



Suprema Corte  
de Justicia de la Nación



DERECHOS  
HUMANOS

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.

**RECOGNITION OF THE GENDER IDENTITY OF TRANS PEOPLE IN OFFICIAL DOCUMENTS**  
**(RECONOCIMIENTO DE LA IDENTIDAD DE GÉNERO DE PERSONAS TRANS EN DOCUMENTOS OFICIALES)**

**CASE:** *Amparo en Revisión* 1317/2017

**REPORTING JUDGE:** Norma Lucía Piña Hernández

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

**DATE OF DECISION:** October 17, 2018

**KEY WORDS:** Right to free development of personality, right to personal identity, right to a name, right to sexual identity, right to gender identity, right to a private life, right to intimacy, adjustment of documents, birth certificate, sex and gender reassignment, recognition of identity, trans people.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión* 1317/2017 First Chamber, Norma Lucía Piña Hernández J., decision of October 17, 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-emplematicas/sentencia/2020-01/AR%201317-2017%20PDF%20p%C3%BAblica.pdf>

**SUGGESTED CITATION FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en revisión* 1317/2017, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 1317/2017

**BACKGROUND:** CLM went to the Civil Registry of Manlio Fabio Altamirano, Veracruz (the Civil Registry) to request the modification of her birth certificate so that it would reflect her gender identity. The authority did not respond to her petition for almost 4 months, so she filed an *amparo indirecto* against the failure to respond. In the *amparo* proceeding, the Civil Registry rendered its report responding that under current local law, the changing of the birth certificate must be processed before a judicial authority, since it is a change of name and sex, which are essential circumstances of the act and, therefore, the procedure could not be carried out through the administrative procedure requested. The district judge of Veracruz that heard the case denied the *amparo*, confirming that the procedure requested should be carried out judicially. CLM filed a motion for review which the First Chamber of Mexico's Supreme Court of Justice (this Court) heard upon resuming its original jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether it was constitutional for the Civil Registry to refuse to adjust CLM's self-perceived gender identity on her the birth certificate through an administrative procedure, given that the local law established that the procedure must be through a judicial proceeding or whether, on the contrary, the law and the actions of the Civil Registry were discriminatory and contrary to the right to the free development of personality and, specifically, the right to gender identity.

**HOLDING:** The appealed decision was modified and the *amparo* granted for the following reasons. Gender identity is a constituent and constitutive element of a person's identity, and therefore its recognition by the State is vitally important for guaranteeing the full enjoyment of the human rights for trans people, including protection against violence, torture, mistreatment, and rights to health, education, employment, housing, social security, and freedom of expression and association. Thus, the right to gender identity is enforced by guaranteeing that the definition of one's own sexual identity and gender coincides with the identification information stated in the different registries and identification documents. Therefore, the State must guarantee that people can exercise their rights without being obligated to maintain another identity that does

not represent their individuality and which could also generate the violation of other human rights. In this case, it was observed that the Civil Code for the State of Veracruz distinguishes the type of proceeding for two equivalent situations: (1) for a sex and gender adjustment or concordance on the birth certificate, a formally judicial procedure before the Courts is established and (2) for the change of last names in cases of voluntary recognition of a child a formally administrative procedure before the Civil Registry is established. This Court considered that there is no reason for this distinction, since it did not observe an objective and reasonable basis for permitting an unequal treatment of the two situations, and therefore it concluded that the difference was the result of direct regulatory discrimination. Consequently the *amparo* was granted to CLM and the Civil Registry was ordered to process her request in order to allow her to make use of the formally and materially administrative procedure to obtain the adjustment of her gender identity. In addition, it was held that the procedure must comply with the standards indicated by both this Court and the Inter-American Court of Human Rights. Thus it was ordered that a new birth certificate be issued that reflects the relevant changes but without evidencing the prior identity, and that the original birth certificate be reserved, without publishing it or issuing any record, except by judicial order or ministerial request.

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

The votes formulated may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=228350>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 1317/2017

p.1 Mexico City. The First Chamber of Mexico’s Supreme Court of Justice (this Court), in session of October 17, 2018, issues the following decision.

