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## **CHARGING OF UNIVERSITY ENROLLMENT FEES (COBRO DE CUOTAS DE INSCRIPCIÓN EN LA UNIVERSIDAD)**

**CASE:** *Amparo en Revisión 750/2015*

**REPORTING JUSTICE:** Norma Lucía Piña Hernández

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

**DATE OF THE DECISION:** April 20, 2016

**KEY WORDS:** Right to education, higher education, cost-free, academic freedom, autonomous public universities, principle of progressive realization, enrollment fees, personal autonomy, local constitution and limitation on the right to education.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 750/2015*, First Chamber, Norma Lucía Piña Hernández, J., decision of April 20, 2016, 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/AR750-2015.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Center for Constitutional Studies of Mexico's Supreme Court of Justice, Extract of the *Amparo en Revisión 750/2015*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 750/2015

**BACKGROUND:** A Decree was published in the Official Gazette of the State of Michoacán that amended the Political Constitution of the Free and Sovereign State of Michoacán de Ocampo (the Constitution of Michoacán). The amendment established the right to receive and the State's obligation to provide basic, high school and college education free of charge. Initially, public high school and college up to the bachelor's degree would require the payment of an enrollment fee. Subsequently, the Government of the State of Michoacán (the Government of Michoacán) executed a collaboration agreement with a University to implement cost-free high school and college education. The Government of Michoacán agreed to cover the enrollment expenses of the student community at the high school and college level during the academic years of 2011-2012 and 2012-2013. However, the Government of Michoacán did not renew the agreement for the academic years of 2013-2014 and 2014-2015. The University maintained the subsidies for the enrollment fees during those academic years but announced students would be charged enrollment fees beginning in the academic year "February 2014-August 2014". Therefore M, a student at the University, filed an *Amparo indirecto* lawsuit against the acts of the Governor and the University authorities, arguing that her right to a free education was violated. The judge hearing the case issued a decision granting the *amparo* to M. The University authorities filed a *recurso de revisión* which was taken up by Mexico's Supreme Court of Justice (this Court) when it was asked to exercise its authority to assert its original jurisdiction.

**ISSUE PRESENTED TO THE COURT:** Whether charging enrollment fees in the University, as a result of the failure to renew a collaboration agreement that established cost-free high school and college education in accordance with the Constitution of Michoacán is constitutional in accordance with the rules that govern the right to education and the principle of progressive realization of human rights.

**HOLDING:** The challenged decision was confirmed and the *amparo* granted to M for the following reasons. It was decided that the State of Michoacán, in view of the Constitution of Michoacán was obligated to offer cost-free higher education, which included the University. In

addition, it was determined that academic autonomy is an institutional guarantee intended to protect academic freedom which implies the powers of self-regulation, self-governance and free administration of its assets. However, academic autonomy, generally, cannot be invoked to frustrate or restrict the cost-free nature of higher education. Furthermore, due to the principle of progressive realization, once the State of Michoacán extended free higher education it was prohibited from adopting regressive measures that were not justified by exceptional conditions. Therefore, the burden of proving the exceptional conditions must fall on the authorities. Notwithstanding, in this case the University authorities did not offer any evidence that would sufficiently justify charging enrollment fees for high school and college education. Consequently, it was determined that the University authorities violated, to M's detriment, the right to a free higher education established in article 3 of the Federal Constitution and developed in article 138 of the Constitution of Michoacán, as well as the principle of progressive realization established in article 1 of the Federal Constitution. Therefore, the *amparo* was granted to M ordering the Governor and the University authorities to guarantee that the education she receives would be free, which means her enrollment fees would be covered up to the bachelor's degree level, thereby avoiding the violation of her right to a cost-free higher education.

**VOTE:** The First Chamber decided this case unanimously with four votes of the justices Norma Lucía Piña Hernández, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz (reserved the right to issue a concurrent opinion) and Alfredo Gutiérrez Ortiz Mena. Justice Jorge Mario Pardo Rebolledo was absent.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=182888>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 750/2015

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of April 20, 2016, issues the following decision.

