

MISCELLANEOUS CASE 912/2010.

REPORTING JUDGE: MARGARITA BEATRIZ LUNA RAMOS.

**AUTHOR OF THE RULING: JOSÉ RAMÓN COSSÍO DÍAZ.
CLERKS: RAÚL MANUEL MEJÍA GARZA Y
LAURA PATRICIA ROJAS ZAMUDIO.**

Mexico City, Federal District. *En Banc* Decision of the Supreme Court of Justice, **issued July 14, 2011.**

An appeal of the “Miscellaneous Case 912/2010” regarding the orders of the Plenum of the Supreme Court of Justice, in its decision of September 7, 2010, issued as part of the file of “Miscellaneous Case 489/2010”, and

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9. On May 19, 2011, the Inter-American Court of Human Rights issued a resolution to monitor compliance; which included the following rulings:

"THE INTER-AMERICAN COURT OF HUMAN RIGHTS, in the exercise of its authority to monitor compliance with its rulings, and in accordance with Articles 33, 62.1, 62.3, 65, 67 and 68.1 of the American Convention on Human Rights, 25.1 and 30 of the Statute, and 31.2 and 69 of the Regulation, declares that:

1. In accordance with the relevant conclusions of law in this Order, the State has already complied with the following ruling from the Judgment:

a) To publish once, paragraphs 1-7, 52 – 66, 144 to 358 of the Judgment, without footnotes, as well as the rulings portion of that decision, in the Official Journal of the Federation, and in another newspaper of widespread national circulation, within six months of the date of notification of the Judgment, and to publish the entire text of the Order on the official website of the Office of the Attorney General of the Federation, within two months of the date of notification of the Judgment, (Paragraph 13 of Rulings, and paragraph 36 of the Conclusions of law).

2. In accordance with the relevant Conclusions of law of this Order, the following rulings in the Judgment have yet to be complied with:

a) effectively conduct due diligence and within a reasonable time carry out the investigation, and where appropriate, initiate criminal proceedings in connection with the detention and subsequent disappearance of Mr. Rosendo Radilla Pacheco, in order to determine the relevant criminal liability in the case and effectively apply penalties and sanctions as provided by law (Paragraph 8 of Rulings, and paragraphs 10 and 11 of the Conclusions of law);

b) continue to effectively search for and promptly find Mr. Radilla Pacheco, or his remains, as the case may be (paragraph 9 of Rulings, and paragraphs 15 and 16 of the Conclusions of law);

c) adopt, within a reasonable time, appropriate legislative reforms in order to bring Article 57 of the Code of Military Justice into compliance with applicable international standards in that field and with the American Convention on Human Rights (paragraph 10 of the Rulings, and paragraphs 20 to 22 of the Conclusions of law);

d) adopt, within a reasonable time, appropriate legislative reforms in order for Article 215A of the Federal Criminal Code to be in compliance with applicable international standards and with the Inter-American Convention on Forced Disappearance of Persons (paragraph 11 of the Rulings and paragraphs 27 and 28 of the Conclusions of law) ;

e) implement, within a reasonable time and make the necessary budgetary allocations for, permanent courses or programs to analyze the jurisprudence of the Inter-American Human Rights System in regard to limits to the criminal jurisdiction of military courts, as well as to implement a training program on appropriate investigation and prosecution of acts which involve the forced disappearance of persons (paragraph 12 of the Rulings and paragraph 32 of the Conclusions of law);

f) publicly acknowledge responsibility in relation to the facts of the case and honor the memory of Mr. Rosendo Radilla Pacheco, and at a site in the city of Atoyac de Alvarez, Guerrero, place a commemorative plaque recalling the events of his forced disappearance (paragraph 14 of the Rulings, and paragraphs 40 and 41 of the Conclusions of law);

g) publicize a report on the life of Mr. Rosendo Radilla Pacheco (paragraph 15 of the Rulings and paragraph 45 of the Conclusions of law);

h) provide adequately, effectively, promptly and free of charge psychological and /or psychiatric counseling, through specialized public health institutions, to the victims acknowledged in the Judgment who so request it. (paragraph 16 of the Rulings, and 49 of the Conclusions of law), and

i) pay the amounts set forth in paragraphs 365, 370, 375 and 385 of the Judgment as compensation for material and moral damages, and reimbursement of costs and expenses, where appropriate (paragraph 17 of the Rulings, and 53 to 56 of the Conclusions of Law) .

AND RESOLVES TO:

1. Require the United Mexican States to take all necessary measures in order to effectively and promptly comply with rulings that have yet to be enforced as identified in Declarative Paragraph No. 2 above, in accordance with the provisions of Article 68.1 of the American Convention on Human Rights.
2. Request the United Mexican States submit, by August 29, 2011 or earlier, a detailed report on measures adopted to comply with the reparations ordered which have not yet been complied with per the terms set forth in paragraphs 7 to 56 of the Conclusions of Law of this Resolution. Thereafter, the State shall continue submitting a compliance report every 3 months.
3. Request that the victims' representatives and the Inter-American Human Rights Commission submit any observations they consider pertinent to the reports presented by the United Mexican States and referred to in paragraph two of this ruling, within four and six weeks, respectively, of receipt of the abovementioned reports.
4. Keep the monitoring compliance procedure open with regard to the terms of the Judgment pending compliance as outlined in the second paragraph of the declarative section.
5. Order that the Secretariat of the Inter-American Court of Human Rights give notice of this resolution to the United Mexican States, the Inter-American Human Rights Commission and the representatives of the victims."

II. W H E R E A S:

10. **FIRST. Jurisdiction.** The Supreme Court of Justice *en banc* is competent to rule in this case, in accordance with the provisions of Article 10, section XI¹, of the Organic Law of the Judiciary, as the full Court ruled on September 7, 2010, that it should issue a declarative judgment regarding the possible participation of the Nation's federal courts in carrying out the sentence of the Inter-American Court of Human Rights in the Case of Radilla Pacheco against the United Mexican States, given the uncertainties which are caused by the absence of express legal rules governing the execution of such a sentence, and the importance that this case has for the nation's legal system.
11. **SECOND. Complete consideration of the ruling by this Court *en banc*.** The ruling issued in the case "Miscellaneous" 489/2010 by this Supreme Court *en banc*, in its public hearing on September 7, 2010 determined essentially that:
- A) A declaration must be issued regarding the possible involvement of the federal courts in executing the ruling by the Inter-American Court of Human Rights in the Case of Radilla Pacheco against the United Mexican States.
 - B) In an order published in the Official Journal of the Federation on February 24, 1999, the President of the United Mexican States publicly reported on the Declarative judgment that recognized the contentious

¹ "Article 10. The Supreme Court will meet *en banc* and hear: [...] XI. Any other matter within the jurisdiction of the Supreme Court, which is not to be heard by the (specialized) Chambers, and"

jurisdiction of the Inter-American Court of Human Rights, and therefore the United Mexican States recognized the general jurisdiction of and the binding nature of rulings by that Court on cases involving the interpretation or application of the American Convention on Human Rights.

C) This recognition of the contentious jurisdiction of the Inter-American Court of Human Rights implies an obligation by the United Mexican States to comply with the decisions of that court, since Mexico is a State Party to and expressly declared its adherence the American Convention on Human rights.

D) The Court must define what the specific obligations for the federal courts are, and the manner in which they will be implemented.

12. **THIRD. Background.** We review below the history of this case, drawing on both our national courts' records, as well as the summary published in the Official Journal of the Federation of the ruling of the Inter-American Court of Human Rights in the case of Radilla Pacheco against the United Mexican States.

[NOTE TO READERS: The Case History reciting factual and legal developments leading up to this decision is found in the Appendix at the end of the opinion.]

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13. **FOURTH. Subject of the consultation.** The holding of the Court *en banc*, in its resolution issued on September 7, 2010 in the record of the case "miscellaneous" 489/10, described in paragraph two of this enforceable decision, requires us to review the recognition of the jurisdiction of the Inter-American Court Human Rights,

to then set forth which are the specific obligations for the Federal Courts as part of the Mexican state.

14. **FIFTH. Recognition of the adjudicatory jurisdiction of the Inter-American Court of Human Rights, and of the binding and advisory character of its rulings.** For the reasons stated, it is indisputable that the decision of the United Mexican States to be subject to the jurisdiction of Inter-American Court of Human Rights is an already settled decision of the Mexican State.
15. Therefore, when the Mexican State has been a party to a dispute or controversy before the Inter-American Court, the judgment issued by that Court, together with all of its reasoning, constitutes *res judicata* and it is for that international body exclusively to review each and every one of the exceptions made by the Mexican State, whether they relate to the reach of the jurisdiction of the Court itself or with reservations and objections made by the Mexican State itself, as we are before an international institution.
16. In effect, the Mexican State is a party to the proceedings before the Court and has the opportunity to participate actively in the process. Mexico is the state that will bear the consequences of the Court's ruling, since the assigned representatives of the country litigated on Mexico's behalf. This Court, even as a constitutional court cannot review this lawsuit nor question the jurisdictional competence of the Court, but only limit itself to the enforcement of the relevant part of the judgment and according to its terms.

17. In this sense, this Supreme Court is not competent to analyze, review, evaluate, or decide whether a ruling by the Inter-American Court of Human Rights, that has been issued at its international headquarters is right or wrong, or if it goes beyond the rules which govern the work of the Court, both substantively and procedurally. This body of national jurisdiction cannot make any statement that challenges the validity of a ruling by the Inter-American Court of Human Rights, since for the Mexican state those judgments are, as already stated, *res judicata* and, therefore, this Court can only follow and enforce the entire sentence according to its terms.
18. The binding character of the judgments of the Inter-American Court of Human Rights is derived, in addition to the authorities listed above, from the provisions in Articles 62.3, 67 and 68 of the American Convention on Human Rights to this effect which state:

“Article 62

[...]

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

“Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.”

“Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.

2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

19. Thus, the decisions of this international court whose jurisdiction has been accepted by the Mexican government are binding on all agencies of the Mexican State in their respective areas, given that Mexico is a party state to a particular controversy. Therefore, not only are the specific paragraphs of rulings binding on the federal courts, but the entirety of the reasoning contained in the judgment resolving this dispute.

