourable to human rights; With the exception of the express restrictions in the Constitution, they must be expressed – if it is not admitted that in the light of international treaties, given the vote of the ministers divided in this aspect – at least on the basis of the constitutional rights and guarantees that surround it.
- (e) Comprehensive judicial control, in the case of secondary implementing laws and acts implementing express constitutional restrictions, and these laws are therefore subject to comprehensive judicial control (especially since this is established

in article 103 of the CPEUM), in the light of human rights of national and international sources.

In compliance with this constitutional mandate, legal operators must attend to the following:

1. When the criterion of the Inter-American Court has been issued in a case in which the Mexican State has not been a party, the applicability of the precedent to the specific case must be determined based on the verification of the existence of the same reasons that motivated the pronouncement;
2. Where possible, national jurisprudence should be harmonized with inter-American jurisprudence; and
3. If harmonization is impossible, the approach most conducive to the protection of human rights should be applied.

Now, let's analyze in particular the jurisprudence with the heading: "Human rights contained in the Constitution and in the International Treaties, constitute the parameter of control of constitutional regularity, but when in the Constitution there is an express restriction to the exercise of those, it must be what the constitutional text establishes" through which, the Justices of the Supreme Court maintained that, as a result of the reforms, the configuration of the set of legal norms evolved, with respect to which this supremacy can be manifested in the Mexican legal order; as a result of the expansion of the catalogue of human rights provided for in the Constitution, which can obviously be described as part of the normative body that enjoys this constitutional supremacy. In this sense, human rights as a whole constitute the parameter of control of constitutional regularity, according to which the validity of the norms and acts that form part of the Mexican legal order must be analyzed.

With the exception that when there is an express restriction on the exercise of human rights in the Constitution, it must be as indicated in the constitutional norm, since the principle that gives it supremacy entails the elevation of the Constitution as a fundamental norm of the Mexican legal order, which in turn implies that the rest of the legal norms must be in accordance with it, both in a formal and material sense. And that this circumstance did not change with the human rights reforms.

Finally, let us analyze jurisprudence number 2003975, which justifies constitutional restrictions, establishing that the SCJN has already ruled that there are no absolute human rights, and therefore in accordance with the first paragraph of article 1 of the Constitution, human rights can be validly restricted or suspended in the cases and conditions that the Constitution itself establishes. and that, in the same vein, Article 30 of the American Convention on Human Rights states that the restrictions permitted on the enjoyment and exercise of the rights recognized therein may be applied only in accordance with the laws enacted in the general interest and in accordance with the purpose for which they have been established; However, the norm that regulates the cases by which human rights are restricted or suspended, these cannot be arbitrary, but the limits must serve as elements that the legal operator must take into account to consider them valid. Therefore, the requirements to consider the restrictions valid are the following:

- (a) That they are established in a formal and substantive law (principle of reservation of law) issued in the general or public interest, in order to guarantee the various rights of equality and legal certainty (formal requirements); and
- (b) That they pass a proportionality test, that is, that they are necessary; which pursue a constitutionally legitimate interest or aim and which are reasonable and measurable in a democratic society (material requirements)

From what can be noted then, that with the jurisprudential determination of the SCJN, to address the constitutional restrictions, the clause of conforming interpretation is stopped, it becomes impossible to apply the norm that grants greater benefits to people, between national and international. Thus disabling the intention of the constituent embodied in the 2011 reform in the field of human rights.

VII. RESTRICTION ENSHRINED IN ARTICLE 123, SECTION B, SECTION XIII, OF THE CPEUM

The separation of police officers without the possibility of reinstatement is a restriction enshrined in section XIII, section B of article 123 of the Constitution, which states:

... XIII. Military personnel, sailors, foreign service personnel, agents of the Public Prosecutor's Office, experts and members of police institutions shall be governed by their own laws.

Agents of the Public Prosecutor's Office, experts and members of the police institutions of the Federation, the Federal District, the States and the Municipalities may be removed from their positions if they do not comply with the requirements that the laws in force at the time of the act indicate to remain in said institutions, or removed for incurring responsibility in the performance of their functions. If the judicial authority decides that the separation, removal, discharge, cessation or any other form of termination of service was unjustified, the State shall only be obliged to pay the compensation and other benefits to which it is entitled, without in any case reinstating it to service, whatever the result of the trial or means of defense that has been promoted.

In order to introduce ourselves to the study of the described restriction, it is necessary to begin by knowing its origin.

It was on June 18, 2008 when the reform of article 123, section B, section XIII of the CPEUM was published, indicating in its explanatory statement that it sought to seek the professionalization of public servants dedicated to the administration of justice and the investigation of crimes. Another of its objectives was to clean up the bad elements that incurred in illegal acts in the exercise of their functions, thus betting a fundamental success with this reform, since, without efficient, honest and reliable ministerial agents and police, any effort to deal with crime would be impossible.

The intention of the Constituent Assembly was to establish an energetic mechanism to expel members of police institutions who had failed to comply with the principles of legality, honesty, loyalty, impartiality and efficiency, denying them in absolute terms reinstatement to their posts, regardless of the jurisdictional resolution regarding the trial or means of defense that was promoted.