### BACKGROUND

p.2-3 On August 6, 2010, Decree number 213 (the Decree) was published in the official gazette of the State of Michoacán. The Decree reformed and added articles 138 and 139 of the Political Constitution of the Free and Sovereign State of Michoacán de Ocampo (the Constitution of Michoacán). The modification of the constitutional text established the right of every individual to receive an education and the corresponding State obligation to offer preschool, elementary, secondary, high school and college education. It was also established that all the education offered by the State would be free.

The obligations resulting from the Decree would be complied with gradually and progressively. Initially, public high school and college educational institutions would be free, except for an enrollment fee.

p.4 On November 30, 2011, the Government of the State of Michoacán (the Government of Michoacán) executed a collaboration agreement with a University to implement free education at the high school and college level. The Government of Michoacán committed to transferring the financial resources to cover the enrollment costs of all the students at high school and college levels registered in the University, during the academic years of 2011-2012 and 2012-2012.

p.8 The Government of Michoacán did not renew the collaboration agreement with the University for the academic years of 2012-2013 and 2013-2013. However, the University maintained the subsidies of the enrollment fees during those academic years.

p.9 On August 29, 2013, the University Council held a session in which it explained that it had not yet been able to renew the collaboration agreement with the Government of

Michoacán. The session also resolved that the semester fee per student would be four hundred twenty pesos (\$420.00 MN).

- p.8-9 In 2014, the subsidy for the enrollment fees was suspended by the University.
- p.9-10 On February 21, 2014, the treasurer of the University informed the university community that students at the high school and college level would be charged enrollment fees beginning in the academic year “February 2014-August 2014”.
- p.10-11 On February 27, 2014, M, a student of the University, filed an *amparo indirecto* lawsuit against the Governor of the State of Michoacán (the Governor), the University and the treasurer and the University Council thereof. She alleged, mainly, that the lack of inclusion of an item in the budget for the fiscal year 2014 to continue transferring financial resources under the collaboration agreement between the Government of Michoacán and the University violates articles 1 and 138 of the Constitution of Michoacán. M also challenged the charging of the enrollment fees to the students of the high school and college levels beginning in the academic year “February 2014-August 2014”.
- p.13-14 On June 20, 2014, the judge hearing the case issued a ruling granting the *Amparo* to M. The effects of the ruling were to free M from the obligation to pay the enrollment fee in the subsequent academic years, to the bachelor’s degree level. The dean and president of the University Council and the treasurer of the University, filed a *recurso de revisión*, which was admitted by the Collegiate Circuit Court on October 15, 2014.
- p.14,19 The dean and the treasurer asked this Court to exercise its authority to assert its original jurisdiction. This decided to do so in order to hear the *recurso de revisión* against the ruling of June 20, 2014.

## STUDY OF THE MERITS

- p.36,38 This t will only decide with respect to the constitutionality analysis of the resolution of the University Council of the University that determined that, beginning with the academic year commencing in February 2014, students in high school and college would have to pay enrollment fees, which resolution was applied to M. This is in light of the grievances asserted by the University authorities in the case.

p.39,41 This Court noted that the following grievances stated by the University authorities are unfounded: (i) the right to education is not absolute; (ii) academic autonomy is violated; and (iii) the failure to focus on the acts of the Governor as well as the University.

**I. Did the appealed ruling fail to analyze the acts claimed against the Governor and only focus on the University?**

p.41-42 While the arguments of the disputed ruling principally allude to the challenged acts of the University, the appealed ruling did determine that the challenged act of the Governor existed. It also specified that the non-admissibility cause (*causal de improcedencia*) invoked was unfounded because no legislative omission was claimed but instead the failure to provide the University with the necessary resources to cover the enrollment fees of the affected party, as ordered in a “general provision”. The effect of granting the *Amparo* would be to exempt M from paying such enrollment fees. Therefore, the arguments supporting the appealed ruling also acknowledge implicitly the granting of the *Amparo* in relation to the challenged act of the Governor.

