

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.

**DOUBLE SHIFT  
(DOBLE JORNADA LABORAL)**

**CASE:** *Amparo Directo en Revisión 4883/2017*

**REPORTING JUSTICE:** Arturo Zaldívar Lelo de Larrea

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

**DATE OF THE DECISION:** February 28, 2018

**KEY WORDS:** Double shift, compensation, housework, domestic activities, professional work, equality, retroactive application, indemnification, compensatory mechanism, conspicuously inferior assets, unpaid work.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 4883/2017*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of February 28, 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/2022-01/ADR4883-2017.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt of the *Amparo Directo en Revisión 4883/2017*, Mexico.

## SUMMARY OF AMPARO DIRECTO EN REVISION 4883/2017

**BACKGROUND:** L (wife) and J (husband) divorced in 2010. L sued J for payment of compensation of 50% of the value of two pieces of real estate. This is considering that during the 40 years of their marriage, L devoted herself predominantly to domestic work and the care of their three daughters. The judge decided that the compensation had no grounds because the plaintiff did not meet the conditions for compensation established in Article 267 of the Civil Code in force until June 24, 2011 (the Civil Code). L appealed the trial court decision. She pointed out that the judge should have retroactively applied section VI of article 267 of the current Civil Code, which establishes more favorable premises. The Appellate Chamber upheld the judge's decision. L filed an *amparo directo* against this decision. She argued that the article was disproportionate and discriminatory. The Collegiate Circuit Court denied the *amparo* because it considered that the provision did not impose disproportionate requirements, nor any arbitrary and unjustified element. L filed a *recurso de revisión* against the decision denying her the *Amparo*, which was heard by the First Chamber of the Supreme Court (this Court).

**ISSUE PRESENTED TO THE COURT:** Whether in order to access the compensatory mechanism, the spouse requesting it must provide proof that he/she was exclusively dedicated to the care of the household and children throughout the term of the marriage.

**HOLDING:** The decision was overturned essentially for the following reasons. The interpretation of the challenged article is contrary to the principles of equality and equity pursued by the institution of compensation. This Court ruled that the article is constitutional if it is interpreted that the wording of the provision "*has been dedicated to carrying out the housework of the household and the care of any children*" does not imply requiring the petitioning spouse to prove that he/she was dedicated "exclusively" to domestic work, since this would distort, on the one hand, the nature of the compensation mechanism and, on the other, the recognition of the double shift.

**VOTE:** The First Chamber decided the case with the unanimous vote of the four justices Norma Lucia Piña Hernandez, Arturo Zaldívar Lelo de Larrea, Jose Ramon Cossío Diaz and Jorge Mario Pardo Rebolledo. Alfredo Gutierrez Ortiz Mena was absent.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=221697>

## EXTRACT OF THE *AMPARO DIRECTO EN REVISION* 4883/2017

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of February 28, 2018, issues the following decision.

### BACKGROUND

p.2 J (husband) sued L (wife) for the dissolution of their marriage. On January 8, 2010, the divorce was declared valid and, with the failure to reach a settlement agreement, the rights of the parties were reserved to be asserted in an ancillary proceeding.

p.2 On February 10, 2015, L filed an ancillary proceeding for payment of compensation in which she demanded from J the payment of 50% of the value of two pieces of real estate. She supported her claim arguing that for 40 years she devoted herself predominantly to the work of the household and the care of their three daughters.

p.2-3 The trial judge issued a decision on August 12, 2016, in which she determined that the compensation claimed had no grounds. She considered that the premises of the compensation referred to under article 267 of the Civil Code, applicable to the case, were not proven given that the divorce was declared in 2010.

p.3 L appealed the decision of the trial court. She pointed out that the decision was confusing and ambiguous and that it did not address the principles of progressivity, effective judicial protection, and *pro homine*.

p.4 The Appellate Chamber issued a ruling on February 2, 2017, in which it upheld the first decision.

p.4-5 L filed an *amparo* lawsuit against the Appellate Chamber decision. She argued that section VI of Article 267 of the Civil Code, in force until the June 2011 reforms, was disproportionate and discriminatory.

p.5 The Collegiate Circuit Court hearing the case issued a decision on June 22, 2017, in which it denied the *amparo*.

- p.7 L filed a *recurso de revisión* before this Court against the decision denying her the *amparo*. In her brief she stated that the collegiate body failed to rule on the issue of constitutionality.
- p.8 The Collegiate Circuit Court interpreted section VI of article 267 of the Civil Code. It decided that the premises established by the provision for access to the compensatory mechanism do not violate the principles of equality and equity that govern the institution of compensation. This is a constitutionality issue.

This Court took the case and turned the case file over to Justice Arturo Zaldívar Lelo de Larrea.

### STUDY OF THE MERITS

- p.9 A constitutionality question was raised in the case. The problem resolved by this Court was whether the interpretation of the Collegiate Circuit Court of section VI of article 267 of the Civil Code addresses the principle of equity that governs the institution of compensation.

This issue, moreover, was important because it allowed this Court to establish criteria on the principle of equity with respect to the institution of compensation between spouses who, in addition to the care of the household and children, carried out remunerated activities (double shift).