20. On the other hand, the rest of the Inter-American Court’s jurisprudence which involves cases where Mexico is not a party shall be considered as guiding criteria for decisions by Mexican courts, but always to the extent that is most favorable to the person, in accordance with Article 1 of the Constitution, published in the Official Journal of the Federation on June 10, 2011, particularly in its second paragraph, which states: **“Rules related to human rights shall be construed in accordance with this Constitution and relevant international treaties, so as to encourage the broadest level of protection to persons at all times.”**

21. Thus, National courts must firstly observe the human rights enshrined in the Mexican Constitution and international treaties to which the Mexican government is

a party, as well as the jurisprudence issued by the Federal Courts to interpret and refer to the interpretive criteria of the Inter-American Court to assess whether one or another is more favorable and offers a wider protection of the rights whose protection is sought. This does not preclude the possibility that our national jurisprudence are those which better adhere to the provisions of Article 1 of the Constitution, which will require a case by case assessment in order to always guarantee a greater protection for human rights.

22. **SIXTH. Specific obligations for the judiciary.** The following obligations for the Judiciary as part of the Mexican State are based on the ruling of the Inter-American Court of Human Rights in the Radilla case. They are listed here without any detail, and will be developed further in the subsequent paragraphs:

- a) Judges should conduct an ex officio conventionality control in a model of diffuse control of constitutionality.
- b) Interpretation of cases of military justice should be restricted to individual cases.
- c) The Federal Judicial Power shall implement administrative measures arising from the decision of the Inter-American Court in the Radilla case.

23. **SEVENTH. Ex officio “control of conventionality” control in a broad constitutional review model.** If we accept that rulings of the Inter-American Court of Human Rights in cases to which Mexico was a party are binding upon the Judicial Branch under its terms, we must draw a conclusion about the content

of para 339 of the Judgment of the Inter-American Court of Human Rights which reads as follows:

“339. With regard to judicial practices, this Tribunal has established, in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system. But once a State has ratified an international treaty such as the American Convention, its judges, as part of the State’s apparatus, are also submitted to it, which compels them to make sure that the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation.

In other words, the Judiciary shall exercise a “control of conventionality” ex officio between domestic regulations and the American Convention, evidently within the framework of its respective competences and the corresponding procedural regulations.

Within this task, the Judiciary shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it.

24. It should then be determined how if the Judiciary can exercise an ex-officio "control of conventionality" and if so, how it could do so, since each State would have to adapt such a control to its existing constitutionality review mechanism.
25. In this regard, Mexico is a special case since based on interpretation of case law and all prior experience, constitutionality reviews have been exercised exclusively by the Federal Judiciary through the writ of Amparo, constitutional disputes and unconstitutionality claims. Furthermore, added to

these review mechanisms are those exercised by the Electoral Courts by virtue of the Constitutional Amendment of July 1st, 2008, Art. 99, par. 6 of the Federal Constitution, thus granting said Courts the power to not apply relevant laws which run counter to the Constitution. Therefore, determining whether Mexico had operated a broad constitutionality review mechanism at some point would not depend directly on any explicit constitutional provision, but would rather be constructed from multiple case law sources over time².

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In April 1919, the Full Court ruled that any law contrary to the provisions of the Constitution should not be obeyed by any authority and expressed this opinion titled: “CONSITITUCIÓN, IMPERIO DE LA” (IUS Registry 289, 270) In May 1934, the Second Chamber established a separate opinion in: “CONSTITUCIONALIDAD DE LA LEY” (IUS Registry 336, 181), establishing that pursuant to art. 133 of the Federal Constitution, all judges of the Republic were under the obligation to submit their rulings to the provisions of the Constitution, regardless of contrary provisions in lower laws. The following year, in August 1935, the same Chamber indicated that the only bodies which could rule a provision unconstitutional are the Federal Courts, when it issued the following separate argument: “LEYES DE LOS ESTADOS, CONTRARIAS A LOS PRECEPTOS CONSTITUCIONALES” (IUS Registry No. 335,247). Four years later, in February 1939, the The Third Chamber of the Court ruled in an isolated opinion that observance of art. 133 of the Federal Constitution is mandatory for all local judges of all categories. The title of the argument is: “LEYES, CONSTITUCIONALIDAD DE LAS” (IUS registry no. 356,069). Furthermore, in April 1942, the Second Chamber once again found that all domestic authorities must observe the Constitution regardless of any contrary provisions in other laws. The opinion is titled: “CONSTITUCIONALIDAD DE LAS LEYES, COMPETENCIA DEL TRIBUNAL FISCAL PARA EXAMINARLA Y ESTATUIR SOBRE ELLAS” (IUS Registry 326,678) and “CONSTITUCIONALIDAD DE LA LEY DEL IMPUESTO AL SUPERPROVECHO COMPETENCIA DEL TRIBUNAL FISCAL PARA DECIDIR SOBRE ELLA” (IUS Registry 326, 642). In 1949, the Second Chamber handed down an opinion with a different line of argument that maintains that only Federal Judicial authorities can hear matters related to “unconstitutionality”, whose title is: “LEYES, CONSTITUCIONALIDAD DE LAS” (IUS Registry 320,007). In September 1959, the Second Chamber found that the adequate route to settle a dispute between a lower law and the Constitution was the Writ of Amparo. The title of that opinion was: “CONSTITUCION Y LEYES SECUNDARIAS, OPOSICIÓN EN LAS” (IUS Registry 268, 130). In 1960, the Third Chamber ruled that even though judicial authorities of lower courts cannot strike down laws as unconstitutional, they must give precedence to the Constitution when a lower law directly contradicts it, pursuant to art. 133. The title of the opinion is: “CONSTITUCIÓN. SU APLICACIÓN POR PARTE DE LAS AUTORIDADES DEL FUERO COMÚN CUANDO SE ENCUENTRA CONTRAVENIDA POR UNA LEY ORDINARIA” (IUS Registry 270, 759). In September 1968, the Third Chamber handed down an opinion finding that only the Federal Judiciary can assess the constitutionality of laws through the writ of Amparo. The title is:

26. Furthermore, on June 10th, 2011 the amendment to Article 1 of the Constitution that was published in the Official Gazette of the Federation in its first three paragraphs reads as follows:

In the United Mexican States, all people shall be entitled to the human rights granted by this Constitution and in the international treaties to which Mexico is a state party, as well as the privileges and immunities to ensure them. Such privileges and immunities shall not be restricted or suspended, except in the cases and under the conditions established by the Constitution itself.

“CONSTITUCIONALIDAD DE LAS LEYES, EXÁMEN DE LA, IMPROCEDENTE, POR LA AUTORIDAD JUDICIAL COMÚN” (IUS Registry No. 269,162). In August 1971, the Third Chamber found that all judicial authorities must make their rulings conform to the Constitution. The title of the opinion is: “LEYES, CONSTITUCIONALIDAD DE LAS. SU VIOLACIÓN ALEGADA ANTE EL TRIBUNAL DE APELACIÓN” (IUS Registry No. 242, 149). In June 1972, the Third Chamber handed down an opinion finding that only the Federal Judiciary can assess the constitutionality of laws through the writ of Amparo. The title is: “CONSTITUCIONALIDAD DE LAS LEYES, EXAMEN DE LA, IMPROCEDENTE POR LA AUTORIDAD JUDICIAL COMÚN” (IUS Registry 242, 028).

Now in the ninth era and through an opinion of the full court handed down in May 1995, reiterated in July 1997 and in three precedents from 1998, the Court ruled that art. 133 of the Constitution does not authorize a broad constitutionality review of all laws. The opinion is P./J. 74/99 and carries the title: “CONTROL DIFUSO DE LA CONSTITUCIONALIDAD DE NORMAS GENERALES. NO LO AUTORIZA EL ARTÍCULO 133 DE LA CONSTITUCIÓN”. This opinion was overturned in plenary opinion P./J. 73/99 which carries the title: “CONTROL JUDICIAL DE LA CONSTITUCIÓN. ES ATRIBUCIÓN EXCLUSIVA DEL PODER JUDICIAL DE LA CONSTITUCIÓN”. In August 2004, the Second Chamber reiterated the opinion in case law opinion 2ª./J. 109/2004 carries the title: “CONTENCIOSO ADMINISTRATIVO. EL TRIBUNAL FEDERAL DE JUSTICIA FISCAL Y ADMINISTRATIVA CARECE DE COMPETENCIA PARA PRONUNCIARSE SOBRE LOS VICIOS DE CONSTITUCIONALIDAD QUE EN LA DEMANDA RESPECTIVA SE ATRIBUYAN A UNA REGLA GENERAL ADMINISTRATIVA”.

Legislation on human rights shall be interpreted in accordance with this Constitution and relevant international treaties thereby always granting the highest standard of protection.

All public authorities, within the purview of their jurisdiction, shall be required to promote, respect, protect and guarantee human rights as universal, interdependent, indivisible and progressive. Consequently, the State must prevent, investigate, sanction and remedy human rights violations under terms established by law. (...).”

27. Accordingly, all public authorities in the country shall be required, within the purview of their jurisdiction, to safeguard not only the human rights listed in international instruments signed by the Mexican government, but also the human rights listed in the Federal Constitution, by adopting the most favorable interpretation for the human right at stake, a practice known as the “pro Homine principle”.
28. These mandates contained in the new Art. 1 of the Constitution must be read in tandem with the provisions of Art. 133 of the Federal Constitution to determine the framework in which a conventionality review can be conducted. This conventionality review would be clearly different from the strict review traditionally exercised in our legal system.³

³

Article 133.

The Constitution, and the Laws enacted by Congress which shall be made in pursuance thereof; and all Treaties made, or which shall be made, by the President of the Republic with the Senate's consent shall be the supreme Law of the Union. The Judges in every State shall be bound thereby, anything in the Constitution of Laws of any State to the contrary notwithstanding. (Pérez Vázquez, Calos:

<http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf>)

29. In their jurisdictional role, judges, in accordance with the last part of Article 133 as regards Article 1, are required to give precedence to human rights as set out in the Constitution and International Treaties, even if these run counter to provisions contained in any lower legislation.

Although the ruling of a judge cannot invalidate or strike down a law that the judge may consider contrary to human rights provisions in the Constitution or Treaties (direct constitutional judicial review) as expressed in articles 103, 107, and 105 in the Constitution), it can give precedence to the Constitution and relevant Treaties while not applying a lower law.

30. Accordingly, the ex officio "control of conventionality" mechanism must conform to the overarching judicial review model established constitutionally. Thus, there could be no "review" such as the one indicated in the ruling under analysis if said "review" did not conform to the general constitutionality judicial review mechanism emerging from a systemic analysis of articles 1 and 133 of the Constitution, which is at the heart of the role that judges perform in the legal system.
31. The mandatory parameters for analyzing this type of judicial review by any judge in the country are as follows:
- All human rights set out in the Federal Constitution (based on articles 1 and 133) as well as case law handed down by the Federal Judiciary;

- All human rights contained in international treaties to which Mexico is a party.
- Binding criteria of the Inter-American Court of Human Rights set out in rulings in cases in which Mexico was a party, guidelines contained in precedents and case law of the aforementioned Court where Mexico was not a party.

