



**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.

**LEGAL TERMINATION OF PREGNANCY OF A FETUS WITH CONGENITAL DISORDERS  
CONCEIVED AS A CONSEQUENCE OF RAPE  
(INTERRUPCIÓN LEGAL DEL EMBARAZO DE UN PRODUCTO CON ALTERACIONES  
CONGÉNITAS CONCEBIDO COMO CONSECUENCIA DE UNA VIOLACIÓN SEXUAL)**

**CASE:** *Amparo en Revisión* 601/2017

**REPORTING JUDGE:** José Fernando Franco González Salas

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

**DATE OF DECISION:** April 4, 2018

**KEY WORDS:** Right to health, victims' rights, right to personal integrity, sexual and reproductive rights, legal termination of pregnancy, abortion, rape, congenital disorder, cruel and inhuman treatment, direct victims, indirect victims, full redress for the harm.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión* 601/2018 Second Chamber, José Fernando Franco González Salas, J., decision of April 4, 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%20601\\_2017.pdf](https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emplematicas/sentencia/2020-01/AR%20601_2017.pdf)

**SUGGESTED CITATION FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en revisión* 601/2017, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 601/2017

**BACKGROUND:** MPA, a minor, was a victim of rape and, as a consequence, became pregnant. The crime was formally reported to the Morelos Public Prosecutor. Sometime later a medical evaluation diagnosed that the fetus had severe hydrocephaly, which implied a high risk pregnancy. For these reasons, the minor and her mother requested the termination of the pregnancy from both the authorities of the Cuernavaca General Hospital (the Hospital) and the Specialized Prosecutor of Sexual Crimes of Morelos (the Prosecutor). The Bioethics Committee of the Hospital analyzed the request and determined that there was no medical justification for terminating the pregnancy since although the fetus had a congenital malformation, the life of the mother was not at risk and, without waiting for the response of the Prosecutor, ordered MPA's discharge. The minor and her parents filed an *amparo indirecto*. The Morelos district court that heard the matter granted the *amparo*, but only because the Bioethics Committee did not duly support its conclusion. The minor and her parents also filed a motion for review of this ruling, which the Second Chamber of Mexico's Supreme Court of Justice heard through the exercise of its power to assert jurisdiction over a matter.

**ISSUE PRESENTED TO THE COURT:** Whether the failure to authorize the legal termination of a pregnancy resulting from rape and where the fetus also had a congenital disorder was a serious human rights violation of a minor – directly – and of her parents – indirectly.

**HOLDING:** The *amparo* was granted for essentially the following reasons. According to the current law regarding victims, the State is obligated to guarantee every rape victim access to voluntary pregnancy termination services in all cases permitted by the criminal laws. According to the Morelos Criminal Code, abortion is not punishable when the pregnancy is the result of rape and when, in the judgment of a medical specialist, congenital or genetic disorders of the fetus resulting in serious physical or mental problems from conception are diagnosed, as long as the pregnant woman consents. In this context, since the authorities knew that the pregnancy was the direct consequence of a rape from the beginning, there was a clear disregard of the local criminal law and regulations related to victims and, therefore, there was a serious violation

of the human rights of MPA by extending her suffering and the physical and psychological harm she suffered as a result of the crime. This violation becomes even clearer, due to the fact that the state criminal legislation excludes criminal liability when, as in this case, there is the presence of a fetus' congenital disorder, Thus, the minor was recognized as direct victim and her parents as indirect victims, and the corresponding authorities were ordered to register them in the national and state victims' registry, to give them access to the resources of the respective fund and to declare the measures of restitution, rehabilitation, compensation, satisfaction and non-repetition that are considered appropriate, in order to guarantee the full redress of the harm done.

**VOTE:** The Second Chamber ruled on this issue by five unanimous votes of judges Alberto Pérez Dayán, Javier Laynez Potisek (reserved the right to issue a concurring opinion), José Fernando Franco González Salas (reserved the right to issue a concurring opinion), Eduardo Medina Mora I. and Margarita Beatriz Luna Ramos (issued her vote against considerations).

The votes formulated may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=218421>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 601/2017

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court (this Court), in session of April 4, 2018, issues the following decision.

