

**Regulatory analysis on the application of protection measures in Mexico****Análisis normativo sobre la aplicación de medidas de protección en México**

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**Abstract**

In Mexico, protection measures are those framed in article 137 of the National Code of Criminal Procedures and as their name indicates, they are those mechanisms or measures established as norms by the legislator but dictated or authorized by the Public Ministry or by a Judge. for the protection of victims from their aggressor, to avoid future acts of violence against the victim or offended party. The present research work seeks to highlight a gap in current legislation, since protection measures should not be dictated only when the aggressor is known but should be implemented even when the identity of the aggressor is unknown, this to achieve true protection of the victim against any act of violence.

**Protective measures, Human rights, Crime, Victim, Aggressor, Security, Legal reasoning, Authority, Normativity**

**Resumen**

En México, las medidas de protección son aquellas enmarcadas en el artículo 137 del Código Nacional de Procedimientos Penales y como su nombre lo indica son aquellos mecanismos o medidas plasmadas como normas por el legislador, pero dictadas o autorizadas por el Ministerio Público para la protección de las víctimas de su agresor en la etapa inicial de la investigación del hecho delictivo, con el fin de evitar futuros actos de violencia en contra de la víctima u ofendido. Con el presente trabajo de investigación se busca evidenciar un vacío en la legislación vigente, pues las medidas de protección no deberían de dictarse únicamente cuando se conoce al agresor, sino que deben ser implementadas aun cuando se desconozca la identidad de este, esto con el fin de lograr una verdadera protección de la víctima frente a cualquier acto de violencia.

**Medidas de protección, Derechos humanos, Delito, Víctima, Agresor, Seguridad, Razonamiento jurídico, Autoridad, Normatividad**

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## Introduction

Currently, protection measures are very important figures in criminal law, as they represent a fundamental part of the rights of victims or offended parties. They are precautionary orders or mechanisms whose objective is to adopt urgent security actions in favour of the victims to guarantee their safety. Their purpose is to restore the safety and peace of mind of the victims, as well as to safeguard their physical and emotional integrity against possible subsequent threats or reprisals by the aggressor.

This article addresses the problem of the application and justification of the protective measures framed in the National Code of Criminal Procedures, foreseen in article 137, issued during the investigation stage, which aim to prevent or avoid an eminent future risk to the safety of the victims, within the judicial procedure. For the present research, the qualitative paradigm was used, in its bibliographic-documentary modality, through the use of academic articles, books, doctrine, journals, theses and legislation, which were the main source of help for the collection of information on the research topic. In addition, the general method applied to this research was inductive, as it allowed the analysis of particular facts and events in order to reach a generality that serves as a reference in the research.

Some authors such as Córdova et al. (2019) argue that:

Protection measures are those attitudes and decisions taken into account by the State through its various public institutions, in order to make effective the care and protection of the victim of aggression, with respect to the aggression itself and its aggressor; they are mechanisms that seek to provide support and protection to victims of aggression and prevent the continuation of these. (p. 65).

According to the above, the primary objective of protective measures is to provide care and protection to the victim or offended person in order to prevent the aggressor from continuing the aggressions against the victim. In other words, they are provided to provide physical and emotional security and tranquillity for the victims.

Protective measures are contemplated in Article 137, Chapter I, Title VI of the National Code of Criminal Procedures and are issued when it is considered that an aggressor puts the life or integrity of the victims at risk.

Textually, this article states that:

The Public Prosecutor's Office, under its strictest responsibility, shall order the application of suitable protection measures when it considers that the accused represents an imminent risk to the safety of the victim or injured party. The following are protective measures:

- I. Prohibition on approaching or communicating with the victim or injured party.
- II. Limitation on attending or approaching the home of the victim or offended party or the place where he or she is located.
- III. Immediate separation from the home.
- IV. Immediate surrender of objects of personal use and identity documents of the victim in the possession of the person likely to be responsible.
- V. The prohibition of intimidating or annoying conduct towards the victim or offended party or persons related to them.
- VI. Police protection of the victim or injured party.
- VII. Immediate assistance by members of police institutions to the home where the victim or injured party is located at the time of the request.
- VIII. Transfer of the victim or offended person to temporary shelters or refuges, as well as their descendants.
- IX. The return of the victim or injured party to his or her home, once his or her safety has been safeguarded (Congreso General de los Estados Unidos Mexicanos, 2023, pp. 41-42).

It is therefore unavoidable to point out the problems and the scope of the legal vacuum that exists in the Protective Measures enshrined in Article 137 of the National Code of Criminal Procedures in order to show that they are mechanisms to protect the victim from her aggressor and that they should be implemented even when the latter's identity is not known.

### Development

Evidently, there is a legal vacuum in this article which violates the right to protection of victims or offended parties who may be susceptible to suffering another act of violence because the person responsible for the crime is not recognised. The question then arises: under what reasoning criteria does the Public Prosecutor's Office justify the protection measures that it must necessarily provide to victims of crimes perpetrated against them when the perpetrator is unknown?

This research uses a qualitative model with a bibliographical-documentary approach based on the use of academic articles, doctrines and current legislation that serve as support when collecting information on the research topic. In addition, the general method applied to this research was the inductive method through the analysis of particular events, in order to subsequently create generalities for the development of this research, and thus be able to determine a conclusion of the research topic.

In a hypothetical case in which a crime of intentional homicide with a firearm is committed inside the home of the person identified at the time as the deceased, in this context at the time of the event a person is present, who recognises the aggressor who committed the crime, depriving the person of life, followed by the presentation of the offender to the Public Prosecutor's Office and the opening of the corresponding investigation file, under the reasoning that there is well-founded fear, and an eminent danger in which the integrity of the person is vulnerable, and because there is an eminent danger on the part of the aggressor against the safety of the victim recognised in the investigation file and in the Criminal Code applicable in the state where the crime is perpetrated, framed as a serious crime, which justifies the measures of protection for the victim within the procedure, in this sense the Agent of the Public Prosecutor's Office bases the granting of the same.