32. The judicial power to not apply particular laws in no way implies the elimination or the abnegation of the presumption of constitutionality. On the contrary, part of the presumption of constitutionality is precisely to allow for judicial review before a law is applied.

33. Consequently, this judicial interpretation is composed of three steps:

E) Interpretation in the broad sense. This means that judges in the country, as well as the other authorities of Mexico, must interpret legislation in light of and in accordance with human rights as set out in the Constitution and international treaties that Mexico is a party to, ensuring at all times the highest standard of protection.

F) Interpretation in the strict sense. This means that when faced with multiple legally valid interpretations, judges, while respecting the presumption of constitutionality, shall give priority to the interpretation which brings the law in conformity with the Constitution and international treaties to which Mexico is a party, so as to avoid violation of or interference with the core content of these rights.

G) Non-application of the law when the previous alternatives are impossible. This is without prejudice to or effect upon the principles of separation of powers or federalism. It rather strengthens the role of judges as the final remedy to ensure the prevalence and effective application of human rights as set out in the Constitution and the international treaties to which Mexico is a party.

34. Currently, there are two main types of constitutional judicial review in the Mexican legal system which fit a model for conventionality review in the established terms. The first type is the review carried out by the Federal Judiciary through direct review mechanisms: unconstitutionality claims, constitutionality disputes, direct or indirect writs of Amparo. The second type is the review carried out by all other judges in the country incidentally throughout cases under their jurisdiction, without the need to open a separate case.
35. Finally, it must be emphasized that all public authorities in the Country within the purview of their jurisdiction must give laws the most favorable interpretation to accord the highest standard of human rights protection when applying them, without prejudice to the general applicability or compatibility of these laws.
36. Both types of review are exercised independently and the existence of this general review mechanism does not require that all cases be reviewable or disputable under both types. As we have seen, it is a system that is strict in one part and broad in another which allows for constitutional interpretations and criteria, either through rulings of unconstitutionality or non-application, which eventually flow to

the Supreme Court so that it may be the final arbiter on whether the relevant legislation should be allowed to stand. There may be cases of laws not being applied which are not reviewable under either the direct or restricted review mechanism, but this does not automatically invalidate the other type of review under the general review model. As a result, the Supreme Court itself and the Legislature shall establish the which review mechanisms are most appropriate for specific cases and periodically assess whether there is any need to amend them. (Please refer to the following chart).

General Constitutionality and Conventionality Review Mechanism

Type of Review	Body and Means of Review	Constitutional Basis	Possible Outcome	Form
<u>Strict:</u>	Federal Judiciary (Amparo Courts): a) Constitutional Disputes and Unconstitutionality Claims. b) Indirect Writs of Amparo c) Direct Writs of Amparo	105, sections I and II 103, 107, section VII 103, 107, section IX	Finding of unconstitutionality for general purposes or for the specific case. There is no final ruling of unconstitutionality.	Direct
<u>Review Under Specific Constitutional Mandate:</u>	a) Electoral Court in constitutional review session to review final results or records of local electoral authorities and to rule on voting or electoral disputes b) Electoral Tribunal of the Federal Judiciary	Art. 41, section VI, 99, para 6 99, para 6	No declaration of unconstitutionality, just non-application.	Direct and Incidental*
<u>Broad:</u>	a) Rest of Courts a. Federal: District Courts, Federal Trials Unit Courts and Administrative Courts b. Local: Trial, Administrative and Electoral Courts	1, 133, 104 and human rights treaties 1, 133, 116 and human rights treaties	No declaration of unconstitutionality, just non-application.	Incidental*
<u>Highest Standard:</u>	All Mexican Authorities	Art. 1 and human rights treaties	Only interpretation granting the highest standard of protection without non-application or declarations of unconstitutionality	When grounds or motivation exist to do so.

37. **EIGHTH. Interpretative restriction of military jurisdiction.** As regards the specific measures at the disposal of Mexico as contained in the judgment under analysis, it should be noted that in paras 337- 342, Mexico is required to carry out legal reforms with a view to restrict military jurisdiction to prosecuting active military service members for acts whose nature constitute offenses against the legal rights

of the military, and as paragraphs 272-277 lay out the necessary relevant considerations, the content must be reproduced here:

“C2. Reforms to legal stipulations”

i) Constitutional and legislative reforms in matters of military jurisdiction

337. The representatives asked this Court to order that the State make a reform to Article 13 of the Constitution, which regulates military jurisdiction, based on the fact that, “[e]ven though in principle the article does not seem to generate any problem whatsoever, the interpretations that have been made of the same[, ...] result in the need to request its reform in order to reach the necessary precision, which shall prevent that members of the Mexican army be prosecuted by military courts even when they have committed violations of human rights.”

338. For this Tribunal, not only the suppression or issuing of the regulations within the domestic legislation guarantee the rights enshrined in the American Convention, pursuant with the obligation included in Article 2 of that instrument. The development of State practices leading to the effective observance of the rights and liberties enshrined in the same is also required. Therefore, the existence of a regulation does not guarantee in itself that its application will be adequate. It is necessary that the application of the regulations or their interpretation, as jurisdictional practices and a manifestation of the state’s public order, be adjusted to the same purpose sought by Article 2 of the Convention. In practical terms, the interpretation of Article 13 of the Political Constitution of Mexico shall be coherent with the conventional and constitutional principles of the due process of law and the right to a fair trial, included in Article 8(1) of the American Convention and the relevant regulations of the Mexican Constitution.

339. With regard to judicial practices, this Tribunal has established, in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system. But once a State has ratified an international treaty such as the American Convention, its judges, as part of the State’s apparatus, are also submitted to it, which compels them to make

sure that the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation. In other words, the Judiciary shall exercise a “control of conventionality” *ex officio* between domestic regulations and the American Convention, evidently within the framework of its respective competences and the corresponding procedural regulations. Within this task, the Judiciary shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it.

340. Therefore, it is necessary that the constitutional and legislative interpretations regarding the material and personal competence criteria of military jurisdiction in Mexico be adjusted to the principles established in the jurisprudence of this Tribunal, which have been reiterated in the present case (*supra* paras. 272 through 277).

341. As per this understanding, this Tribunal considers that it is not necessary to order the modification of the regulatory content included in Article 13 of the Political Constitution of the United Mexican States.

342. Despite the aforementioned, the Court stated in Chapter IX of the present Judgment that Article 57 of the Military Criminal Code is incompatible with the American Convention (*supra*. Paras. 287 and 289). Therefore, the State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision compatible with international standards of the field and of the Convention, pursuant with paragraphs 272 through 277 of this Judgment.

“273. Likewise, this Court has established that, taking into account the nature of the crime and the juridical right damaged, military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights but that instead the processing of those responsible always corresponds to the ordinary justice system. In that sense, the Court, on multiple occasions, has indicated that “[w]hen the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent

tribunal and, *a fortiori*, to a due process,” which is, at the same time, intimately related to the right to a fair trial. The judge in charge of hearing a case shall be competent, as well as independent and impartial.

274. Therefore, taking into account the constant jurisprudence of this Tribunal (*supra* paras. 272 and 273), it shall be concluded that if the criminal acts committed by a person who enjoys the classification of active soldier does not affect the juridical rights of the military sphere, ordinary courts should always prosecute said person. In this sense, regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance.

275. The Court points out that when the military courts hear of acts that constitute violations to human rights against civilians they exercise jurisdiction not only with regard to the defendant, which must necessarily be a person with an active military status, but also with regard to the civil victim, who has the right to participate in the criminal proceedings not only for the effects of the corresponding reparation of the damage but also to exercise their rights to the truth and to justice (*supra* para. 247). In that sense, the victims of the violations of human rights and their next of kin have the right to have said violations heard and resolved by a competent tribunal, pursuant with the due process of law and the right to a fair trial. The importance of the passive subject transcends the sphere of the military realm, since juridical rights characteristic of the ordinary regimen are involved.

276. The Tribunal points out that, during the public hearing (*supra* para. 69), the expert Miguel Sarre Iguíniz warned on the extension of military jurisdiction in Mexico and stated that Article 57, fraction II, subparagraph a) of the Code of Military Justice “[is beyond the] written [and] closed scope [...] of military discipline [...],” besides the fact that “[n]ot only is it more ample regarding the active subject, but it is more ample because it does not consider the passive subject [...].” Similarly, the expert Federico Andreu-Guzmán, in the statement offered before the Tribunal (*supra* para. 68), stated that among the elements characteristic of the Mexican military criminal jurisdiction was “[a]n extensive realm of material competence, which surpasses the framework of strictly military crimes,” and that “[t]hrough the figure of the crime of duty or with occasion of the service enshrined by

Article 57 of the Code of Military Justice, the Mexican criminal jurisdiction has the characteristics of a personal jurisdiction linked to the defendant's condition of soldier and not to the nature of the crime.”

277. In the present case, there is no doubt that the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco in which military agents participated (*supra* para. 150) are not related in any way whatsoever with the military discipline. From those behaviors judicial rights such as life, personal integrity, personal liberty, and the acknowledgement of juridical personality of Mr. Rosendo Radilla-Pacheco have been affected. Likewise in a Constitutional State, the commission of acts such as forced disappearance of civilians by members of the military can never be considered as a legitimate and acceptable means for compliance with the military mission. It is clear that those behaviors are openly contrary to the duties of respect and protection of human rights and therefore, are excluded from the competence of the military jurisdiction.

38. Although the title of the first group of paragraphs (337-342) is “C2. Reforms to legal stipulations”. “i) Constitutional and legislative reforms in matters of military jurisdiction), whether occurring through constitutional amendment or the legislative reforms of Mexico, it is clear based on an examination of these paragraphs that their content generates obligations for the Federal Judiciary. Particularly, as regards the exercise of a constitutional judicial review under the terms set out in the previous section, on article 57, section II of the Military Justice Code in a way that it would be considered incompatible with the provisions of Art. 2 of the American Convention on Human Rights which also gives significance to article 13 of the Federal Constitution⁴ in terms of interpretation.