### BACKGROUND

p.6-7 On April 23, 2015, CLM (the affected party) filed an *amparo indirecto* against the head of the Civil Registry of Manlio Fabio Altamirano, Veracruz (the Civil Registry), for the failure to respond in a timely manner to her petition filed on January 8, 2015. In that petition, the affected party requested that her birth certificate be changed as a result of a sex and gender reassignment so that it says “female” instead of “male” in relation to her sex; and that the original name be changed. She also explained that she made this request because she is a transsexual person who finds her full aspirations in the female sex.

p.7 On May 22, 2015, the Civil Registry issued its report and, in response to the request to change the birth certificate stated that the correction requested involved a change in order to reach her aspirations and not an error on the birth certificate, and therefore CLM must process it before the judicial authority.

p.8 On June 16, 2015, the affected party expanded her *amparo* claim in order to challenge the articles of the Civil Code for the State of Veracruz (the Civil Code) and indicated the response of the Civil Registry to her request to change her birth certificate as the first applicable act.

p.9-10 The district judge of Veracruz that heard the matter issued a decision on October 18, 2016 ruling to deny the *amparo* regarding the articles challenged and their application.

p.11 CLM filed a motion for review over which this Court assumed original jurisdiction to hear the matter.

### STUDY OF THE MERITS

p.36 This Court considers that the affected party’s grievances are essentially justified and sufficient to change the challenged decision.

p.39 This is so because the Civil Code establishes a distinction that requires two procedures for the adjustment of essential information on the birth certificate, which must be

processed before different authorities (one judicial and the other administrative); and that distinction, being unreasonable, is the result of direct regulatory discrimination.

p.40 The Federal Constitution recognizes that human dignity is the basis and condition for all other rights. In this respect, the Plenary of this Court, in the *Amparo Directo* 6/2008, held that all the other rights stem from the right to human dignity, in that they are necessary for individuals to fully develop their personality, among which are the right to privacy, to name, to image, to personal dignity and to free development of personality.

p.41 The Plenary of this Court has also established that the free development of personality includes, among other expressions, the freedom to choose one's personal appearance, and free sexual choice, to the extent that these aspects are part of the manner in which a person wishes to project herself and live her life and that, therefore, only she can decide for herself.

Related to the free development of personality is the right to personal identity and, in particular, the right to gender identity, which is how the person sees herself.

Gender identity is the internal and individual life of gender as each person perceives it, which may or may not correspond to the sex assigned at the time of birth, including the personal life of the body (which may or may not involve the change of appearance or bodily function through medical, surgical or other types of procedures, as long as it is freely chosen) and other expressions of gender, including dress, mode of speaking and manners.

p.42 Thus, gender identity is a constituent and constitutive element of the identity of people, and consequently its recognition by the State is vitally important in order to guarantee the full enjoyment of the human rights of trans people, including protection from violence, torture, mistreatment, right to health, education, employment, housing, access to social security, as well as the right to free expression and association.

p.43 The right of people to autonomously define their own sexual and gender identity is enforced by guaranteeing that such definitions coincide with the identification information in the registries and identity documents. This means all persons have a right to have the attributes of their personality indicated in those registries and other identification

documents coincide with the identity definitions they have of themselves and, if they do not coincide, it should be possible to change them.

- p.45 Thus, the failure to recognize the right to gender identity can in turn obstruct the exercise of other fundamental rights and, therefore, have an important differential impact on trans people, who often find themselves in a vulnerable position. Therefore the right of each person to autonomously define their sexual and gender identity and to have the information in the registries and the identity documents correspond to the definition they have of themselves, is protected by the American Convention on Human Rights (ACHR) through the provisions that guarantee the free development of personality, the right to privacy, the recognition of legal personality and the right to a name.
- p.45-46 In this regard, the State must guarantee that people can exercise their rights and contract obligations according to that same identity, without having to maintain another identity that does not represent their individuality, especially when this involves continuous exposure to social questioning of that identity thereby affecting the effective exercise and enjoyment of the rights recognized by the internal law and international law.
- p.46 This Court observes that the challenged rules do contemplate the possibility of using a procedure that allows the interested person to obtain the sex or gender adjustment on the birth certificate; however, they establish that such procedure must be carried out before a formally judicial authority.
- p.51 In contrast to this, article 759 of the Civil Code establishes the voluntary recognition by a father of his child as an exception for requesting the correction or modification of a civil registry certificate before a Judicial authority.
- p.52 Several provisions of that code establish that a child may be recognized by one of the parents after the birth certificate is prepared, and that this can be done through an administrative procedure before the Civil Registry, specifically through a certificate of recognition and, in that certificate, the birth certificate will be mentioned through the corresponding notation.
- p.52-53 This Court considers that the recognition of a child after the birth certificate is prepared will involve the change of an essential piece of information of that certificate (the birth), which is the last name of the person whose birth was registered.