### BACKGROUND

p.4 By formal complaint filed on November 30, 2015, the minor MPA informed the Agent of the Investigating Public Prosecutor assigned to the Attorney General's Office of the State of Morelos (Attorney General), the crime of rape committed against her by CCC. In the declaration of the minor made on December 8<sup>th</sup> of that year, she indicated that she was pregnant as a result of the cited crime.

p.5 A medical examination of January 9, 2016 ordered by the perinatology unit of the General Hospital of Cuernavaca in the State of Morelos (General Hospital), diagnosed that the minor was 17 weeks pregnant, and pointed out that the fetus suffered from hydrocephaly, which implied a high-risk pregnancy. Such diagnosis was confirmed on January 15<sup>th</sup>.

p.4-5 Subsequently, the minor and her mother LAM requested the termination of the pregnancy since it was the result of rape and, in addition, the fetus had a congenital disorder. The General Hospital notified the Attorney General of the medical-legal case on January 15, 2016; on the same date, MPA was asked for her informed consent to carry out the abortion or D and C, and both parents also signed that document.

p.5-6 On January 28<sup>th</sup>, a meeting was held of the Bioethics Committee of the General Hospital (Bioethics Committee), the minutes of which show that it was expressly determined that, having analyzed the clinical case of the patient MPA, no medical justification was found for terminating the pregnancy. Therefore, since the mother did not present any pathology, she was released from the hospital since staying there implied a risk to her health.

p.6 By communication of February 5, 2016, sent to the patient MPA, the doctor CFM as head of gynecology and obstetrics of the General Hospital, stating the medical history of the minor, indicated that after an analysis of her clinical file, he concluded that she was a patient with a normally progressing pregnancy which, although the fetus has a congenital

malformation, did not put at risk the life of the mother, so there was no basis or legal requirement for its termination.

LAM and FPR, as mother and father of the minor MPA, in their own right and in her representation, filed an *amparo indirecto* against this decision, arguing that the minor was the victim of a serious violation of her human rights, facing cruel and inhuman acts akin to torture, for being obligated to keep a pregnancy resulting from rape and also suffering from a congenital disorder.

p.7-9 On April 22, 2016, the district judge of Morelos that heard the matter issued a decision to grant in part and deny in part the *amparo* requested in order for the Bioethics Committee to invalidate the “Minutes of the Work Meeting of the Bioethics Committee” of January 28, 2016 and to issue another determination reaching the same or a different conclusion but purging the formal defects.

p.9-10 LAM, FPR and MPA, the affected parties, filed an appeal and the federal collegiate court that took up the matter ruled to request this Court to exercise its jurisdiction over the case, which it decided to exercise in order to hear the case.

### **STUDY OF THE MERITS**

P.14-15 The substantive dispute that this Court must resolve is to establish whether there was a serious violation of the human rights of the minor – directly - and of her parents – indirectly – by not permitting the minor to terminate the pregnancy that resulted from a rape and whose fetus suffered from a congenital disorder; which would then result in the recognition of MPA and her parents as victims (direct and indirect).

p.16 This Court will analyze whether MPA’s request to terminate the pregnancy resulting from rape, pursuant to the Criminal Code of the State of Morelos (state Criminal Code), was excluded from criminal liability for abortion and, therefore, if the authorities indicated as responsible were obligated to carry it out, this unavoidably implying that, if the legality of the intended termination is proven, the refusal to do so in this case was a serious violation of the sexual and reproductive rights of the minor.

Article 119 of the state Criminal Code establishes that abortion is not a crime when the termination of the pregnancy is requested because the pregnancy is the result of a rape or because the fetus has congenital or genetic disorders confirmed by a medical specialist that result in serious physical or mental disorders, this latter at the consent of the woman.

p.18 Under articles 30 and 35 of the General Victims Law [Ley General de Víctimas (LAGV)], the victim of a serious violation of human rights, such as rape, has the right to emergency medical, odontological, surgical and hospital services, which include the services of termination of the pregnancy in the cases permitted by the law, with absolute respect for the wishes of the victim. Furthermore, the State is obligated to guarantee all victims of rape access to services of emergency contraception and voluntary termination of the pregnancy in the cases permitted by the law.