For these reasons, the amendment to article 123, section B, section XIII, third paragraph, of the Constitution was submitted for consideration by the legislature in order to expressly state that the removal of agents of the Public Prosecutor's Office and members of the police institutions of the municipalities, states and federation would be carried out freely in the terms indicated by law. Additionally, it is reiterated – with greater precision in the proposed text – that under no circumstances will the

reinstatement or restitution of such public servants proceed. In this way, in the event that any means of defense succeeds, the State will only cover compensation, but it is insisted, it will not be obliged to reinstate him to his functions.

It sought to promote a healthy balance between the need to maintain a career service and the imperative of having efficient mechanisms to purify the elements that violate the principles of ethics and dirty and damage institutions.

It follows that the intention of the constituent was that the members of the police institutions of the Federation, the then Federal District, the States and the Municipalities, could be removed from their positions for the following assumptions:

- 1.- If they did not comply with the requirements that the laws in force at the time of the act indicate to remain in said institutions, or
- 2.- Were removed for incurring responsibility in the performance of their duties.

VIII. CASE ANALYSIS

Being part of the Legal Department of the Ministry of Mobility of the State of Jalisco, I had the opportunity to analyze various sentences of road police who had been dismissed, for not complying with the requirements of permanence established in the Law of the Public Security System of the state of Jalisco, these being:

a) of the First District Court in Administrative and Labor Matters in the State of Jalisco: Indirect Amparo Trial 1820/2013, Indirect Amparo Trial 1910/2013, Indirect Amparo Trial 2022/2013;

b) of the Second District Court in Administrative and Labor Matters in the State of Jalisco: Indirect Amparo Trial 1946/2013, Indirect Amparo Trial 2001/2013, Indirect Amparo Trial 816/2014;

c) of the Third District Court in Administrative and Labor Matters in the State of Jalisco: Indirect Amparo Trial 1822/2013, Indirect Amparo Trial 1895/2013, Indirect Amparo Trial 1903/2013, Indirect Amparo Trial 1976/2013, Indirect Amparo Trial 2199/2013, Indirect Amparo Trial 822/2014;

d) of the Fourth District Court in Administrative and Labor Matters in the state of Jalisco: Indirect Amparo Trial 1774/2013, Indirect Amparo Trial 1941/2013, Indirect Amparo Trial 1888/2013;

e) of the Fifth District Court in Administrative and Labor Matters in the State of Jalisco: Indirect Amparo Trial 1063/2013, Indirect Amparo Trial 1207/2013, Indirect Amparo Trial 1782/2013, Indirect Amparo Trial 1788/2013, Indirect Amparo Trial 1897/2013, Indirect Amparo Trial 1072/2014;

f) of the Sixth District Court in Administrative and Labor Matters in the state of Jalisco: Indirect Amparo Trial 1775/2013, Indirect Amparo Trial 1778/2013, Indirect Amparo Trial 2442/2014;

g) of the Seventh District Court in Administrative and Labor Matters in the state of Jalisco: Indirect Amparo Trial 55/2013, Indirect Amparo Trial 56/2013, Indirect Amparo Trial 182/2013, Indirect Amparo Trial 190/2013, Indirect Amparo Trial 191/2013, Indirect Amparo Trial 243/2013, Indirect Amparo Trial 291/2013, Indirect Amparo Trial 742/2013, Indirect Amparo Trial 1001/2013.

From the study of these amparo trials through which police officers of the then Ministry of Mobility, sued for various human rights violations, which were committed in the administrative procedures followed in the form of a trial, based on the Law of the Public Security System of the state of Jalisco, through which as a result they were dismissed from their functions. Among these violations, the most common were that the responsible authorities did not comply: with due justification and motivation (Article 16 of the Constitution) and with the essential formalities of the procedure, violating the guarantees of legal certainty by not granting them the guarantee of a hearing established in Article 14 of the Constitution, as well as Article 8 of the American Convention on Human Rights, specifically, their human right to a hearing and defense.

The foregoing by virtue of the fact that they were not given the opportunity to properly forge their defense, given that at the time they were summoned they were not transferred with the results of the examinations carried out by the State Center for Evaluation and Control of Trust, but only the comprehensive report of said Center was delivered to them. but not the results or the methodology used to evaluate them; nor the records that showed where they obtained the information on the behaviors that were imputed to them, nor were they made aware of the tests of the confidence control evaluation that they did not pass, nor what the results were; Even less the parameters to know what the measurements were and thus be able

to know when it is approved and when it is reapproved. To ensure that the special reasons and particular arguments taken into consideration by the authorities to reach the conclusions of each particular case could be reliably known; in conclusion, they were deprived of the opportunity to properly forge their defense, in order to distort the parameters and/or measurements with which the responsible authorities determined that the road police were not approved to continue in a Public Security institution.

