This summary contains the cover page, the synthesis and the extract of a decision of Mexico´s Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

JEHOVAH'S WITNESSES: OBJECTION OF THE PARENTS TO BLOOD TRANSFUSIONS FOR THEIR DAUGHTER
(*TESTIGOS DE JEHOVÁ: OBJECIÓN DE LOS PADRES DE APLICAR TRANSFUSIONES SANGUÍNEAS A SU HIJA*)

CASE: *Amparo en Revisión* 1049/2017

REPORTING JUDGE: Arturo Zaldívar Lelo de Larrea

DECISION ISSUED BY: First Chamber of Mexico's Supreme Court of Justice

DATE OF DECISION: August 15, 2018

KEY WORDS: Right to religious freedom, right to health, right to life, right to private and family life, rights of parents, family autonomy, best interest of the child, intervention of the State, guardianship, Jehovah's Witnesses, blood transfusions, alternative treatment

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión* 1049/2017, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of August 15, 2018, Mexico.

The full text of the decision may be consulted at the following link:
https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-01/AR_1049_2017-pdf.pdf

SUGGESTED CITATION FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en Revisión 1049/2017,* Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 1049/2017

BACKGROUND: "Clara", a 5-year-old girl belonging to the Raramuri ethnic group and a member of a family that professes the religion of Jehovah's Witnesses, entered a hospital in a state of emergency, requiring urgent blood transfusions upon presenting a probable diagnosis of acute lymphoblastic leukemia. The parents of the child, after having been informed by the doctors that without the application of this treatment "Clara" could die that same day, refused its application arguing that they had the right to make decisions on their daughter and they would do so in exercise of their religious freedom. Given the situation, the hospital authorities requested the intervention of the Office of the Deputy Director of the Agency for Auxiliary Protection of Children and Adolescents of the Morelos Judicial District, state of Chihuahua (the Agency), which initiated an administrative procedure for protection of minors to assume the guardianship of the child and authorize the blood transfusions, which were done until "Clara" was reported stable. Days later, the diagnosis of leukemia was confirmed and it was indicated to the parents that she may require more transfusions. The parents refused to initiate the treatment immediately, and therefore the Agency authorized it due to the urgency of combatting the disease. The mother of the minor filed an *amparo indirecto* proceeding against such act. The district judge of Chihuahua that heard the matter granted the *amparo* with the effect that subsequently the wish of the parents be respected to implement alternative treatments and that blood transfusions were only authorized as a last resort. Disagreeing with the decision, the mother, the Agency, the special representative of minors and the Public Prosecutor assigned to the district court, filed appeals, which were heard by the First Chamber of Mexico´s Supreme Court of Justice (this Court) upon reassuming its original jurisdiction.

ISSUE PRESENTED TO THE COURT: Whether the intervention of the State in the family autonomy was constitutional upon assuming the power to decide on the medical treatment that should be applied to a minor, whose health and life was at risk, since her parents refused blood transfusions for her based on their religious beliefs. And whether the decision of the district judge that the subsequent treatment respect the wishes of the parents except in cases of emergency, was in conformity with the right to life.

HOLDING: The *amparo* was denied, essentially for the following reasons. As a general rule, it is the parents who have standing to authorize any medical procedure on their children and they are also free to instruct them the practices they decide according to their religious convictions, and therefore the State is obligated to respect the free exercise of those rights. On the other hand, the Constitution also protects the rights to life and health of children as a preponderant constitutional interest, and therefore, even though parents have the right to weigh the alternative treatments together with the hospital personnel in the interest of safeguarding their religious beliefs, if they make a decision that puts at risk the life of the minor, the State must intervene with the objective of implementing the best treatment to save the minor's life. This does not mean that a total displacement of the parent relationship is authorized, since the guardianship assumed by the State is limited to making the medical decisions concerning the recovery of health, and the other rights the parents have in the nuclear family should not be displaced at all. Therefore, it was ordered that the administrative child protection proceeding must continue, in the understanding that the medical treatments that are necessary to stabilize the child will be authorized, which implied the authorization of blood transfusions not only as a last resort to save her life, but when the child's body required it.