⁴ Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the

39. The Inter-American Court of Human Rights did not order Mexico to amend legislation regulated by article 13 of the Political Constitution of the United Mexican States, but did rule that in practice, the Constitution be interpreted in a manner consistent with the conventional and constitutional principles of due process and access to justice set out in the Constitution and in article 8.1. of the American Convention.⁵
40. The finding contained in the Judgment under examination was that in situations of human rights violations against civilians, under no circumstance can military justice be invoked, because when military tribunals hear cases of human rights violations against civilians, their jurisdiction operates not only upon the accused, who is necessarily an active service member, but also upon the civilian victim, who has the right to participate in the criminal trial not only in order to remedy damages, but also to effectively enjoy his or her rights to the truth and to justice.
41. In this regard, victims of human rights violations and their family members have a right to have these violations heard and ruled upon by a competent court, in accordance with due process and access to justice. The importance of the victim

provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

⁵ Article. 8 Right to a Fair Trial

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

transcends the military sphere since legal rights corresponding to the regular jurisdiction are involved.

42. In this regard, in strict observance of rulings handed down by the Inter-American Court of Human Rights, this Supreme Court of the Nation is compelled to interpret Art. 13 of the Federal Constitution in a way that is consistent with the constitutional principles of due process and access to justice, as well as Art. 8 of the American Convention of Human Rights, which among other prerogatives includes the right to appear before a competent judge.
43. As a result, Art. 57, section II, of the Military Justice Code is incompatible with the provisions of Art. 13 based on this interpretation in light of Art. 2 and 8.1 of the American Convention on Human Rights. This is because upon defining criminal offenses against military discipline, civilians and their families who have been victims of human rights violations are not guaranteed the possibility of submitting to the jurisdiction of a regular judge or court.
44. This means that judges in the country, pursuant to article 1 of the Federal Constitution, must interpret human rights legislation in accordance with relevant international treaties that Mexico is a party to, ensuring at all times the highest standard of protection in the face of situations that violate the human rights of civilians.
45. This interpretation shall be observed in all future cases heard by this Court, in full session or in partial session, regardless of the manner through which these bodies came to hear the case. In other words, under the regular jurisdiction, either through

the original competence of the court or by drawing cases into appeal, therefore attaching the greatest importance to duly exercising its jurisdiction.

46. **NINTH. Administrative measures derived from the Judgment of the Inter-American Court in the Radilla Pacheco case which must be implemented by the Federal Judiciary.** Given the finding by this Court in full session that all of the rulings handed down by the Inter-American Court of Human Rights to which Mexico is a party are binding on the Federal Judiciary, the measures that it shall be implement based on the competencies derived from the international ruling analyzed are as followed:
47. As regards paragraphs 346, 347, and 348 of the ruling of the Inter-American Court of Human Rights, in relation to establishing courses and training programs for all judges and magistrates as well as all civil servants who play a legal or jurisdictional role in the Judiciary, it should establish:
- A) Continuing education on the general system and case law of the Inter-American Court, especially as regards the limits of military jurisdiction, right to a fair trial and international standards applicable to the justice system
 - B) Training for trying forced disappearance cases, about what legally constitutes forced disappearance, with special emphasis on the legal, technical and scientific elements necessary to fully assess the phenomenon of forced disappearances, as well as the use of circumstantial evidence and hearsay with a view to obtaining an accurate judicial assessment of these cases given the special nature of forced disappearance.

48. To this end, both the Supreme Court and the Federal Judicial Council, aided by the Institute of the Federal Judiciary, shall implement the necessary measures in the shortest possible time frame.
49. This Full Court is not unaware that there have already been efforts to implement training courses. While these courses are mandatory for all of the aforementioned civil servants of the Judiciary, they could also be opened to members of the general public interested in the matter and there could even be some kind of coordination with local bodies of the judiciary so that their civil servants can also be trained.
50. In accordance with para. 332 of a ruling of the Inter-American Court of Human Rights, once the Executive implements the measures required under the ruling, the Federal Judiciary shall guarantee that the previous open inquiry in the Radilla Case shall remain in civilian jurisdiction and under no circumstance shall be moved to the martial jurisdiction. This measure in no way permits the Federal Judiciary to intervene or interfere in the jurisdiction or faculties possessed by the Office of the General Prosecutor of the Republic in prior inquiry SIEDF/CGI/454/2007. The only implication of the measure is that once the investigation is confided to a federal judge, the facts under investigation cannot be removed to military jurisdiction and no competence of the military jurisdiction should be recognized in the matter. The matter can only be heard by authorities in the civilian jurisdiction
51. As regards para. 339 of the judgment from the Inter-American Court of Human Rights, given the scope of the ruling handed down by this Full Court, all judges in

Mexico, in accordance with art. 1 of the Constitution may refuse to apply general laws which, in their judgment violate human rights contents in the Federal Constitution and International Treaties to which Mexico is a party.

52. Furthermore in order to ensure the aforementioned effect, a Justice of this Full Court must request case law P./J. be amended, based on para 4 of art. 197 of the Law on Writs of Amparo. 74/1999 in which art. 133 of the Federal Constitution is interpreted so as to prohibit broad constitutional review of general laws by all judges in Mexico.
53. In accordance with para 340 of the ruling of the Inter-American Human Rights Court and with a view towards the objective mentioned in the previous paragraph, specific cases of this type shall be heard by the Federal Judiciary which should guide all subsequent constitutional and legal interpretations of the material and personal competence of the military jurisdiction with international human rights standards.
54. In accordance with paras. 252 and 256 of the ruling of the Inter-American Court of Human Rights, this Full Court orders that in all lower instances victims shall be guaranteed access to case files and shall be issued copies.
55. All federal and lower courts of the country are hereby ordered that if they are currently hearing any case related to this subject, they shall inform the Supreme Court so that it may resume its original competence or rather exercise its power to draw the matter into appeal, given the important nature of this subject.

By virtue of the foregoing, it is ordered that:

FIRST. The role of the Judiciary in executing the ruling handed down by the Inter-American Court of Human Rights in the case Radilla Pacheco vs. United Mexican States be circumscribed in the terms specified in this judgment

SECOND. The Plenary of the Council of the Federal Judiciary be notified, along with the Head of the Federal Executive Branch via the Governance and Foreign Relations Secretaries for all necessary purposes.

As fitting, this case be closed and considered concluded.

This be published in the Official Gazette of the Federation and in the Weekly Newsletter and Gazette of the Federal Judiciary.

It is so decided by the Full Supreme Court of Justice of the Nation, pursuant to the first concluding paragraph of the ruling, the considerations which uphold it were adopted in the following terms:

As regards to the fifth section “Recognition of the competence of the Inter-American Court of Human Rights in disputes and its guiding and binding principles”:

By a majority of 8 composed of Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the

Supreme Court rules that given that Mexico has been ruled against by the Inter-American Court of Human Rights, the Court finds it cannot consider if one of the exceptions of Mexico to the recognition of its competence in dispute settlement can be reconfigured, nor can it reconsider the reservations or interpretative statements that it formulated upon joining the American Convention on Human Rights as well as the Inter-American Convention on the Forced Disappearance of Persons. Justices Aguirre Anguiano, Luna Ramos and Aguilar were opposed.

Justices Luna Ramos and Aguilar Morales each reserved the right to offer separate opinions.

By unanimity of 11 votes, Justices Aguirre Anguiano, Cossío Díaz, Luna Ramos, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court ruled that the judgments against Mexico handed down by the Inter-American Court of Justice are binding upon the Judiciary in its terms, qualified by Justices Aguirre Anguiano, Luna Ramos, Franco González Salas and Aguilar Morales.

Justice Franco González Salas qualified that judgments against Mexico in the Inter-American Court of Human Rights are binding upon the Federal Judiciary, unless the Supreme Court of Justice of the Nation finds them to be in violation of the Political Constitution of the United Mexican States.

By a majority of six votes Justices Aguirre Anguiano, Luna Ramos, Franco González Salas, Pardo Rebolledo, Aguilar Morales, Ortiz Mayagoitia, the Court found that the interpretive criteria of the Inter-American Court of Human Rights are meant to guide the Federal Judiciary. Justices Cossío Díaz, Zaldívar Lelo de Larrea,

Valls Hernández, Sánchez Cordero de García Villegas and chief Justice Silva Meza were opposed, arguing that those criteria are binding.

Justice Aguirre Anguiano expressed that he would include a specific observations in due time.

As regards the fifth section “Recognition of the competence of the Inter-American Court of Human Rights in disputes and its guiding and binding principles”:

By a majority of 8 composed of Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Supreme Court rules that given that the Inter-American Court of Human Rights ruled against Mexico, the Court cannot consider if one of the exceptions of Mexico to the recognition of its competence in dispute settlement can be reconfigured, nor can it reconsider the reservations or interpretative statements that it formulated upon joining the American Convention on Human Rights as well as the Inter-American Convention on the Forced Disappearance of Persons. Justices Aguirre Anguiano, Luna Ramos and Aguilar were opposed.

By unanimity of eleven votes, Justices Aguirre Anguiano, Cossío Díaz, Luna Ramos, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court agreed to merge sections five and six, which sets out that the Supreme Court of Justice of the Nation is not competent to review the exceptions, reservations or interpretative declarations formulated by Mexico.

As regards the sixth section “Specific Obligations Binding upon the Judiciary”

By a majority of ten votes, Justices Aguirre Anguiano, as rapporteur, Cossío Díaz, believing that there were obligations for both this High Court and the Federal Council that were identified, Luna Ramos, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, with reservations about some of the considerations, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court ruled that this section simply lists the possible obligations emanating from a ruling of the Inter-American Court of Human Rights in the Radilla Pacheco Case.

Justice Aguilar Morales was opposed.

Justice Pardo Rebolledo reserved his right to write a separate concurrent opinion.

As regards the seventh section “Ex officio 'control of conventionality' in a broad constitutional review model”

By a majority of seven votes from Justices Cossío Díaz, because the obligation emanates from a system, Franco González Salas, based on art. 1 of the Constitution and the judgment itself, Zaldívar Lelo de Larrea, for the same reason as Justice Cossío Díaz, Valls Hernández, based on Art.1 of the Constitution, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and chief Justice Silva Meza, the Court ruled, pursuant to para 339 of the Judgment of the Inter-American Court of Human Rights in the Radilla Pacheco case, the Federal Judiciary should carry out an ex

oficio conventionality review of domestic laws against the American Convention, within the purview of their respective competences and corresponding procedural regulations. Opposed were Justices Aguirre Anguiano, since the aforementioned judgment does not place obligations on the Supreme Court of Justice and the criterion under analysis is applicable to a specific case, Pardo Rebolledo and Aguilar Morales, given that para 339 of the judgment does not place an obligation on the Supreme Court of Justice, without prejudice to the criteria being valid for subsequent cases heard by it.