Under the cited in Article 137 of the National Code of Criminal Procedure, by stipulating that the accused represents an eminent risk against the safety of the indirect victim.

Unlike the opposite case, in a crime of disappearance committed by private individuals, where unknown persons hooded with firearms enter the victim's home, using force, in the presence of a person, therefore, due to the way the events took place, the person does not know data that would help to identify the aggressors who caused the illegal deprivation of the victim's liberty, under this tesitura he/she presents himself/herself before the Public Prosecutor's Office to file a complaint for such fact, which empowers him/her within the process as a victim, Now, according to Article 137 of the National Code of Criminal Procedures, the agent of the Public Prosecutor's Office will have to justify the reasoning and offer the corresponding protection measures to the victim, despite not knowing information about the aggressors involved in the commission of the offence, As with the aforementioned crime, it is assumed that there is a well-founded fear and an eminent danger to the integrity of the person, and because there is an eminent danger on the part of the aggressors, even if their identity is unknown, for possible attacks on the victim's safety.

Victims of crime, usually after the crime has been committed, are in most cases exposed to multiple victimisation, i.e. they are vulnerable to further acts of violence against them by the same offender who had already committed the criminal act against the victim. To avoid this type of situation, Article 5 of the General Law on Victims establishes that:

All government authorities must ensure the widest possible application of protective measures for the dignity, freedom, security and other rights of the victims of crime and human rights violations, and also states that the authorities must at all times adopt measures to guarantee the security, protection, physical and psychological well-being and privacy of the victims. (Congreso General de los Estados Unidos Mexicanos, 2023, p. 4).

It is therefore essential to have protection measures that allow the safety of the victims or offended parties to be established in an efficient manner, and it is also necessary to comply with precautionary measures to ensure that the damage is repaired, which is why it is imperative to establish efficient legislation that guarantees the safety and well-being of the victims or offended parties against their aggressors. This recognises that the protection of victims or offended parties arises from a bilateral relationship between the State and the victims, in which, on the one hand, there is the obligation of every individual to support the administration of justice during criminal proceedings, when a crime is known or has been witnessed; and on the other hand, the right of any person to receive protection for their person, property and family when these legal assets are at risk or are threatened.

In this way, according to Villanueva (2015), security becomes a necessary condition for full freedom and must be guaranteed at all times to the victims or offended parties. Thus, security is interpreted as an instrument at the service of guaranteeing rights and freedoms, which can only be conceived within a system coherent with democratic values of solidarity, tolerance, peaceful coexistence and public service for all citizens and at the service of the common good for society (pp. 20-21).

Internationally, the Inter-American Court of Human Rights has clarified and defined the repercussions necessary to guarantee the protection of victims whose physical or moral integrity is at risk due to threats of harm, as well as the obligation to protect their integrity.

## Conclusion

To conclude, it is important to highlight that the issuing and application of protection measures are applied in the initial stage of the investigation, when the investigation file is initiated, which does not mean that the aggressor is subjected to trial and an incriminating sentence is passed. It should be pointed out that these measures are of a preventive nature and their main purpose is to avoid re-victimisation by the aggressor, to protect and safeguard the safety of the victims recognised in the investigation file, which is why it is important that they are applied in a timely manner, and that they are followed up and supervised.

It must be emphasised that all persons have the fundamental right to live with dignity and to have their physical and psychological integrity respected, which is why protection measures seek to preserve these rights, especially in situations where the victims may be at risk, in this sense protection measures are preventive and seek to avoid victims suffering further harm or re-victimisation as mentioned above.

Considering that providing protection to victims is crucial to ensure their effective participation in legal processes, focusing on victims, if they feel safe, they are more likely to cooperate with justice, which strengthens legal systems and contributes to the delivery of justice, because by providing protection measures, a more conducive environment is created for victims to seek help and justice without fear of reprisals.

The existence of protection measures strengthens society's trust in the institutions in charge of guaranteeing security and justice, which is essential to maintain stability and respect for the rule of law, so they should be granted regardless of the classification of the facts, whether or not the aggressor(s) are known, as protecting victims is aligned with human rights principles. The provision of protection measures contributes to building fairer and more equitable societies, where all people have the opportunity to live free from violence and discrimination, framing the fact that the state has a responsibility to protect its citizens, including victims, and that protection measures are a concrete expression of this commitment.

It must be paramount that even if it is not known who the perpetrators may be, protection measures can be issued and implemented by the competent authorities to provide security for the victims and thereby safeguard their integrity. And for this it is important that the Public Prosecutor's Office provides legal reasoning for the safety and integrity of the victims who are part of the investigation process, it is vital that the Public Prosecutor's Office and the supporting authorities guarantee the protection of the victims, because although it is true that in the commission of a crime the active subjects will always be participants, and even if the identity of the perpetrators is unknown, they will always be the victims.

Even if the identity is unknown, it is understood that there is a person or persons responsible, so that the investigation stage is responsible for gathering evidence to prosecute and charge those responsible, although the issuance and application of such protective measures are at the discretion of the competent authority.

In short, providing protection measures to victims is not only an ethical and legal obligation, but also contributes to building societies that are safer, fairer and more respectful of fundamental rights.

For this reason, it is necessary to reform the National Code of Criminal Procedures to establish that these protection measures are applicable with the precedent of protecting and safeguarding the integrity of the victims even if the aggressor is unknown, as established in the Criminal Code of the State where the offence is committed.

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