#### **I. Purpose of the compensatory mechanism and its connection with the recognition of the double shift**

The institution of compensation is an inequality mitigating mechanism that can be requested when one of the spouses, for different reasons, assumes certain domestic and family burdens in greater proportion, without receiving financial remuneration in return.

- p.10 The indemnification is an instrument that aims to correct the situations of unjust enrichment and impoverishment perceptible at the time of the dissolution of a certain patrimonial economic regime.

p.11 This mechanism vindicates the value of domestic and care work, long visible in our society, ensuring the equality of rights and responsibilities of both spouses regarding the marriage, during the marriage and in case of its dissolution.

The purpose of the institution of compensation is to ensure the equality of rights of the spouse who, upon assuming the domestic and family responsibilities, failed to develop professionally in the conventional labor market with the same time, intensity, and diligence as the other spouse.

The characteristics that govern this institution are: (i) it is restorative in nature; (ii) it can be requested and stipulated for either spouse who has reported an economic imbalance due to having engaged in domestic and care work; (iii) it only operates with respect to property acquired during the marriage; (iv) the burden of proof lies with the requesting party and, when in doubt, the judge should assume an active role in the process.

p.14 The modality of housework may consist of: (i) material execution of household tasks; (ii) material execution of tasks outside the home but linked to the organization of the household and obtaining goods and services for the family; (iii) performance of functions of direction and management of the household economy, and (iv) care, upbringing, and education of the children.

After the analysis of section VI of article 267 in force until June 2011, it is necessary to conclude that, in order to evaluate the premise of access to compensation, it is not decisive that the applicant spouse dedicates him or herself exclusively to domestic tasks, since there is a multiplicity of activities that are the parameter for calibrating the material execution and the time dedicated to family work.

p.14-15 The "double shift" consists precisely of the recognition that some women, in addition to having a job or profession, also carry out work activities within the home and of childcare. Normally, this domestic work is unpaid and represents an opportunity cost for women.

p.16 Some women spent more time than their partners in domestic work and were not paid for it, were unable to develop professionally on an equal footing with their former spouses and thus were unable to acquire the same amount of assets. Failure to recognize this situation and the costs to women would mean, precisely, making invisible the value of domestic work without considering the effort for time devoted to unpaid work (domestic work).

## **II. Constitutionality of section VI of article 267 of the Civil Code of Mexico City**

p.16 This Court rules on the constitutionality of section VI of article 267 of the Civil Code.

p.17 The article is constitutional if it is construed that the wording of the provision “*has been dedicated to carrying out the work of the household and, if applicable, the care of the children*” does not imply requiring the applicant spouse to prove that she or he was dedicated “exclusively” to domestic work, since this would distort, on the one hand, the nature of the compensation mechanism and, on the other, the recognition of the double shift.

The compensatory mechanism may be accessed when applicant spouses prove that they have dedicated themselves to domestic work and, when applicable, to the care of children, even when they have devoted some proportion of their time to paid work outside the home. The applicants only have to prove that for some time they devoted themselves to domestic tasks and that this made it impossible for them to acquire their own assets or that those assets are conspicuously inferior to those of their spouse, regardless of whether they have carried out other types of work outside the household.

The judge must evaluate the modality of domestic work and the time used for these tasks, whether it was full-time, double shift or both spouses shared the domestic work in the same intensity.

## **III. Analysis of this case**

p.17-18 The Collegiate Circuit Court that decided the case indicated that the provision did not contain discriminatory treatment; that, on the contrary, the legislator sought to adapt the provision to the social reality that has prevailed in Mexican society in order to balance the economic regime of marriage.

The Collegiate Court explained that it was essential to prove having been dedicated to the household and children for the entire duration of the marriage and that, in this regard, it was not feasible to separate or divide that period into two stages, since the legislator's intention was to protect the balance of the matrimonial economic regime for the entire time it lasted.

It is seen from the foregoing that the collegiate body interpreted section VI of article 267 of the Civil Code contrary to the constitutional purposes pursued by the institution of compensation.

p.18-19 The purpose of the compensation is to equalize the rights of the spouse who, when assuming the domestic and family burdens, did not manage to develop professionally in the labor market with the same time, intensity, and diligence as the other spouse, causing a detriment to his or her assets. The premise "has been dedicated to carrying out the work of the household and, if applicable, the care of the children" is applicable in those cases in which a situation of inequality between the spouses persists that has to be mitigated through the compensatory mechanism, either because the applicant spouse was dedicated exclusively to the household or because he or she worked a double shift.

## **DECISION**

p.19 Based on the foregoing, the decision of the Collegiate Circuit Court is overturned so it may issue another one in which the institution of compensation and the recognition of the double shift are applied. It must: (i) determine whether the applicant predominantly dedicated herself to the household, even if she had performed other professional activities; (ii) determine whether devoting herself to domestic activities to a greater extent than her





ex-spouse generated some opportunity cost for her; and (iii) with free jurisdiction establish the percentage of compensation, if any, that corresponds to the plaintiff.