By unanimity of seven votes, Justice Cossío Díaz, without prejudice to the Salas, for the same reasons that Justice Cossío Díaz, Zaldívar Lelo de Larrea, as well, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia, since it was so determined in the relevant judgment and thus mandatory for the Supreme Court, and Chief Justice Silva Meza, for the same reasons as Justice Ortiz Mayagoitia, the Court ruled that a conventionality review can be exercised by any judge in Mexico. Opposed were Justices Aguirre Anguiano, as necessary according to his previous finding, given that the conventionality review can only be exercised by those expressly authorized to do so, Pardo Rebolledo and Aguilar Morales who considered that that the Supreme Court is under no obligation to rule in this regard.

By a majority of seven votes, Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that the conventionality and constitutionality review should be adopted based on the provisions of para 339 of the judgment of the Inter-American Court of Human Rights in the matter of Radilla Pacheco vs. The United Mexican States and in Arts. 1, 103,

105 and 133 of the Federal Constitution, proposed by Justice Cossío Díaz, to the extent that: 1) judges of the Federal Judiciary when hearing constitutional disputes, unconstitutionality claims and writs of Amparo, may declare laws invalid if they contradict the Federal Constitution and/or international treaties that recognize human rights 2.) all other judges in the country, in matters where they are competent may chose to not apply laws which infringe the Federal Constitution and/or international treaties that recognize human rights, only for the purposes of the specific case and without striking down the law or its provisions 3.) authorities in the country who do not perform a judicial function shall interpret human rights to the highest possible standard, while not being authorized to declare laws invalid or not apply them in specific cases. Opposed were Justices Aguirre Anguiano, as well as Justices Pardo Rebolledo and Aguilar Morales who believed this was not the appropriate jurisdiction for that analysis.

As regards section Eight: “Interpretative restriction of military jurisdiction”:

By unanimity of ten votes, Justices Aguirre Anguiano, qualified that these paragraphs do not impose a current obligation on the Supreme Court of Justice, furthermore this High Court does not represent the Federal Judiciary nor the other judicial bodies of the country or bodies powers of that nature, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo y Aguilar Morales, qualifying that criteria contained in those paragraphs should be taken into account by this High Court in future cases, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia, qualifying that the obligation imposed by these paragraphs is current, but will be exercised in future cases, and Chief Justice Silva

Meza, the Court ruled that paras 337-342 of the ruling handed by the Inter-American Court of Human Rights in the case of Radilla Pacheco vs. The United Mexican States are mandatory for Mexico when performing a conventionality review.

By unanimity of ten votes, Justices Aguirre Anguiano, qualifying that judges should taking into account both the Federal Constitution and international treaties when hearing specific cases, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo and Aguilar Morales, qualifying that it should be reiterated if the particularities of the case warrant it, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia, qualifying that this reiteration shall be done by virtue of the office and competence of judges, and Chief Justice Silva Meza, the Court found that judges in Mexico must reiterate in future cases the criteria of the Inter-American Court of Human Rights as regards the restriction of military jurisdiction, in compliance with the ruling handed down in the case of Radilla Pacheco vs. The United Mexican States, in application of Art. 1 of the Constitution.

Justice Pardo Rebolledo reserved his right to place a concurrent vote.

By unanimity of ten votes, Justices Aguirre Anguiano, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court ruled that the Supreme Court of Justice of the Nation, to effectively comply with the ruling handed down by the Inter-American Court of Human Rights in the case of Radilla Pacheco vs. United Mexican States, in accordance with Art. 1 of the Constitution, must resume its original competence to resolve disputes on jurisdiction between regular and military jurisdiction.

Justice Aguilar Morales specified that the aforementioned should be done until case law has been created.

As regards “Administrative measures derived from the judgment of the Inter-American Court in the Radilla Pacheco case which must be implemented by the Federal Judiciary”:.

By a majority of eight votes, Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that the Federal Judiciary through its competent bodies and in accordance with paras 346, 347, and 348 of the ruling handed down by the Inter-American Court on Human Rights in the case of Radilla Pacheco vs. United Mexican States, that courses will be established for all judges, magistrates, and civil servants with jurisdictional or legal functions in the Federal Judiciary as follows: a) Continuous Education on the content of Inter-American case law regarding the limits of military jurisdiction, the right to a fair trial, international standards applicable to law enforcement and the legal system; and b) Training on how to try forced disappearance cases in order to appropriately assess what elements constitute the crime of forced disappearance, with special emphasis on the legal, technical, and scientific elements necessary to fully assess the phenomenon of forced disappearance; as well as the use of circumstantial evidence and hearsay; the goal is to ensure adequate judicial assessment of this type of case given the special nature of forced disappearance. Justices Aguirre Anguiano and Aguilar Morales were opposed.

Justice Pardo Rebolledo reserved his right to write a concurrent opinion.

By a majority of seven votes, Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that in accordance with para 332 of the ruling handed down by the Inter-American Court, the Federal Judiciary shall guarantee that prior inquiry SIEDF/CGI/454/2007 open in the matter of Radilla Pacheco should remain in the regular jurisdiction and under no circumstance the military jurisdiction. This implies that once the initial investigation is finished before a federal judge, the findings of the investigation cannot be transferred to military jurisdiction nor should any competence of the military jurisdiction be recognized. Justices Aguirre Anguiano, Pardo Rebolledo and Aguilar Morales were opposed.

By a majority of seven votes, Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that based on para 339 of the ruling of the Inter-American Court of Human Rights in the matter of Radilla Pacheco vs. United Mexican States , given the scope of the ruling handed down by this Full Court, all judges in Mexico, in accordance with article 1 of the Constitution may refuse to apply general laws which, in their judgment violate human rights contents in the Federal Constitution and International Treaties in which Mexico is a party, thus necessitating the modification of jurisprudence by the Full Court. 74/1999. Justices Aguirre Anguiano, Pardo Rebolledo and Aguilar Morales were opposed.

By a majority of seven votes, Justices Cossío Díaz, with reservations, Franco González Salas, Zaldívar Lelo de Larrea, with reservations Valls Hernández, with reservations, Sánchez Cordero de García Villegas, with reservations, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that based on para 340 of the ruling of the Inter-American Court of Human Rights in the matter of Radilla Pacheco vs. United Mexican States, the Federal Judiciary shall adjust its subsequent constitutional and legal interpretations on material and personal competence of the military jurisdiction, based on the criteria contained in case law of the Inter-American Court of Human Rights. Opposed were Justices Aguirre Anguiano, since the ruling addresses an obligation to the Legislature and not the Judiciary in this respect, Pardo Rebolledo and Aguilar Morales, because obligations cannot be placed on the entire Judiciary of the nation by virtue of this one ruling.

By a majority of seven votes, Justices Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that based on paras 252 and 256 of the ruling of the Inter-American Court of Human Rights in the matter of Radilla Pacheco vs. United Mexican States, it shall be guaranteed in all lower stages of proceedings that victims will have access to the case file and be able to receive copies. Justices Aguirre Anguiano, Pardo Rebolledo and Aguilar Morales were opposed.

By unanimity of ten votes Justices Aguirre Anguiano, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls

Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza, the Court found that the Supreme Court of Justice shall resume its original competence and exercise its power to draw into appeal the matter of jurisdictional dispute between military and regular jurisdiction, or rather, exercise its power to draw into appeal upon its own initiative given the important nature of the matter, and thus shall request of all local courts and federal courts of the country to inform the Supreme Court of Justice of any related cases they are currently hearing for the aforementioned purpose.

Justice Pardo Rebolledo stated that his opposition to the proposal should in no way be understood as implying that the ruling of the Inter-American Court of Justice does not generate obligations for Mexico, but rather that criteria do emerge from it which should be considering that various parts of the ruling in one case are not binding on the rest of authorities in the country and that in any case the indicated obligations emanate directly from the Inter-American Court of Human Rights as stated by Justice Ortiz Mazagoitia.

Justice Aguirre Anguiano reserved the right to place a dissenting vote; Justice Zaldívar Lelo de Larrea, reserved the right to write a particular opinion on the non-binding nature of the criteria of the Inter-American Court of Human Rights; Justice Aguilar Morales, to express an opinion highlighting the obligation of Mexico to comply with rulings as agreed in the Pact of San José, which nevertheless implies remedy of the violations suffered by Mr. Radilla Pacheco; Justice Valls Hernández reserved the right to write a concurrent or special opinion; Justice Franco González Salas reserved the right to write a concurrent opinion; Justice Pardo Rebolledo reserved the right to write a particular or concurrent opinion.

As regards the Second and Third Concluding Paragraphs:

The votes of Justices Aguirre Anguiano, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza were adopted unanimously.

Chief Justice Juan N. Silva Meza declared the matter closed in the indicated terms.

Justice Margarita Beatriz Luna Ramos was absent due to an official engagement.

In the private session held on the 20th of September, 2011, by unanimity of 11 votes of Justices Aguirre Anguiano, Cossío Díaz, Luna Ramos, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia y Chief Justice Silva Meza, the text of file 912/2010 was adopted.

Chief Justice Silva Meza declared the aforementioned file adopted with the observations of Justices Aguirre Anguiano, Cossío Díaz, Franco González Salas, Zaldívar Lelo de Larrea, Pardo Rebolledo, Aguilar Morales, Valls Hernández, Sánchez Cordero de García Villegas, Ortiz Mayagoitia and Chief Justice Silva Meza were adopted unanimously.

Signed by the Chief Justice, Justice in charge of the case file and the Law Clerk General, Rafael Coello Cetina who authorizes and certifies.

CHIEF JUSTICE:

JUAN N. SILVA MEZA

JUSTICE IN CHARGE OF THE CASE FILE:

JOSÉ RAMÓN COSSÍO DÍAZ

LAW CLERK GENERAL:

RAFAEL COELLO CETINA.