VOTE: The First Chamber ruled on this matter by a majority of four votes of judges Arturo Zaldívar Lelo de Larrea, Jorge Mario Pardo Rebolledo (reserved the right to formulate a concurring vote), Alfredo Gutiérrez Ortiz Mena (reserved the right to formulate a concurring vote), and Norma Lucía Piña Hernández (reserved the right to formulate a concurring vote). Judge José Ramón Cossío Díaz voted against (reserved the right to formulate a concurring vote).

The votes formulated may be consulted at the following link:
http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=224201

EXTRACT OF THE *AMPARO EN REVISIÓN* 1049/2017

p. 1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of August 15, 2018, issues the following decision.

BACKGROUND

p. 2 "Luisa" and "Manuel" procreated two daughters: "Carmen", who was born in 2006, and "Clara", who was born in 2011. The members of the family belong to the Raramuri ethnic group and profess the religion of Jehovah's Witnesses.

In the first few days of the month of April of 2017 "Clara" presented signs of chickenpox, so her mother took her to the doctor. On April 19, the minor was examined. The treating doctor informed "Luisa" that "Clara" probably suffered from acute lymphoblastic leukemia, and it was urgent that she go to the Children's Hospital for Specialties of the State of Chihuahua (the Hospital).

p. 2-3 "Clara" was examined at the emergency room that same day. The hematologist concluded the child most likely had an infectious viral condition, and therefore requested the child be transferred to intermediate therapy, and the initiation of antiviral treatments, antibiotics and hemoderivatives (products derived from blood).

p. 3 The hematologist informed the parents of the seriousness of the state of health of "Clara", and of the medical treatment she considered best, including blood transfusions. However, the parents said that it was their wish to seek an alternative measure to the blood transfusion since they professed as a family the religion of Jehovah's Witnesses.

Under these circumstances, the social worker of the children's hospital considered that she should put the minor in the care of the Office of the Deputy Director of the Agency for Auxiliary Protection of Children and Adolescents of the Morelos Judicial District, state of Chihuahua (the Agency), due to the seriousness of the state of health of the minor, the need to carry out the blood transfusion treatment and the opposition of the parents to such treatment.

In response, the head of the Agency immediately interviewed the parents to encourage them to accept the proposed treatment. However, “Luisa” and “Manuel” continued to refuse it.

p. 4 In this situation, the head of the Agency decided to initiate the administrative procedure for protection of minors based on: (i) the diagnosis of possible acute lymphoblastic leukemia, (ii) the immediate necessity that “Clara” receive blood transfusions to save her life in the judgment of the specialists and (iii) the refusal of her parents to agree to that treatment. The Agency ordered that the guardianship of the minor be given provisionally to it, in order to authorize the medical treatments that were necessary to save the life of the child.

As a consequence, “Clara” was taken to the intensive therapy area. Under the consent of the Agency, the doctors initiated the application of immunoglobulin intravenously and transfusion of erythrocyte concentrate and platelet concentrate.

p. 4-5 It was not until the third day that “Clara” finally was reported stable. Since she was improving, the doctors determined that it was viable to suspend the transfusion of erythrocyte concentrate, although they expected that the transfusion of platelet concentrate and immunoglobulin should continue. On the fourth day, “Clara” was reported in good general condition, and therefore the personnel ordered not to apply platelet concentrate transfusions for the moment.

On the seventh day, “Clara” was given surgery with the consent of the Agency. The doctor did an aspirate and took bone marrow in order to confirm the diagnosis. On this day a platelet concentrate transfusion was also done.

p. 5 In the following days, “Clara” received immunoglobulin and a transfusion of platelet concentrate.

p. 5-6 On the fifteenth day the results of the analysis of the bone marrow were issued, which confirmed that “Clara” suffered from acute lymphoblastic leukemia. In this context, the hematologist, the social worker of the hospital and the Agency met with “Clara’s” parents to inform them that the treatment the child required was chemotherapy, indicating to them

that the consequences of the treatment, among others, implied the possibility of continuing to need blood transfusions.

p. 6 In this situation, “Luisa” and “Manuel” indicated that they needed a second medical opinion with respect to the best treatment for their daughter. The doctor replied that it was urgent to initiate the chemotherapy cycles, but that she agreed to discuss the case with another doctor with a specialty equal to hers.