p.18-19 In addition, articles 3 and 4 of the Services and Redress for Victims of Crime and Violations of Human Rights Law for the State of Morelos [Ley de Atención y Reparación a Víctimas del Delito y de Violaciones a los Derechos Humanos para el Estado de Morelos (state Victim's Law)] determine that the provisions contained in that law shall be interpreted in conformity with the Federal Constitution, the international instruments and the LGV, always favoring the broadest protection of the rights of the victims of one or more crimes. Therefore it is clear that articles 30 and 35 of the LGV require the state entity to provide the health service of termination of a pregnancy resulting from rape.

p.19 Based on the above, in this case of a request for termination of a pregnancy caused by rape, the State of Morelos, through its public officers, is obligated to provide the medical services of abortion, and refusing to do so, if proven, without a justified cause, is a clear disregard of both the state criminal law and the LGV, regarding the rights of a victim of rape, and is *per se* a serious violation because it extends the suffering and physical and psychological harm of the woman resulting from the criminal act.

In this regard, the health authorities that treat women who are victims of rape and become pregnant as a result of that crime, must efficiently and immediately attend the request, in order to prevent the continuation of the physical, psychological and other consequences

of the sexual aggression. This means not only providing the medical attention and observation necessary, but also carrying out the legal termination of the pregnancy.

p.20-21 This Court considers that, in light of the documents in this court record, serious acts violating the human rights of the minor MPA have been proven, given that the state authorities, from the first moment, knew that the pregnancy was the direct consequence of a rape suffered by the minor and they knew of the formal complaint she had filed.

p.22-23 This is so because the medical authorities expressly refused to perform the abortion when it was a direct consequence of a rape. That implies actions that subverted the very spirit of article 1 of the Constitution, since the refusal is a violation of human rights because it permitted the continuation of the consequence of a sexual aggression suffered by the minor. And they cannot argue the lack of legal authorization to carry out the abortion, since they had the obligation to wait for such ruling in order to make the corresponding decision and, if such authorization was not issued as rapidly as it should have been (as occurred in this case), to use their own authority to process their own decision before the Attorney General. This is because every authority is obligated to ensure the protection and enforcement of human rights, especially when, as in this case, the victim is a minor.

p.23 The violation of human rights is even starker with their refusal, in clear disregard of the state law that binds them, to carry out the abortion even when another element excluding liability had been proven, which was the presence of a serious congenital disorder in the fetus in the judgment of a medical specialist that diagnosed it, in which case the consent of the pregnant woman was sufficient.

p.23-24 In this particular case, the serious congenital disorder was timely diagnosed by the treating physicians. However, even though it was therefore enough to have the consent of the minor to carry out the abortion, the Bioethics Committee ignored that circumstance and, without any justification, determined that there was insufficient reason shown for the need to terminate the pregnancy and, with even greater incongruence, the doctor CFM argued that the continuation of the pregnancy did not imply a risk to the life of the woman,

contrary to all the declarations in this court record of the those in his area which qualify the pregnancy as high risk; which directly violates the rights of the minor involved.

## DECISION

- p.14 This Court considers that acts were carried out by the authorities assigned to the General Hospital, and by the authorities of the Health System, all of the State of Morelos, and of the Specialized Investigator of Sexual Crimes – for obvious delay in an emergency – which permitted the permanency and materialization of serious violations of the human rights of the minor, by denying her the termination of the pregnancy.
- p.24-25 In that regard, in the judgment of this Court, the first inherent effect of granting the *amparo* is to recognize that MPA is a direct victim, given that, as a consequence of the serious violating acts, her rights were seriously harmed; and that her parents LAM and FPR are indirect victims, as established in the LGV. This is because they are direct family members of a minor who have taken responsibility in support and protection of the minor in the situation in which the minor was unfairly placed, harming their rights, to a different degree but still seriously.
- p.25 In this context, the mere declaration as a victim of a competent authority has the inherent effect of giving the victim access to the resources of the Fund for Aid, Assistance and Full Redress, according to the parameters established for that purpose, and full redress for the harm caused with the victimizing act.
- p.25-26 Therefore, it is appropriate to establish the measures necessary for the full redress of the harm, according to the guidelines that have been established internationally and that are fully reflected in the internal law. In this regard, the victims have a right to timely, full, differentiated, transforming, comprehensive and effective redress for the harm they have suffered as a consequence of the victimizing crime or act that has affected them or of the violations of human rights they have suffered, including measures of restitution, rehabilitation, compensation, satisfaction and measures of non-repetition.
- p.26 Thus, full redress of the harm implies:



- ❖ Restitution: it is sought to return the victim to the situation prior to the commission of the crime or the violation of her human rights;
- ❖ Rehabilitation: it is sought to facilitate the victim in facing the effects suffered from the punishable act or the violations of human rights;
- ❖ Compensation: granted to the victim in a manner appropriate and proportional to the seriousness of the punishable act committed or the violation of human rights suffered and having in mind the circumstances of each case. This will be granted for all the harm, suffering and losses economically assessable that are a consequence of the crime or the violation of human rights;
- ❖ Satisfaction: it is sought to recognize and reestablish the dignity of the victims;
- ❖ Measures of non-repetition: it is sought to ensure that the punishable act or the violation of human rights suffered by the victim does not occur again.

p.26-27 Taking into account those parameters, it is important to indicate that the first measure – restitution – , due to the nature of the violation of rights and the circumstances of this case, is not satisfied with restitution, in that it is not possible to return things to the state they had before the violation. The denial of the abortion (without a justified cause) with respect to a pregnancy resulting from rape, when such termination is permissible in terms of the applicable criminal law, constitutes a serious violation of human rights, which implies in itself generating continuity in the harm caused to the victim, obligating her to carry the pregnancy to term.

p.27 At the time this appeal is resolved, the date estimated for the minor MPA carrying the pregnancy to term has been reached, and there is nothing in this court record that indicates whether the conception of the fetus was viable or whether the minor was able to terminate the pregnancy by other means. Therefore, in neither case would restitution be feasible, since the effects of the refusal to carry out the termination as an act in violation of sexual and reproductive rights of the minor immediately apply in the legal sphere of the victim. Thus, a victimizing act occurred, which is extended from the denial and for the entire time the denial of abortion continues, without any other ruling of the authorities

involved, and if one does exist, it would be after the estimated date of the term of the pregnancy, which implies the material impossibility of restitution.

p.28 While restitution for the violated right is materially impossible, this does not mean this final *amparo* decision cannot have any effect.

Pursuant to the above, MPA and her parents, LAM and FPR, should be granted the measures for full redress of the harm, which means the measures of rehabilitation, compensation and those of satisfaction and non-repetition, contemplated in the LGV that are applicable.

p.31-32 Therefore, given the broad list of possible measures that the victims' protection authority could declare in order to comply with the granting of the *amparo* and, thereby guarantee the full redress of the serious violation of human rights caused, this Court may order pursuant to the LGV, that the Executive Victims Care Commission [Comision Ejecutiva de Atencion a Victimas (CEAV)], in the terms established in the law and its regulation, to request, obtain or coordinate the actions necessary to ensure the full redress of the harm caused by the violation.

p.32 The authorities subject to compliance with this ruling will carry it out in light of the mandate to pursue full redress and the fact that it involves a serious violation of human rights against a minor and, since it involves a matter of sexual violation against a woman, its decisions are circumscribed by the principle of a differentiated and specialized focus, which is to say that a greater situation of vulnerability by reason of age and gender is recognized in this specific case.

p.32-33 In addition, the CEAV shall ensure that the full redress establishes measures of non-repetition that prevent the occurrence of serious violations of human rights such as those found in this final decision, such that the authorities of all levels and areas must effectively, immediately and without objections attend the requests for termination of a pregnancy resulting from a sexual violation, privileging the rights of every woman that has been a victim of cruel and inhuman acts such as a sexual violation.

p.33 Their recognition as victims – direct and indirect – in this matter requires their immediate registration in the National Victims Registry, which includes the state registries (in this case, the Sole Registry of Victims of Morelos) and the direct consequences thereof.

Finally, the victims' protection authority, at the time of individualizing the measures necessary for the full redress, shall exercise all its powers to determine whether the pregnancy was carried to term or the minor was able to terminate it, in order to establish the necessary parameters for a fair redress.

p.33-34 The above does not release the responsible authorities from obligations, as they must immediately send the complete and full clinical and administrative files of the minor which will allow the CEAV to have the elements necessary for the full redress of the direct and indirect victims, and to cooperate with the executive body in question to have the elements necessary for the full redress of the petitioners and complete without any delay each and every one of the measures imposed.