- p.53-54 In spite of the fact that both proceedings (recognition of child or sex or gender reassignment) have equivalent situations of fact, since in both the purpose is to change an essential piece of information of the birth certificate, which result in reflecting this change in the corresponding certificate, one of those proceedings must be processed before a formally judicial authority – the sex or gender reassignment – and the other before a formally administrative authority – the recognition of a child; however, such distinction with respect to the authority that must hear and process the request is unreasonable, since there is no objective and reasonable basis for treating one or the other situation differently regarding the formal nature of the authority that must process the request.
- p.54 Regulatory discrimination exists when two equivalent situations of fact are regulated differently without a reasonable justification for that differentiated treatment, as occurs in the challenged article, and therefore it is unconstitutional.
- p.55 The regulatory discrimination indicated here directly harms the affected party because, while for purposes of the adjustment of self-perceived gender identity, proceedings could be carried out before a judicial authority or before an administrative authority, the most logical proceeding for that purpose would be carried out administratively before an administrative authority.
- p.56-57 In this regard, following the Inter-America Court of Human Rights (IACHR), the nature of the authority that processes it, in principle, is not relevant for determining which proceeding is more appropriate for adjusting gender identity, and therefore it may be processed before a judicial or an administrative authority; what is relevant is that the respective procedure have a materially administrative nature and, ideally, that the procedure be materially and formally administrative, which means processed before a formally administrative authority, in an administrative proceeding, since such a procedure would imply fewer formalities and delays than a judicial procedure.
- p.60 This Court is convinced by the above that the regulation that requires CLM to carry out a procedure for the adjustment of self-perceived gender identity before the Judicial Branch is unconstitutional and should not be applied; rather, in all cases, a formally and materially



administrative procedure before the Civil Registry should be permitted to adjust her gender identity.

Consequently, given the unconstitutionality of the analyzed article, the Civil Registry should process the request made by the affected party to adjust the sex or gender on the birth certificate, for which purpose such authority must adhere to certain standards.

The necessary characteristics of a procedure for adjusting self-perceived gender identity in order for it to be appropriate for that purpose and consistent with the standards indicated by both this Court and the IACHR in its Consultative Opinion OC-24/17 must be understood.

p.61 In this regard, the IACHR has indicated that, regardless of the formal nature (judicial or administrative) of the procedures for the change of name, adjustment of image and correction of the reference to sex or gender, they must comply with the following five requirements:

**1. Procedure focused on the full adjustment of the self-perceived gender identity**

p.63 In addition to the name, which is just one element of identity, these procedures must focus on the full adjustment of other identity components so that they reflect the self-perceived gender identity of the interested persons. Therefore, they must permit changing the registration of the name and, if applicable, adjust the photographic image, and correct the registry of gender or sex, in both the identity documents and the registries that are relevant for the interested parties to exercise their rights.

p.63-64 The State must ensure that the changes of a person's information made before the civil registries are updated in any other documents and institutions without requiring the involvement of the petitioner, so that person is not submitted to unreasonable burdens for adjusting their self-perceived gender identity in all the relevant registries.

p.64 On this point the Plenary of this Court, when ruling on *Amparo Directo* 6/2008, held that if a complete adjustment of gender identity is not permitted through issuance of new identity documents, this would require trans people to show a document with information that would reveal their condition as a trans person, without the full recognition of the person he or she really is, generating a tortuous situation in their daily life, which



unquestionably affects their emotional or mental state and, therefore, their right to full health.

**2. Procedure based solely on the free and informed consent of the petitioner without demanding requirements such as medical and/or psychological or other certifications that could be unreasonable or pathological**

p.65 The regulation and implementation of these processes must be based solely on the free and informed consent of the petitioner. Thus they must rest on the principle that gender identity is not proven. Therefore, States must respect the physical and psychological integrity of people, legally recognizing the self-perceived gender identity without any obstacles or challenges by third parties or abusive requirements that may be violations of human rights.

p.66 In this regard, any medical, psychological or psychiatric certificates that an authority or law requires in this type of procedure are invasive and question the identity assignment chosen by the person, since they are based on the presumption that having an identity contrary to the sex that was assigned at birth is a pathology. Therefore these types of requirements or medical certificates contribute to perpetuating the prejudices associated with the binary construction of masculine and feminine genders, and therefore they should not be required.