Given the refusal of the parents to immediately initiate the proposed treatment, the Agency authorized the initiation of chemotherapy due to the urgency of combatting the disease as soon as possible.

In this context, “Luisa”, in her own right and in representation of her minor daughter “Clara”, filed an *amparo indirecto* against the determination of the Agency to initiate the administrative proceeding and assume the guardianship over her minor child, in order to authorize the procedures that were necessary in the course of the medical treatment to recover her health.

p. 8 The district judge that heard the matter granted the definitive suspension, which meant that the Agency should not make any decision related to the treatment of the girl and the authorities of the Hospital should inform the mother in detail of the benefits and complications of the alternative treatments.

p. 9 The doctor indicated that, according to the disease that “Clara” suffered, her probabilities of survival were around 90%, as long as the chemotherapy scheme is followed, plus the supporting treatment: transfusions of blood components, antibiotics and hygiene-diet measures.

p. 11 The district judge issued a decision on June 30, 2017 in which he granted the *amparo*.

p. 11-12 The judge understood that the Agency had initiated the administrative procedure of protection illegally, without a prior investigation to evidence that the child was in a situation of abandonment, such that its decision in reality was based on discriminatory practices directed to the mother due to her religious beliefs.

p. 12 The judge concluded that the personnel of the hospital had violated the right of the mother to know in detail the benefits or complications of the treatment that would be applied to the minor and, therefore, to adequately get her consent in the application of treatments and interventions.

p. 12-13 The judge concluded that in the subsequent treatment the desires of the parents to implement alternative treatments must be respected and only if it is "urgent or necessary", that is, if the alternative treatments failed and as a last resort, could the blood transfusions be implemented.

p. 13 Disagreeing with the decision, the mother, the Agency, the special representative of minors and the Public Prosecutor filed appeals.

p. 16 A collegiate court of Chihuahua sent the file to this Court, which assumed jurisdiction to hear the present appeal.

STUDY OF THE MERITS

p. 21 This Court must determine if the State can intervene in a family relationship in order to apply to a minor a medical treatment that her parents object to for religious reasons and want to substitute with an alternative treatment. In this regard the privacy of family relations acquires relevance.

I. Right to private and family life

p. 24 The right to private and family life is configured as a guarantee against the State and against third parties so they cannot unjustifiably intervene in decisions that only correspond to the nuclear family. Among those powers is the right of parents to make the decisions concerning their children.

Thus, the protection that the family merits from intrusions of the State rests on the premise that parents are the most suited for making decisions about their children.

In this case, the decision of the parents to oppose the blood transfusions is an exercise of autonomy as representatives of the child in the medical context, which also rests on a special justification: religious freedom.

a) Right of parents to form their children according to their religious beliefs

p. 25 One important decision for the nuclear family, in particular for the parents, consists of determining what religious education their children should have. In the values or beliefs that parents transmit to their children is manifested, on the one hand, their right to religious freedom and, on the other hand, their right to educate their children in the manner they prefer.

The right to religious freedom has been conceived in court precedents and in doctrine, as the right that permits each person independently and autonomously to believe, cease to believe or not believe any particular religion, recognizing for all persons their right to maintain the integrity of their beliefs, to change their religious convictions or to assume atheistic or agnostic positions.

p. 26 The right to religious freedom involves two facets: internal (profess) and external (practice). This right imposes certain duties on the State to ensure its materialization. In this regard, emphasis has been placed on the State's obligation to assume a neutral and impartial role toward the different religions that are professed in its territory and its duty to promote tolerance among the different religious groups.

p. 26-27 Through these guarantees of protection and abstention, the State ensures that believers can effectively exercise their religious freedom and that they are not inhibited from its expression in both the internal sphere and in the exercise of public worship.

p. 27 Nevertheless, as with any other right, religious freedom is not absolute, since it is submitted to certain limits that the Constitution imposes: the imperative of public order, the rights of others, the prevalence of public interest and the fundamental rights of the person against an abusive exercise thereof.