This paper corresponds to case file 912/2010, relative to the investigation ordered by the Full Court of the Supreme Court of Justice of the Nation, in a ruling from the 7th of September, 2010 set out in case file 489/2010, as regards the ruling handed down on the 23rd of November, 2009 by the Inter-American Court of Human Rights, in the case of Radilla Pacheco against the United Mexican States, in accordance with the following items: "FIRST. The role of the Judiciary in executing the ruling handed down by the Inter-American

*Court of Human Rights in the case Radilla Pacheco vs. United Mexican States be circumscribed in the terms specified in this judgment. **SECOND.** The Plenary of the Council of the Federal Judiciary be notified, along with the Head of the Federal Executive Branch via the Governance and Foreign Relations Secretaries for all necessary purposes. IT IS SO RECORDED.*

Appendix: Case History

<p>Nov 22-69</p>	<p>The American Convention on Human Rights is adopted in the city of San Jose, Costa Rica; Articles 74 and 75 of which state as follows:</p> <p><u>"Article 74</u></p> <p>1. This Convention shall be open for signature and ratification by or accession of any member state of the Organization of American States.</p> <p>2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.</p> <p>3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention."</p> <p><u>"Article 75</u></p> <p>This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties</p>
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	signed on May 23, 1969."
Aug 25-74	Mexican citizen Radilla Pacheco was allegedly the victim of forced disappearance by Mexican Army units stationed in the State of Guerrero.
Dec18-80	The Senate of Mexico approved the adherence of Mexico to the American Convention on Human Rights.
Jan 9 -81	<p>The Act of Adherence to the American Convention on Human Rights was published in the Official Journal of the Federation, which reads as follows:</p> <p>"THIRD. The American Convention on Human Rights is approved, as adopted in San Jose, Costa Rica, and opened for signature on November 22, 1969, with interpretative statements as to paragraph I of Article 4 and Article 12 and a reservation to article 23, paragraph 2, to be declared by the President of the Republic at the time of adherence to the Convention."</p> <p>[...]</p> <p style="text-align: center;">"INTERPRETIVE DECLARATIONS</p> <p>With respect to paragraph 1 of Article 4 (Mexico) considers that the phrase "in general" in the cited paragraph shall not constitute an obligation to adopt or maintain in force legislation to protect life "from the moment of conception", since this matter falls within the jurisdiction of the States.</p> <p>Moreover, in regard to the national government of Mexico, the limitation set forth in the Political Constitution of the United Mexican States, regarding the requirement that every public act of worship be held specifically inside temples, falls within scope of paragraph 3 of Article 12.</p> <p style="text-align: center;">RESERVATION</p> <p>The Government of Mexico makes an express Reservation to paragraph 2 of Article 23, since the Political Constitution of the United</p>

	<p>Mexican States, in Article 130, states that ministers of religious denominations shall not have active or passive votes, nor the right to associate for political purposes.</p> <p>The Instrument of Adherence, signed by me on March 2, 1981, was deposited with the Secretary General of the Organization of American States, on March 24 of that year, with the Declarations and Reservation herein included. "</p>
<p>Mar 27-92</p>	<p>Citizen Andrea Radilla Martinez filed a criminal complaint with the office of the Federal Public Prosecutor in the State of Guerrero regarding her father's disappearance and bringing charges against the parties found to be responsible for the disappearance.</p>
<p>Jun-9-94</p>	<p>The Inter-American Convention on Forced Disappearance of Persons was adopted in Belem, Brazil; articles 16 to 20 address the accession of states parties to the Convention as follows:</p> <p>"Article XVI. This Convention is open for signature by the member states of the Organization of American States.</p> <p>Article XVII. This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.</p> <p>Article XVIII. This Convention shall be open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.</p> <p>Article XIX. The states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.</p> <p>Article XX. This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification. --- For each state ratifying or acceding to the Convention after the second instrument of ratification has been</p>

	<p>deposited, the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession."</p>
<p>24-feb-99</p>	<p>The decree was published which contained the Declaration which recognized the jurisdiction of the Inter-American Court of Human Rights according to the following terms:</p> <p>"I, Ernesto Zedillo Ponce de León, President of the United Mexican States, declare before all those present:</p> <p>The American Convention on Human Rights known as the "Pact of San José de Costa Rica," was adopted in the city of San Jose, Costa Rica, on November 22, 1969, to which the Government of the United Mexican States adhered on March 24, 1981.</p> <p>Exercising the powers granted to any State Party by Article 62, paragraph 1, of the Convention, the Government of the United Mexican States submitted for the consideration of the Senate of the Congress of Mexico the Declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights, which was ratified by the Senate on December 1, 1998, according to the Act published in the Official Journal of the Federation on December 8, of that same year, and which reads as follows:</p> <p style="text-align: center;">DECLARATION RECOGNIZING THE ADJUDICATORY JURISDICTION OF THE INTERAMERICAN COURT OF HUMAN RIGHTS</p> <p>1. The United Mexican States recognizes as legally binding the adjudicatory jurisdiction of the Inter-American Court of Human Rights on matters relating to the interpretation or application of the American Convention on Human Rights, in accordance with article 62.1 of the same, with the exception of cases derived from application of article 33 of the Political Constitution of the United Mexican States.</p>

	<p>2. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights shall be applicable only to facts or juridical acts subsequent to the date of deposit of this declaration, and shall not therefore apply retroactively.</p> <p>3. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights is of a general nature and shall continue in force for one year after the date on which the United Mexican States gives notice that it has denounced it.</p> <p>The instrument of ratification, signed by me on December 9, 1998, was deposited with the Secretary General of the Organization of American States on December 16 of the same year, in accordance with the provisions of Article 61, paragraph 2, of the American Convention on Human Rights, the "Pact of San José, Costa Rica."</p> <p>Therefore, in compliance with and to duly enforce the provisions of Section I of Article 89 of the Constitution of the United Mexican States, I issue the following decree, at the Executive Residence in Mexico City, Federal District, on December 17, 1998 .-Ernesto Zedillo Ponce de León .- Signature .- Minister of Foreign Affairs, Rosario Green – Signature."</p>
<p>May 14-99</p>	<p>Citizen Tita Radilla Martinez filed another criminal complaint with the Office of the Public Attorney General for general jurisdictional claims of the City of Atoyac de Alvarez, Guerrero State, on the forced disappearance of her father, bringing claims against those parties found to be responsible.</p> <p>Both this complaint and the earlier one listed above were dismissed without prejudice for lack of evidence to determine the likely perpetrators.</p>
<p>Oct 20- 00</p>	<p>Citizen Tita Radilla Martinez filed a new criminal complaint on the forced disappearance of Mr. Rosendo Radilla Pacheco, among</p>

	others. The petition was filed before the Public Attorney General for Federal Claims in the Office for the State of Guerrero, and resulted in Preliminary Investigation file 268/CH3/2000.
Jan 9- 01	Citizen Tita Radilla Martinez, and others, filed another criminal complaint with the Office of the Federal Attorney General in connection with the alleged disappearance of her father. Said complaint led to the filing of preliminary inquiry 26/DAFMJ/2001. On March 20, 2001 Tita Radilla Martinez citizen verified the complaint.
May 4 - 01	The Plenipotentiary Representative of the United Mexican States, duly authorized to that effect, signed, subject to ratification, the Inter-American Convention on Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994.
Jun 1- 01	The Official Journal of the Federation published an amendment to the Federal Penal Code which listed the crime of forced disappearance of persons (Articles 215-A to 215-D).
Nov 15-01	The Mexican Commission for the Defense and Promotion of Human Rights and the Association of Relatives of the Disappeared and Victims of Human Rights Violations in Mexico filed a complaint against Mexico with the Inter-American Commission on Human Rights.
Nov 27-01	The National Commission on Human Rights issued Recommendation 26/2001, which stated that the Commission had sufficient evidence to conclude that in at least 275 cases examined, a number of rights were violated for the persons who had been reported as disappeared.
Nov 27-01	The Official Journal of the Federation published the Presidential Order which created the Office of the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP, according to the acronym in Spanish for <i>Fiscalía Especial para Movimientos Sociales y Políticos del Pasado</i>).
Jan 18-02	The Decree which approved the Inter-American Convention on Forced Disappearance of Persons was published in the Official Journal of the Federation, stating the following: "The national seal and emblem appear in the margin, and reads: United Mexican States- Presidency of the Republic. Vicente Fox Quesada, President of the United Mexican States,

	<p>declares to the nation:</p> <p>That the Senate of the National Congress, has delivered the following:</p> <p style="text-align: center;">DECREE</p> <p>"The Senate of the National Congress, exercising its power under Article 76, Section I of the Constitution of the United Mexican States decrees:</p> <p>ARTICLE ONE. The Inter-American Convention on Forced Disappearance of Persons adopted in Belem, Brazil, on June 9th of 1994, is approved subject to the following:</p> <p style="text-align: center;">RESERVATION</p> <p>"The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 <u>makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention</u> given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact."</p>
<p>Feb 27-02</p>	<p>The Official Journal of the Federation published the following note of errors in publication to the Decree which approved the Inter-American Convention on Forced Disappearance of Persons, adopted in Belem, Brazil, on June 9th of 1994, and published on January 18, 2002, per the following:</p> <p>"Section One, on page 4, states that:</p> <p>"The Senate of the National Congress, in exercising their power under</p>

Article 76, Section 1 of the Political Constitution of the United Mexican States, decrees:

ARTICLE ONE. The Inter-American Convention on Forced Disappearance of Persons adopted in Belem, Brazil, on June 9th of 1994, is approved subject to the following:

RESERVATION

"The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact."

should read as follows:

"The Senate of the National Congress, in exercising their power under Article 76, Section 1 of the Political Constitution of the United Mexican States, decrees:

ARTICLE ONE. The Inter-American Convention on Forced Disappearance of Persons adopted in Belem, Brazil, on June 9th of 1994, is approved subject to the following:

RESERVATION

"The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military

	<p>jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact.</p> <p style="text-align: center;">INTERPRETIVE DECLARATION</p> <p>Based on Article 14 of the Political Constitution of the United Mexican States, the Government of Mexico declares, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994, that it shall be understood that the provisions of said Convention shall apply to acts constituting the forced disappearance of persons ordered, executed, or committed after the entry into force of this Convention."</p>
<p>May 6-02</p>	<p>The Official Journal of the Federation published the text of the Convention on Forced Disappearance of Persons⁶, as follows:</p> <p>"The national seal and emblem appear in the margin, and reads: United Mexican States- Presidency of the Republic.</p> <p>Vicente Fox Quesada, President of the United Mexican States, declares to the nation:</p> <p>On May 4, 2001, the Plenipotentiary Representative of the United Mexican States, duly authorized to that effect, signed, subject to ratification, the Inter-American Convention on Forced Disappearance of Persons adopted in Belem, Brazil, adopted in Belem Brazil, on June 9, 1994, the Spanish text of which appears in the certified copy attached.</p>

⁶ Article XX of this Convention reads as follows: "Article XX. This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification. For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, **the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession.**"

The above Convention was adopted by the Senate of the National Congress, with the Reservations and Interpretative Declaration detailed below, on December 10, 2001, according to the decree published in the Official Journal of the Federation on January 18, 2002, and the corrections published on February 27 of that same year:

RESERVATION

"The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact.