**II. What is the normative reference that gives substance to the right to education?**

p.43-44 The human right to education is based on various provisions of the Federal Constitution, particularly articles 3 and 4.

p.49-53 The international treaties to which the Mexican State is party that recognize the human right to education are, among others: article XII of the American Declaration of the Rights and Duties of Man; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 13 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, "Protocol of San Salvador", and article 28 of the Convention on the Rights of the Child.

p.54 The aforementioned norms essentially agree that every person has the right to education and that basic education should focus on allowing the autonomy of students and enabling them as members of a democratic society; that basic education (although they differ regarding its scope) should be accessible to all without discrimination, compulsory, universal and free, and the State must guarantee it; that parents have the right to choose

the education given to their children and private individuals to provide it, as long as they respect the minimum content of that right.

p.54-55 The characteristics of the right to basic education are not the same as those applicable to higher education. However, the norms on human rights, specifically article 3 of the Constitution, provide the minimum content of the right that the Mexican State is obligated to guarantee effective immediately, which can and should be extended gradually as required by the principle of progressive realization.

p.55-56 The difference in characteristics established between basic and higher education comes from a systematic reading of the first paragraph and sections IV and V of article 3 of the Federal Constitution.

The constitutional text shows that the minimum configuration of the right to education implies that basic education (preschool, elementary school and middle school) and high school provided by the State must be free, compulsory, universal and secular.

p.57-58 Regarding higher education, a systematic reading of article 3 of the Federal Constitution reveals that it is not compulsory nor, in principle, free since the constitutional rule only imposes on the Mexican State the obligation to promote it to achieve different social objectives.

Nevertheless, the constitutional protection of the right to education must be understood as a minimum. In view of the principle of progressive realization recognized in article 1 of the Constitution, all the authorities of the country, in the scope of their respective competences, have the obligation to gradually develop the content and extent of the human rights recognized in the Constitution and the international treaties the country is party to and are prohibited from adopting regressive measures. Thus, the minimum content of the right to education set forth in the Federal Constitution may be expanded by the State authorities.

p.60 Article 3 of the Constitution establishes that the minimum content of the right to compulsory education (basic and high school) is to provide the intellectual training necessary to bestow people with autonomy and prepare them to be members of a democratic society.



Education is also essential to guarantee a fair society, since it is a condition for ensuring equality of opportunities in the enjoyment of other fundamental rights and in equitable access to other social goods.

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- p.60-62 Education is an indispensable basic asset for the formation of personal autonomy and, therefore, for exercising the right to the free development of personality. The close connection of the right to education with the generation of the necessary conditions for the exercise of the right to personal autonomy conditions the content of education.

Thus, the objective of education should be the development of the capacities of the human being and the promotion of human rights and other democratic values.

- p.63 Another part of the essential content of the right to basic education is to enable people as members of a democratic society. Therefore, the human right to education, in addition to a subjective aspect as an individual right of every person, has a social or institutional dimension since the existence of educated people is a necessary condition for the functioning of a democratic society.

- p.64-65 Regarding higher education, its content is not centered on the formation of personal autonomy, but rather on the materialization of a life plan freely chosen and therefore the purpose of this type of education is the provision of the necessary tools to achieve it.

Higher education is closely related to obtaining particular collective goals, and therefore the promotion obligations of the State cannot be separated from those social purposes whose maximization benefits society diffusely. Thus, higher education is focused on the generation and transmission of specialized knowledge related to different social



professions and fields of knowledge, as well as the development of skills necessary for that purpose, and therefore a free education should prevail, as a guiding principle.

- p.65 The characteristics of the right to education vary in function of whether it refers to basic education or higher education.
- p.65-69 The following aspects should be emphasized from General Observations 11 and 13 of the Committee on Economic, Social and Cultural Rights with respect to the interpretation of the right to education contained in the International Covenant on Economic, Social and Cultural Rights, as well as a systematic reading of article 3 of the Federal Constitution:
- In our legal system, the human right to basic and high school education must be guaranteed by the Mexican State meeting the characteristics of availability, accessibility (non-discrimination, universality, material and economic accessibility), acceptability and adaptability. In addition, this education must be free, since otherwise the requirement of material accessibility would not be satisfied, which would result in discrimination for economic reasons which would deprive those who cannot pay of access to a basic asset for an autonomous life.
- p.70-71 Given that higher education is more linked to the materialization of a life plan, it is justified, at first glance, that it is neither compulsory nor universal nor necessarily free; that academic freedom and the free exchange of ideas prevail; and that the offer relates to the achievement of diverse collective goals related to the development of the Nation.
- This does not mean that arbitrary conditions can be established. Higher education is subjected to the principle of non-discrimination and, therefore, it is prohibited to impose discriminatory access, continuance and conclusion conditions.
- p.72 It is justified to make individuals responsible for the free choice of a life plan that centers on obtaining a higher education. Nevertheless, social and economic differences not attributable to the individuals themselves can frustrate access to a life plan that requires a higher education. Therefore, the Mexican State, without impairing the principle of access based on capacity and non-discrimination, must progressively extend access to higher education on a free basis.