p. 29 This Court considers that parents have the right to express their religious and moral beliefs, and that from this freedom in relation to the right to private and family life, come the right to educate their children in the faith they profess. This power implies, of course, the right to make decisions on their children based on their beliefs, such as organizing life inside the family according to their religion or their convictions, instructing their

children in religious matters, and taking them to public places of worship or to celebrate certain festivities.

p. 29-30 Overall, the practice of the religion or convictions in which a child is educated may not harm the child's physical or mental health or full development.

b) Right of parents to make medical decisions for their children

p. 30 Another decision that forms part of the spectrum of autonomous choices parents make under the cover of family privacy lies in the freedom to make medical decisions for their children.

While children lack the maturity necessary to make decisions concerning their health themselves, their guardians or parents must assume this role, always looking to satisfy the best interest of the child. The freedom to make these decisions is protected by family privacy, which confers on parents the responsibility of weighing different reasons based on medical advice, and choosing what is in the best interest of the child free of arbitrary interferences in their private life.

p. 31 This Court understands that in the medical sphere parents face a complex scenario since, based on the advice of the doctors, they must carefully weigh the efficacy and the risks of the treatments according to the clinical condition affecting their child. In this intersection, they are called to seek at all times the wellbeing of their children, and therefore there must be a correspondence between the medical decision they assume and the therapeutic measures that best permit the minor to maintain his or her physical wellbeing and recover his or her health.

c) Progressive autonomy of minors

Now, it is worth clarifying that the right of parents to make decisions for their children diminishes as the minor grows in development and autonomy. In other words, until minors are capable of formulating and articulating their own values.

p. 33 This Court considers that based on the best interest of the child, the minor may decide what medical treatments or interventions to receive, as long as this does not affect greater

rights than his or her own autonomy, while that is still in formation. Thus, if the decision of the minor could put his or her health, or even life, at risk, the alternative that ensures recovery to the greatest extent should be chosen.

II. The best interests of the child as a limit on parental rights

p. 34-35 The best interests of the child should also be the guiding principle of those who make decisions in the name of minors. Thus, the exercise of private and family life must have as its objective to procure the greatest satisfaction of the rights of children. In that regard, the rights of parents must be exercised according to the prevailing interest of the children, and therefore the nature of the relations between children and parents should not be determined by the personal desires of the parents, but rather by the best interests of the child.

p. 36 Thus, this Court understands that the medical decisions of parents over their children, while initially protected by a clear field of autonomy, cannot be sustained if they put at risk the health of the minor (even when this is not necessarily the intention of the parents), in that the Constitution obligates the State to ensure that the rights of children are not violated.

p. 37 Furthermore, the First Chamber of this Court in *Amparo en Revisión 502/2017*, ruled that the right of parents to instill in their children religious beliefs is not absolute and that it has a limit: the best interests of the child.

p. 38 Thus, this Court understands that religious freedom does not confer on parents the authority to decide on the life or death of their minor children; thus, the rights of parents find their limit where the life of their children is put at risk.

This means that parents cannot object to the application of medical treatments whose purpose is to save the life of their minor children. The life and health of children are not rights that are subordinated to the will of their representatives.

III. The intervention of the State in family autonomy in the case of risk to life

p. 39 This Court considers that putting at risk the life of a child occurs when the parents, privileging their religious beliefs, refuse to follow the best medical treatment to save the life of their minor child.

p. 40 Likewise, it understands that the best medical treatment is the procedure recommended by medical science that has the highest level possible of scientific consolidation and that, therefore, is indicated with the greatest degree of priority.

p. 41 In this way, the principle of the best interests of the child requires that the treatment that has the greatest probability of saving the life of a child must always be chosen.

Now, it could happen that the parents object to the best medical procedure and consider that there are alternatives that could recover the health of the child, and not violate their religious beliefs.

Under this logic, the Jehovah's Witnesses have explored various alternative procedures to the use of hemoderivatives in order to receive medical attention without violating their religious precepts. Thus, the exercise of their religion has led the Jehovah's Witnesses to prefer medical options that forego the consumption of blood components, and that also allow them to recover their health.