INTERPRETIVE DECLARATION

Based on Article 14 of the Political Constitution of the United Mexican States, the Government of Mexico declares, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994, that it shall be understood that the provisions of said Convention shall apply to acts constituting the forced disappearance of persons ordered, executed, or committed after the entry into force of this Convention.

The instrument of ratification, signed by me as head of the Federal Executive Branch on February 28, 2002, was deposited with the Secretary General of the Organization of American States on April 9 of that same year, in accordance with the provisions of Article XVII of the Convention on Forced Disappearance of Persons, with the Reservations and Interpretative Declaration cited above.

Therefore, in compliance with and to duly enforce the provisions of

	<p>Section I of Article 89 of the Constitution of the United Mexican States, I issue the following decree, at the Executive Residence in Mexico City, Federal District, on April 15, 2002.- Vicente Fox Quesada .- Signature .- Minister for Foreign Affairs, Jorge Castañeda Gutman .- Signature. "</p>
<p>Sep 20-02</p>	<p>Preliminary Investigation PGR/FEMOSPP/033/2002 was initiated, to which were later added the Complaint filed by Mrs. Tita Radilla Martinez within Preliminary Investigation 26/DAFMJ/2001 as well as the file from Preliminary Investigation 03/A1/2001, both regarding the forced disappearance of Mr. Rosendo Radilla Pacheco.</p>
<p>Jun 29-04</p>	<p>The Supreme Court ruled <i>en banc</i> on constitutional controversy 33/2002, brought by the Head of the Federal District government opposing the Decree which approved the Inter-American Convention on Forced Disappearance of Persons adopted in the city Belem, Brazil, on June 9, 1994, published in the Official Journal of the Federation on Friday January 18, 2002, and the corrections to the publication of said decree, published in the Official Journal of the Federation on February 27, 2002, in the part where an express reservation is made to Article IX of the Convention and the interpretative statement on that same article. Said ruling was published in the following case law 48/2004, 49/2004, 86/2004 and 87/2004, which respectively are styled as follows:</p> <p>48/2004: "FORCED DISAPPEARANCE OF PERSONS. THIS CRIME IS OF A PERMANENT OR CONTINUING NATURE. "</p> <p>49/2004: "FORCED DISAPPEARANCE OF PERSONS REFERRED TO THE INTER-AMERICAN CONVENTION OF BELEM, BRAZIL, OF JUNE 9, 1994. THE INTERPRETATIVE DECLARATION MADE BY THE MEXICAN GOVERNMENT DOES NOT VIOLATE THE PRINCIPLE OF NON-RETROACTIVITY OF LAWS ENSHRINED IN ARTICLE 14 OF THE CONSTITUTION. "</p> <p>86/2004: "FORCED DISAPPEARANCE OF PERSONS. EXPRESS RESERVATIONS MADE BY THE MEXICAN GOVERNMENT TO ARTICLE IX OF THE INTER-AMERICAN CONVENTION OF BELEM, BRAZIL, PUBLISHED IN THE OFFICIAL JOURNAL OF THE FEDERATION ON MAY 6, 2002, DOES NOT HAVE AN AFFECT</p>

	<p>THE FEDERAL DISTRICT. "</p> <p>87/2004: "FORCED DISAPPEARANCE OF PERSONS. THE TOLLING OF THE STATUTE OF LIMITATIONS DOES NOT BEGIN TO RUN UNTIL THE VICTIM APPEARS OR HIS WHEREABOUTS BECOME KNOWN."</p>
Aug 11-05	<p>The Office of the Public Attorney General indicated that General Francisco Quirós Hermosillo was the likely party responsible for the crime of unlawful deprivation of liberty by abduction or kidnapping of Mr. Radilla Pacheco, sanctioned by the Penal Code in force at the time that the criminal acts were to have occurred (Preliminary Investigation PGR/FEMOSPP/033/2002).</p> <p>The Second District Judge in the State of Guerrero declined to hear the case on the grounds of subject matter jurisdiction in favor of the applicable Military Court.</p> <p>The matter was filed in the First Military District Court for Military Region One, which ruled that it did have jurisdiction to hear the case and therefore ordered the matter filed under number 1513/2005.</p>
Sep 6 - 05	<p>Citizen Tita Radilla Martinez filed an <i>amparo</i> petition for relief against the ruling of the Second District Court in the State of Guerrero that found it lacked jurisdiction. This demand was rejected outright by the Sixth District Court of the State of Guerrero.</p>
Oct 6-05	<p>Citizen Tita Radilla Martinez filed a motion for reconsideration of the decision above.</p>
Oct 12- 05	<p>The Inter-American Human Rights Commission approved Admissibility Report No. 65/05 regarding the complaint filed from November 15, 2001 onwards by the <i>Comisión Mexicana de Defensa y Promoción de Derechos Humanos</i> (Mexican Commission for Defense and Promotion of Human Rights) and the <i>Asociación de Familiares de Detenidos – Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México</i> Association of Relatives of Detained disappeared and Victims of Human Rights Violations in Mexico.</p>
Oct 27-05	<p>The First Joint Appellate Tribunal for Penal and Administrative</p>

Matters for the Twenty-First Circuit ruled that the First Military Court assigned to the Military Region One did have jurisdiction to hear case number 1513/2005.

The Tribunal's ruling on the matter on appeal stated as follows (paragraph 271 of the Decision of the Inter-American Court of Human Rights):

"... In its decision, the First Appellate Court noted that the person in question was a Lieutenant Colonel in the Mexican Army Infantry assigned to the Costa Grande region of the State of Guerrero, in the town of Atoyac de Alvarez, and that he was in charge '[o]f the checkpoints that the armed forces had set up at the specified locations [...]'. Additionally, among other points, the Court held that Article 13 of the Constitution of the United Mexican States (hereinafter the 'Constitution') and Article 57, Section II of the Code of Military Justice, provide that '[m]ilitary courts shall hear cases of violations of military discipline [...] and that such cases include violation[s] of laws of general or federal jurisdiction when these are committed by military personnel in the exercise of their duties'. Finally, the Court noted that given the fact that the act allegedly committed by Mr. Quiroz Herмосillo was the unlawful imprisonment in the form of kidnapping, sanctioned by the '[P]enal Code for the Federal District and Territories in Ordinary Matters, and for the entire territory of the Republic as to federal cases, in effect at the time the criminal act was committed," said crime was regarded as a violation of military discipline, and therefore it was 'exclusively within the jurisdiction of the Courts of military justice to hear and rule on the matter."

Paragraph 278 of the Judgment of the Court of Human Rights states the following:

"278. From the foregoing we may conclude that the decision of the First Appeals Tribunal (supra para. 261) resulted in the exercise of personal jurisdiction, which operated without taking into account the nature of the acts in question, which as a result meant that Mr. Francisco Quiroz Herмосillo was tried before military courts to adjudicate on the process due to his death (supra para. 264). "

<p>Nov 29-06</p>	<p>The First Military Court assigned to Military Region One issued an AUTO DE SOBRESEIMIENTO order of dismissal due to the extinction of the criminal case due to the death of the defendant (General Francisco Quirós Hermosillo).</p>
<p>2007</p>	<p>Preliminary Investigation SIEDF/CGI/454/2007 was filed with the Office of the Attorney General of the Republic regarding the alleged forced disappearance of Mr. Rosendo Radilla Pacheco.</p> <p>The judgment of the Inter-American Court of Human Rights on the above referenced investigation held as follows (paragraph 119):</p> <p>“The Court finds that it bears repeating that, since the State did not file a copy of preliminary investigation SIEDF/CGI/454/2007 (<i>supra</i> at paragraph 88), the findings as to the facts mentioned herein have been established on the basis of the allegations made to the Tribunal and in the assertions of the parties that were not opposed or challenged.”</p> <p>In its ruling, the Inter-American Court of Human Rights added the following (paragraph 182):</p> <p>“It bears mentioning that given that the State did not return a copy of preliminary investigation SIEDF/CGI/454/2007), the findings as to the facts mentioned herein have been established on the basis of the evidence in the Tribunal’s record, and in the assertions of the parties that were not opposed or challenged (<i>supra</i>, paragraph 92).”</p> <p>The judgment of the Inter-American Court of Human Rights went on to conclude at paragraph 207:</p> <p>“The Court considers that the facts presented by the legal representatives are established, as they may only be challenged by the file of preliminary investigation SIEDF/CGI/454/2007, which the State was to remit and failed to do (<i>supra</i>, paragraphs 88 to 92).”</p> <p>At paragraph 231 of the ruling, the Inter-American Court of Human Rights concluded that:</p>

	<p>“The Court considers that the facts presented by the legal representatives are established, as they may only be challenged by the file of preliminary investigation SIEDF/CGI/454/2007, which the State was to remit and failed to do (<i>supra</i>, paragraph 92).”</p>
Jul-27-07	<p>The Inter-American Commission of Human Rights issued a resolution in the INFORME DE FONDO no. 60/07 (paragraph 1 of the Inter-American Court of Human Rights).</p>
Aug-15-07	<p>The Inter-American Commission of Human Rights gave notice of the previous report to the Mexican State (paragraph 1 of the judgment of the Inter-American Court of Human Rights).</p>
Mar 15-08	<p>The Inter-American Commission of Human Rights submitted the case to The Inter-American Court of Human Rights (paragraph 1 of the judgment of the Inter-American Court of Human Rights) in order to:</p> <ul style="list-style-type: none"> • Declare the international responsibility of the Mexican State for violations of articles 5 (Right to Personal Integrity), 8 (Judicial Guarantees), and 25 (Judicial Protection) of the American Convention on Human Rights. • Declare the international responsibility of the Mexican State; • Declare the violation of Article 2 of the American Convention on Human Rights (Duty to adopt internal legislative provisions); • Order the Mexican State to adopt measures for reparations, monetary and non-monetary.)
Sep 21-08	<p>The Mexican State presented a filing (paragraph 6 of the judgment of the Inter-American Court of Human Rights) whereby it presented four preliminary exceptions, answered the complaints, and made observations. The exceptions were the following:</p> <ul style="list-style-type: none"> • Lack of jurisdiction <i>ratione temporis</i> due to the date of deposit of its instrument of adherence to the American Convention; • Lack of jurisdiction <i>ratione temporis</i> to apply the Inter-American Convention on the Forced Disappearance of Persons due to