Likewise, the procedure established in the multi-cited Law on the Public Security System only allowed public documents as evidence; Consequently, some resolutions issued by the District Courts, some articles were declared unconstitutional and applied (in which the unconstitutionality of the law was alleged), and in others the violation of due process was established, since the essential formalities of the procedure were not respected, violating their guarantees of legal security of hearing and defense, provided for in article 14 of the Constitution. It was even pointed out in some judgments “it has been decided that despite the separation of the employment of police elements, it has not been for not complying with the requirements that the laws in force at the time of the act indicate to remain in the institutions, nor for having been removed from their position for incurring responsibility in the performance of their functions”.

However, if violations of human rights of a constitutional and conventional nature had been noted, that the dismissal of police officers had not occurred because they failed to comply with the requirements of permanence established by law or incurred responsibility in the performance of their duties and that the direct purpose of the amparo proceeding is to restore the complainant to the enjoyment of his violated human right; Without forgetting our topic of study: the new model of interpretation of human rights “conforming interpretation”. The judges were unable to restore the enjoyment of violated human rights to the complainants, they were unable to make a consistent interpretation of human rights standards and to apply the norm that granted greater benefits to people; that is, to apply the international treaties that establish in cases of unjustified dismissals the reinstatement in employment. By virtue of the fact that the legal operators of the courts are obliged to apply the jurisprudence, being then that on the basis of said jurisprudence the Constitution was applied because it contained an express restriction in the specific case, limiting

itself to condemning the responsible authorities only to compensation and not to reinstatement.

IX. CONCLUSIONS

In the context of the interpretation made by judges as a result of the new paradigms that were born with the constitutional reform on human rights (June 2011), with the inclusion of the second paragraph of article one of the Political Constitution of the United Mexican States, which incorporated the clause of conforming interpretation, which states that human rights will be interpreted in accordance with the Constitution and international treaties on the subject of human rights to which the Mexican State is a party, applying the one that grants greater benefits or protection to people. With the birth of this clause, the pro persona principle is incorporated, which, as already established, when there is a violation of human rights, judges when resolving such matters, must apply the one that grants greater benefits to the person.

With the birth of these paradigms, legal operators, when resolving matters submitted to their jurisdiction, must apply the block of constitutionality, unravel the principles that underpin the norm and apply in each specific case the one that protects people the most.

The framework discussion of this study was located from the perspective of the protection of human rights, not only through respect for the fundamental rights recognized in the Constitution itself, and in the international treaties on the subject to which the Mexican State is a party, but also through the application of the clause of conforming interpretation. Interpretation tool for courts when resolving conflicts arising from violations of these human rights.

The conforming interpretation clause, as already confirmed in the empirical study carried out in this work, is impossible to apply due to the jurisprudential determinations issued by the SCJN.

The exercise carried out by legal operators with respect to conforming interpretation, is carried out under restrictions established by the jurisprudential work carried out by the SCJN, without there being a true protection of human rights, because said

jurisprudential work contradicts the will of the constituent that carried out the multi-cited reform of 2011.

It was reliably proven that the legal operators who resolved the amparo proceedings that were analyzed were unable to grant the greatest protection to individuals when ruling on such human rights violations; by virtue of the fact that they were obliged to respect the restrictions contained in the Constitution itself. Specific case indicated in section XIII of section B, of article 123 of the Constitution, which is studied in this thesis. Therefore, it was impossible to provide the broadest protection in accordance with the second paragraph of article 1 of the Constitution.

With the empirical study, it was examined that in the explanatory memorandum of the reform to article 123 section B, section XIII of the Constitution, it had been established that precisely the intention of the Constituent Assembly to establish an energetic mechanism to expel members of police institutions who had failed to comply with the principles of legality, honesty, loyalty, impartiality and efficiency, denying them, in absolute terms, reinstatement to their positions, whatever the jurisdictional decision regarding the trial or means of defense promoted, because even if that had been favorable to the complainants, only their compensation is appropriate. Of what should be highlighted, that the intention of the Constituent Assembly was to implement an energetic mechanism for those who did not comply.

What we do not have, since as can be seen from the empirical analysis, in particular, what was resolved in the Indirect Amparo with file number 182/2013, of the Seventh District Court in Administrative and Labor matters of the State of Jalisco; In it, the judge indicated that even though it has been decided that despite the separation of the employment of the police elements, it has not been for not complying with the requirements that the laws in force at the time of the act indicate to remain in the institutions, nor for having been removed from their position for incurring responsibility in the performance of their functions, even in these cases, the decision of the Permanent Constituent Assembly takes precedence.

That is, there was no breach, so the basis of the restriction is not addressed, giving privilege to the decision of the SCJN not to apply a conforming interpretation, but to strictly apply the constitutional restriction.

Therefore, an answer can be given to the hypothetical question, given that it was possible to verify that the clause of conforming interpretation was effectively ceased to apply, by virtue of the obligation that District Judges have to use jurisprudence.

Which means, that it does not enter into the study of each particular case, with respect to constitutional restrictions. That is, in the specific case, it has not mattered if the road police had been removed from their positions without having failed to comply with any requirement of permanence contemplated in the law, and without having failed to comply with a responsibility; preference is simply given to the decision to apply the restriction indicated in the multi-cited article 123 of the Constitution.

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