However, in order for an alternative proposed by the parents to prevail it is essential to show that the alternative offers a degree of recovery similar or comparable to the medical intervention that has been objected to. Otherwise, the minor will be put in a situation of risk that could be avoided by applying the proven treatment. In that regard, the prevailing interest of the minor prevents the application of a treatment that is clearly inferior to the best treatment.

IV. Development of the intervention of the State in family autonomy

p. 43 The State intervention in a medical context is governed by guidelines intended to preserve the best interests of the child without trampling the rights of parents. These guidelines are relevant from when the minor is presented to receive medical services, until – in case of a risk to the child's life – the State intervenes in order to protect the child's rights.

p. 44 The parents have the right to know the medical alternatives available to treat their children. Thus – if the medical situation of the minor permits it – the parents can request that they be informed of the medical alternatives available, and the health personnel should explain them in detail, in a manner that allows them to effectively weigh the advantages and the inconveniences of different procedures, in order to elect the one that is in the best interests of the child.

p. 45 Thus, once the doctors have received a definitive refusal of the parents, and if they consider that the delay in making decisions could affect the physical wellbeing or health of the child, they are obligated to inform the state child protection agency so that it can evaluate the need to intervene immediately in order to examine the case and authorize the treatment.

Without prejudice of the above, this Court does not overlook the fact that in the case of emergency it may be essential that the treating physician intervene without the consent in order to preserve the life of the minor.

Furthermore, public entities must respect certain guidelines when intervening in family autonomy and deciding to assume the provisional protection of the minor.

p. 46 With respect to the regulation of guardianship, this Court observes that at the federal level and in different regulations of entities of the Republic there is no specific procedure for the public agencies to intervene in the medical context for the purpose of protecting a minor. Instead, it is seen that a generic procedure has been designed so that public entities can exercise a provisional or transitory guardianship when they note that children are in a situation of risk.

p. 49 It is important to clarify that in this case, the parents are not trying to put at risk the life of their daughter, they only wish to prevent the violation of the tenets of their faith in exercise of their religious freedom. Consequently, it is clear that they do not merit being excluded from the medical process or from making decisions that concern their children.

This Court emphasizes that the guardianship the State assumes is limited to making medical decisions concerning the recovery of the health of the child, for the period the

medical treatment lasts, and it should not displace in any way the other rights the parents have in the nuclear family.

p. 50 In addition, provided it is medically possible, the parents have the right to be together with their children and they should not be separated against their will except when strictly necessary. Additionally, it is clear that the health institutions have the obligation to provide them adequate attention free from discrimination.

Similarly, it is important that the implicated authorities recognize the vulnerability of the Jehovah's Witnesses, both for belonging to a minority religion and for professing a belief contrary to the medical paradigm: blood transfusions. Therefore, the authorities involved must ensure that these persons are not stigmatized as bad parents or relegated to taking a secondary role in the recovery of the minor. In this regard, the public agencies should not act on the basis that the parents want to deliberately put their child at risk, or that they are trying to harm their rights.

V. Application of the standard to this case

p. 52 According to the doctors that received "Clara" on April 19, 2017, the minor was in emergency conditions. As the hematologist indicated upon examining the girl, if a decision was not made quickly to authorize the blood transfusions the minor would not survive that night. Therefore, in this case there was an important urgency that required making an expedited decision in order not to put the well-being of the child at risk.

p. 55 Having reviewed the background of the case, this Court considers that the conclusions of the district judge are incorrect and that the actions of the State were appropriate to safeguard the wellbeing of the child.

p. 57-58 Furthermore, this Court understands that the hospital personnel not only did not act unilaterally, they had the duty, given the risk that the child would lose her life, to request the intervention of the child protection authority.