	<p>the date of deposit of Mexico's instrument of adherence to the American Convention;</p> <ul style="list-style-type: none"> • Lack of subject-matter jurisdiction (<i>ratione materiae</i>) to use the Charter of the Organization of American States as a basis to hear the case, and • Lack of jurisdiction <i>ratione temporis</i> to hear claims of alleged violations of articles 4 (Right to Life) and 5 (Right to Personal Integrity) of the American Convention affecting Mr. Rosendo Radilla Pacheco.
Nov 7- 08	The Inter-American Commission of Human Rights filed its allegations (paragraph 7 of the judgment of the Inter-American Court of Human Rights)
Nov 10-08	The Mexican State filed its allegations (paragraph 7 of the judgment of the Inter-American Court of Human Rights)
Nov 23-09	The Inter-American Court of Human Rights issued its judgment.
Dec 15-09	Notice of the judgment was given to the Mexican State.
Feb 9 -10	An extract of the judgment in the Radilla Case was published in the Official Journal of the Federation.
May 26-10	The President of this Supreme Court initiated a consultation of the Plenum of the Court. Case "Miscellaneous" 489/2010 was filed.
Sep 7-10	The Plenum of the Court ruled as to what the participation of the Federal Courts should be in executing the judgment of the Inter-American Court of Human Rights, for which the matter styled "Miscellaneous" 912/2010 was filed.
May 19-11	<p>The Inter-American Court of Human Rights issued a resolution on monitoring compliance with its decisions, of which the following were the rulings paragraphs:</p> <p>"THE INTERAMERICAN COURT OF HUMAN RIGHTS, in the exercise of its authority to monitor compliance with its decisions, and in accordance with articles 33, 62.1, 62.3, 65, 67, and 68.1 of the</p>

American Convention on Human Rights, articles 25.1 and 30 of the Statute of the Court, and articles 31.2 and 69 of its Regulations, DECLARES THAT:

1. In accordance with what the contents of the relevant Whereas clause of this Order, the State has complied with the following ruling paragraphs of the Judgment:

a) To publish once, paragraphs 1-7, 52 – 66, 144 to 358 of the Judgment, without footnotes, as well as the rulings portion of that decision, in the Official Journal of the Federation, and in another newspaper of widespread national circulation, within six months of the date of notification of the Judgment, and to publish the entire text of the Order on the official website of the Office of the Attorney General of the Federation, within two months of the date of notification of the Judgment, (Paragraph 13 of Rulings, and paragraph 36 of the Conclusions of law).

2. In accordance with the relevant Conclusions of Law in this Order, the following rulings in the Judgment have yet to be complied with:

a) effectively conduct due diligence and within a reasonable time carry out the investigation, and where appropriate, initiate criminal proceedings in connection with the detention and subsequent disappearance of Mr. Rosendo Radilla Pacheco, in order to determine the relevant criminal liability in the case and effectively apply penalties and sanctions as provided by law (Paragraph 8 of Rulings, and paragraphs 10 and 11 of the Conclusions of law);

j) continue to effectively search for and promptly find Mr. Radilla Pacheco, or his remains, as the case may be (paragraph 9 of Rulings, and paragraphs 15 and 16 of the Conclusions of law);

k) adopt, within a reasonable time, appropriate legislative reforms in order to bring Article 57 of the Code of Military Justice in compliance with applicable international standards in that field and with the American Convention on Human Rights (paragraph 10 of the Rulings, and paragraphs 20 to 22 of the Conclusions of law);

l) adopt, within a reasonable time, appropriate legislative reforms in order for Article 215A of the Federal Criminal Code to be in compliance with applicable international standards and with the Inter-American Convention on Forced Disappearance of Persons (paragraph 11 of the Rulings and paragraphs 27 and 28 of the Conclusions of law) ;

m) implement, within a reasonable time and make the necessary budgetary allocations for, permanent courses or programs to analyze the jurisprudence of the Inter-American Human Rights System in regard to limits to the criminal jurisdiction of military courts, as well as to implement a training program on appropriate investigation and prosecution of acts which involve the forced disappearance of persons (paragraph 12 of the Rulings and paragraph 32 of the Conclusions of Law);

n) publicly acknowledge responsibility as regards the facts of the case and honor the memory of Mr. Rosendo Radilla Pacheco, and place a commemorative plaque at a site in the city of Atoyac de Alvarez, Guerrero, recalling the events of his forced disappearance (paragraph 14 of the Rulings, and paragraphs 40 and 41 of the Conclusions of law);

o) present a report on the life of Mr. Rosendo Radilla Pacheco (paragraph 15 of the Rulings and paragraph 45 of the Conclusions of Law);

p) provide adequately, effectively, promptly and free of charge psychological and /or psychiatric counseling, through specialized public health institutions, to the victims acknowledged in the Judgment who so request them. (paragraph 16 of the Rulings, and 49 of the Conclusions of law), and

q) pay the amounts set forth in paragraphs 365, 370, 375 and 385 of the Judgment as compensation for material and moral damages, and reimbursement of costs and expenses, where appropriate (paragraph 17 of the Rulings, and 53 to 56 of the Conclusions of Law)

AND RESOLVES TO:

1. Require the United Mexican States to take all necessary measures in order to effectively and promptly comply with the rulings that have yet to be enforced as identified in Declarative Paragraph No. 2 above, in accordance with the provisions of Article 68.1 of the American Convention on Human Rights.
2. Request the United Mexican States submit, by August 29, 2011 or earlier, a detailed report on measures adopted to comply with the reparations ordered which have not yet been complied with per the terms set forth in paragraphs 7 to 56 of the Conclusions of Law of this Resolution. Thereafter, the State shall continue submitting a compliance report every 3 months.
3. Request that the victims' representatives and the Inter-American Human Rights Commission submit any observations they consider pertinent to the reports presented by the United Mexican States and referred to in paragraph two of this ruling, within four and six weeks, respectively, of the receipt of the abovementioned reports.
4. Keep the monitoring compliance procedure open with regard to the terms of the Judgment pending compliance as outlined in the second paragraph of the declarative section.
5. Order that the Secretariat of the Inter-American Court of Human Rights give notice of this resolution to the United Mexican States, the Inter-American Human Rights Commission and the representatives of the victims."

<p>Jun-6-11</p>	<p>The revisions to various provisions of the Constitution of the United Mexican States regarding <i>amparo</i> lawsuits were published in the Official Journal of the Federation, among which we highlight the content of Article 103, Section I, which reads as follows (the transitional provisions are also transcribed):</p> <p>(REVISED, D.O.F. 6 JUNE 2011) "Article 103. The Courts of the Federation shall settle any dispute which may arise</p> <p>I. Generally, acts or omissions of the authority that recognized human rights and the guarantees for protection under this Constitution and by international treaties to which the Mexican state is a party; [...]."</p> <p style="text-align: center;">TRANSITIONAL PROVISIONS</p> <p>D.O.F. JUNE 6, 2011. "First. This Decree shall enter into force 120 days after its publication in the Official Journal of the Federation.</p> <p>"Second. The National Congress shall issue appropriate legal reforms within 120 days following publication of this Decree.</p> <p>"Third. Amparo lawsuits which were filed prior to the entry into force of this Act shall continue until a final resolution in accordance with the provisions in force at the time of the Decree's entry into force, except as regards provisions relating to dismissal of a lawsuit for lack of proper procedure and statute of limitations CADUCIDAD DE INSTANCIA, as well as compliance and enforcement of <i>amparo</i> judgments.</p> <p>"Fourth. As regards the integration of jurisprudence, those judgments which address provisions which are in force shall not be taken into account if they were issued prior to the entry into force of this Act.</p>
<p>Jun 10-11</p>	<p>The reforms of various provisions of the Constitution of the United Mexican States regarding the protection of human rights were</p>

published in the Official Journal of the Federation (*D.O.F.*). The contents of Article 1 reads as follows (Transitional provisions are also transcribed):

TITLE ONE.
(NAME AMENDED, D.O.F. 10 JUNE 2011)
CHAPTER I.
HUMAN RIGHTS AND GUARANTEES.

(REVISED, FIRST PARAGRAPH, D.O.F. 10 JUNE 2011)
Section 1.

Every person in the United Mexican States shall enjoy the human rights enshrined in this Constitution and in the international treaties to which Mexico is a party, as well as the guarantees for their protection, which cannot be restricted or suspended except in such cases and under such conditions as are provided herein.

(ADDED, D.O.F. 10 JUNE 2011)
Laws related to human rights shall be construed in accordance with this Constitution and relevant international treaties, so as to encourage the broadest level of protection to persons at all times.

(ADDED, D.O.F. 10 JUNE 2011)
All public officials, in exercising their authority, have an obligation to promote, respect, protect and guarantee human rights in accordance with principles of universality, interdependence, indivisibility and progressiveness. Therefore the State must prevent, investigate, punish **and remedy human rights violations according to the terms established by law.**

(ADDED, D.O.F. 14 AUGUST 2001)
Slavery is prohibited in the United Mexican States. A slave from abroad who enters the national territory will, for this reason, be granted the freedom and protection of its laws.

(REVISED, D.O.F. 10 JUNE 2011)
Any discrimination on the basis of ethnic or national origin, gender,

age, disability, social status, health status, religion, opinions, sexual preferences, marital status or anything else that violates the dignity human and is intended to nullify or impair the rights and freedoms of individuals is prohibited.

TRANSITIONAL PROVISIONS

Official Journal of the Federation (D.O.F.) JUNE 10, 2011.

First. This Decree shall enter into force on the day following its publication in the Official Journal of the Federation.

Second. The law referred to in the Article 1, Paragraph 3 of the Constitution regarding reparations shall be enacted within a maximum period of **one** year from the effective date of this decree.

Third. The law referred to in Article 11 of the Constitutional regarding asylum shall be enacted within a maximum period of one year from the effective date of this decree.

Fourth. The National Congress shall issue a Regulatory Law on Article 29 of the Constitution regarding the suspension of the exercise of the rights and guarantees within a maximum period of one year from the effective date of this decree.

Fifth. The National Congress shall issue a Regulatory Law on Article 33 of the Constitution regarding the expulsion of foreigners within a maximum period of one year from the effective date of this decree. Once the Regulation is adopted, the provisions of the Article will continue to apply according to the terms in force.

Sixth. Cases that fall within the provisions of Article 97, Second Paragraph, of the Constitution, and which are still pending at the time of entry into force of these reforms, shall continue to be heard by the Supreme Court of Justice until they conclude.

Seventh. In regard to Section B of Article 102 of the Constitution and

the autonomy of the local human rights organizations, state legislatures shall adopt any modifications as are needed within a maximum of one year from the effective date of this decree.

Eighth. The National Congress shall amend the Law on the National Commission on Human Rights within one year from the effective date of this decree.

Ninth. All provisions contrary to this decree are repealed. "