Regarding the requirements of good conduct or police certificates, the Plenary of this Court indicated in the *Amparo Directo* 6/2008 that while they may have a legitimate purpose, such as not eluding the law, they result in a disproportionate restriction by unreasonably transferring an obligation of the State, which is the unification of the registries containing the identity information of people, to the petitioner of the proceeding.

p.67 Therefore, the protection of third parties and public order must be guaranteed through different legal mechanisms that do not imply, permit or result in the diminishment, harming or sacrifice of people's fundamental rights. Otherwise, the essential core of the free development of personality, the right to privacy and intimacy, the right to personal and sexual identity, the right to health and, consequently, the dignity of people and their right to equality and non-discrimination would be affected.

**3. The respective proceedings must be confidential. In addition, the changes, corrections or adjustments in the registries and the identity documents should not reflect the changes according to gender identity**

p.68-69 Undesired publicity of a gender identity change, consummated or in progress, can put the petitioning persons in a situation of greater vulnerability to acts of discrimination against them, against their honor or reputation and, in the end, can be a greater obstacle to the exercise of other fundamental rights.

p.69 In that regard, both the proceedings and the corrections made to the registries and identity documents according to self-perceived gender identity should not be accessible to the public nor appear on the identity document itself.

p.70 The Plenary of this Court has already ruled that if the information concerning the name and sex of people who changed their gender identity on their documents, including the birth certificate, is maintained as originally registered at birth and just a marginal note is inserted of the decision that granted the correction, with the consequent publicity of that information, their fundamental rights to human dignity, equality and non-discrimination, intimacy, privacy, image, personal and sexual identity, free development of personality and health, are violated, because the marginal note propitiates that such persons must exteriorize in even the most simple activities of their lives their former condition, generating potential discriminatory acts toward their person.

**4. The adjustment procedures must be expedited, and to the extent possible, should be free of charge**

p.71 The IACHR has indicated that the reasonable duration of a proceeding, whether judicial or administrative, is determined by, among other elements, the impact of the duration of the proceeding on the legal situation of the person involved in it.

p.72 Therefore, the degree of impact this type of procedure to change a name and adjust the self-perceived identity of people can have is of such magnitude that it should be carried out as quickly as possible.

In addition to this, the procedures related to registration processes should be free or the least onerous possible for the people interested in them, in particular if they are poor and

vulnerable; this is because pecuniary requirements for accessing a right should not result in a denial of its exercise.

**5. The procedures should not require proving surgical and/or hormonal operations**

p.72-73 Gender identity is not a concept that should be systematically associated with physical transformations of the body, since trans people construct their identity independently of a medical treatment or surgical interventions.

p.73 In line with the above, the procedure for requesting a name change and adjustment of the image of the reference to sex or gender in the registries and identity documents cannot require that total or partial surgical interventions be carried out or hormonal therapies, sterilizations or body changes to support the request, since this is contrary to the right to personal integrity, and would imply conditioning the full exercise of various rights, among them the right to privacy and the right to freely choose the options and circumstances that give meaning to one's existence.

p.74 Health, as part of the right to personal integrity, also covers the freedom of all people to control their health and their body and the right not to suffer interferences, such as be submitted to torture or treatments and medical experiments not consented to.

**DECISION**

p.78 CLM is granted the *amparo* and protection of the federal law with respect to the regulation that requires her to carry out a procedure for the adjustment of self-perceived gender identity before the Judicial Branch, so that she be permitted to make use of a formally and materially administrative procedure before the Civil Registry. The rest of the articles whose constitutional regularity is disputed should also not be applied.

p.79 The constitutional protection granted here extends to the act of application of the challenged regulations (response to the request for adjustment of the birth certificate); therefore, the Civil Registry shall process the request that was made by CLM in order to adjust her birth certificate regarding the self-perceived gender identity.

Furthermore, for the administrative procedure to be appropriate and fully comply with the indicated standards, once the administrative procedure is concluded, a new birth certificates must be issued that reflects the relevant changes but without evidencing the

prior identity, and the original birth certificate should be reserved and no record will be published or issued, except with a judicial order or ministerial request.

p.80 To guarantee that the persons who request the adjustment of their gender identity do not thereby evade obligations or responsibilities undertaken with the former identity, the Civil Registry may send official notices indicating the adjustment of the identity (obviously as reserved information) to the different Ministries and Federal or State bodies that need to know of the change of identity due to the rights and obligations contracted by the person requesting the proceeding.