Furthermore, there is no element or record that suggests that the actions of the hospital personnel have threatened the dignity of the parents or encouraged discriminatory acts for their religion or ethnicity.

p. 58-59 With respect to the information provided to the parents of the state of health of "Clara", the doctors did inform the parents of the probable diagnosis of lymphoblastic leukemia; the seriousness of the disease and the urgent need for blood transfusions. Furthermore, when the doctors had access to the confirmed diagnosis, they explained "Clara's" illness to the parents, the treatment that it required and the possible consequences derived from it. Therefore, it is clear to this Court that the doctors did not violate their duty to inform the parents of the state of health of their minor daughter.

p. 60 With respect to informed consent, it can be verified that the doctors also did not violate this right, since from the moment that the parents stated their opposition to the treatment suggested for the child, the doctors abstained from applying blood transfusions until the competent authority ruled that it was responsible for making medical decisions for the minor in substitution of her parents.

Now, with respect to the restriction of access to a second opinion, from the contents of the records, this Court does not see that the parent requested a second medical opinion during the day of April 19th. Thus, during that day the parents only manifested their opposition to the blood transfusions and that, instead, an alternative treatment be given.

p. 60-61 It should be emphasized that when the parents mentioned, for the first time, the possibility of seeking a second medical opinion, the hematologist agreed to the possibility of speaking with another doctor, who had access to the Hospital, the medical notes and the clinical file, which shows that neither the doctors nor the Hospital personnel violated the right of the parents to request a second opinion.

p. 63 Furthermore, from a reading of the facts it is seen that the Agency adequately following the constitutional and legal duties established to assume the guardianship of a minor.

This validates that the Agency did not act unilaterally simply because the mother had indicated she was a Jehovah's Witness; rather its intervention was developed based on the petition of the hospital authorities due to a conflict between medical opinion and the determination of the parents.

p. 66 Now, for this Court it is especially complex to accept an alternative treatment to the scheme indicated, as the parents of "Clara" wish. However, their autonomy to decide over their family cannot be displaced without adequate support.

p. 67 As was established previously, this Court understands that when parents oppose the medical decision to apply a treatment recommended by medical science to treat an illness that puts at risk the life of a minor and try to replace it with an alternate treatment, their proposal cannot be inferior (less secure, reliable or effective) to the treatment known to recover the health of the minor. This implies that the capacity and safety of the alternative treatment may be scientifically corroborated.

In other words, for the decision of "Clara's" parents to survive, it is necessary that a chemotherapy scheme like the one they ask for – one that completely excludes the possibility of administering blood transfusions and is based *solely* on stimulants of blood production such as erythropoietin – has support of medical science equal or similar to the best treatment.

p. 70-71 However, considering the efficacy of the treatment that is normally indicated in comparison with the scientific controversy on stimulants and their risks, this Court is not persuaded that a treatment that excludes the transfusions has the support of medical science equal or similar to the treatment evidenced to be the best. Therefore, it cannot accept that the alternative treatment is in accordance with the best interests of the child.

DECISION

p. 72 This Court considers that the claims of the Agency, the special representatives of the minor and the Public Prosecutor are grounded, for the following reasons: (i) the diagnosis of possible acute lymphoblastic leukemia in a minor; (ii) the immediate need for "Clara" to receive blood transfusions to save her life in the judgment of the specialists, and (iii) the refusal of her parents to have such treatment done, merited the intervention of the State.

Furthermore, the claims of the Public Prosecutor that the appealed decision violates the rights to life and health of the child, because it prevents the doctors from being able to apply the best medical procedure when it is necessary, are grounded.

p. 73 This Court understands that the claims of the mother are unfounded, and therefore it is appropriate to revoke the appealed decision and deny the *amparo*.

As a consequence, the administrative protection of minors procedure that the Agency initiated must continue and the provisional guardianship assumed in parallel survive, in the understanding that each intervention made – whether in exercise of the provisional guardianship, or of the guardianship that may be assumed once the administrative procedure is concluded – shall be conditioned on the purpose of authorizing the medical treatments that are necessary to stabilize the child and, in this regard, strictly justified on the basis of a risk to the health of the minor.

Thus, it is clear that the power to intervene in the family autonomy must be transitory and rigorously obey the health needs of the minor, which of course implies not authorizing superfluous, abusive, unnecessary or idle blood transfusions, but rather only when the child's body requires it according to medical experience and, definitively, not as a last resort to save her life.