p.72-73 Thus, the Federal Constitution does not require, in principle, that the Mexican State provide free higher education. However, this is compatible with the decision of any authority of the Mexican State, in this case, the State of Michoacán, to also make higher education free. According to the principle of progressive realization, all the authorities of the Mexican State are obligated, among other things, to gradually procure cost-free higher education since that would expand the content of the human right to education.

**III. Is the right to free higher education recognized in a local constitution absolute, or can it be limited without implying a violation of the principle of progressive realization established in article 1 of the Federal Constitution? And if it can be limited, does that decision have to be legally justified?**

p.73-74 This Court holds that, generally, fundamental rights are not absolute and therefore they permit limitations of different degrees, provided they are constitutionally legitimate, necessary, adequate and proportional to the protection of another fundamental right that, in that case, has greater weight than the one limited.

p.74 The principle of progressive realization requires expanding the scope and protection of human rights to the greatest extent possible until achieving their full realization, according to factual and legal circumstances.

p.74-75 As a positive aspect, the principle of progressive realization means for the legislator (whether formal or material) the obligation to expand the scope and protection of human rights. With respect to the executive authority, it implies the duty of interpreting the norms in a manner that expands those aspects of the rights as far as legally possible.

As a negative aspect, it imposes a prohibition on regressivity: the legislator is prohibited from issuing legislative acts that limit, restrict, eliminate or do not recognize the scope and protection that at a given time has already been recognized for human rights. The executive authority is prohibited from interpreting the human rights norms regressively, i.e., attributing to them a meaning that implies disregarding the extension of the human rights and their level of protection previously admitted.

p.76-79 Despite its historical genesis, the principle of progressive realization in our legal system is applicable to all human rights. This is because they all protect basic rights derived from the fundamental principles of autonomy, equality and dignity.

This Court considers that the fundamental right to education is a social right. But regardless of how this human right is qualified, its scope and protection are subject to the principle of progressive realization.

p.81 Thus, the Mexican State has the immediate obligation to ensure an essential level in the enjoyment of the right to education, specifically to guarantee free, universal and compulsory access to basic and high school education. Furthermore, the Mexican State has other obligations of progressive compliance, consisting of achieving the full exercise of this right up to the maximum of the available resources, which implies, among other things, extending a cost-free education to higher education.

p.84,86 This Court concluded that while the right to education is not infinite and, therefore, its scope and protection may be limited in certain exceptional conditions, these must be fully justified and subjected to intense judicial scrutiny.

The authorities must guarantee, protect, promote and respect, as a priority, the full effectiveness of all human rights; and if they do not do this or adopt regressive measures, they have the duty to justify those actions and the burden of proof to demonstrate it.

p.87 Consequently, the answers to the questions raised in this section are: the human right to education, like many fundamental rights, is not absolute. However, given the especially relevant nature of this right for personal autonomy, for the functioning of a deliberative democratic society, for the equality of people and for the social wellbeing in general, any omission or action of the Mexican State that affects this right must be fully justified considering other fundamental rights of similar importance recognized by the Federal Constitution. That action of the State must be subjected to an especially intense scrutiny, in court. The State authority has the burden of clearly proving the absence of resources; that the maximum available resources were used; and/or that this absence is absolute or relative to the satisfaction of another fundamental right of similar relevance, and not that they were applied to just any other social goal.

#### **IV. What is the legal nature, scope and limitations of academic autonomy protected by article 3, section VII, of the Federal Constitution?**

- p.90 This Court maintains that the autonomous public universities are decentralized entities of the State with legal capacity and their own financial resources, whose purpose is to provide public education as established in article 3 of the Federal Constitution.
- p.91 The academic autonomy set forth in section VII of article 3 of the Federal Constitution, with respect to the universities that have that nature, consists of the power to govern themselves respecting teaching and research freedom and the free examination and exchange of ideas. They can also set the terms of hiring, promoting and tenure of their academic staff and are responsible for managing their patrimony.
- p.91-92 The autonomous university is also an institutional design intended to maximize the respect for the principle of academic freedom (teaching and research freedom and free examination and exchange of ideas), a condition for the development and dissemination of knowledge and, therefore, for the satisfaction of the right to higher education. It is important not to confuse academic autonomy, the means, with academic freedom as part of the fundamental right to higher education, the end.
- p.93 Academic autonomy, as an institutional guarantee of a human right, the right to education, is subordinated to the maximization of that right. Therefore, as a general rule, the legitimate exercise of academic autonomy can never include the restriction of any aspect of the right to education.
- p.94 The power to regulate themselves (“self-regulation”), to govern themselves and to manage their assets does not endow universities with a regime of exceptionality, extraterritoriality or privilege that removes them from respecting the rule of law, which is to say the principles and norms of the legal system.
- p.95 If an authority of the State extends the scope of the human right to higher education to include that it is free, then, generally, academic autonomy cannot be invoked as a justification for restricting that aspect of the fundamental right. Academic autonomy, as an

institutional guarantee, must always be used to maximize, never limit, the scope and protection of the human right that gives it meaning.

p.95-96 This Court considers that if the human right to higher education, at a particular time, includes being free, the faculty to manage its own patrimony resulting from academic autonomy cannot be invoked as a sufficient reason for not recognizing that aspect of the human right. This is because it is obvious that academic autonomy would have been limited to procuring funds by any lawful means that does not jeopardize the cost-free nature of education.

#### **V. What is the legal nature of the University?**

p. 96,98 This Court considers that, under section VII, of article 3, of the Federal Constitution, academic autonomy must be recognized through a formal and material law, and therefore it can be argued that the recognition of this characteristic is subject to the principle of legislative development [*reserve de ley*]. According to its organic law, the University is a decentralized State service entity, with its own legal capacity and patrimony, endowed with autonomy to carry out its purpose of providing higher education.

#### **VI. What implications does the concept of free education established in article 138 of the Constitution of Michoacán have for the University?**

p.99-100 According to article 138 of the Constitution of Michoacán, the State of Michoacán is obligated to provide free higher education.

p.100-101 The grammatical meaning of article 138 of the Constitution of Michoacán does include the University as an institution obligated to offer free higher education, since it is not contested that the University is part of the State and, therefore, the higher education it offers is understood as offered by the State of Michoacán. This is so because the cited constitutional rule establishes that all higher education provided by the State will be free, but also because it is clear that this reform was inspired by a progressive sense of expanding free education to higher public education.

p.115 The intention of the author of this rule of the Constitution of Michoacán was to extend the scope of free public education provided for in the Federal Constitution to the higher

education offered by the State of Michoacán through any of its bodies, including, of course, autonomous universities. In addition, academic autonomy does not exclude the University from respecting the content and scope of the human right to higher education recognized in article 3 of the Federal Constitution, in relation to article 138 of the Constitution of Michoacán.

p.117 Therefore, if the authorities implemented free higher education through the collaboration agreement exempting M from paying enrollment fees during the periods specified, then they were subject to the prohibition on regressivity derived from the principle of progressive realization. Therefore, they were prohibited, in principle, from adopting measures that imply disregarding the cost-free nature of education by ceasing to finance the University and reinstating the charge of enrollment fees in detriment of M, unless they had shown that such regression was fully justified constitutionally, which did not happen in this case.

### DECISION

p.119-120 This Court considered that the dean and president of the University Council, as well as the treasurer, both of the University, violated to M's detriment the right to a free higher education established in article 3 of the Federal Constitution and developed in article 138 of the Constitution of Michoacán, as well as the principle of progressive realization established in article 1 of the Federal Constitution. Therefore, in the matter of this *recurso de revisión* the challenged decision must be confirmed and the *amparo* granted to the affected party according to its terms.

The effects of granting the *amparo* imply for the Governor to transfer to the University the resources necessary to guarantee that the education M receives is free up to the level of the bachelor's degree which includes at least the necessary resources to cover the enrollment fees. It should cover M's enrollment fees with funds from the State resources included in the budget of the State of Michoacán. The University and its authorities must refrain from infringing the cost-free nature of the higher education M receives, which means at least not charging her enrollment fees during her higher education.