

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.

RIGHTS OF MINORS VIS-À-VIS THE EXERCISE OF PARENTAL AUTHORITY OF THEIR PARENTS
(DERECHOS DE LOS NIÑOS, NIÑAS Y ADOLESCENTES FRENTE AL EJERCICIO DE LA PATRIA POTESTAD DE SUS PADRES)

CASE: *Amparo en Revisión 800/2017*

REPORTING JUSTICE: Alberto Pérez Dayán

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

DATE OF THE DECISION: November 29, 2017

TOPICS: Rights of minors, sex education, best interests of the child, equal treatment and non-discrimination, exercise of parental authority, freedom of conscience, thought and religion, right to personal integrity, right of children to association and assembly, privacy and access to telecommunications.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 800/2017*, Second Chamber, Alberto Pérez Dayán, J., decision of November 29, 2017, 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/2022-01/AR800-2017.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo en Revisión 800/2017*, Mexico.

SUMMARY OF THE AMPARO IN REVISION 800/2017

BACKGROUND: M in his own right and on behalf of his minor daughter, filed an *amparo indirecto* lawsuit. In his lawsuit, he questioned the constitutionality of various provisions of the General Law on the Rights of Children and Adolescents (General Law) and the Law on the Rights of Children and Adolescents for the State of Aguascalientes (Aguascalientes Law). He argued, *inter alia*, that those provisions violated the best interests of the child, as well as the right of parents to educate their children in accordance with the values they deem appropriate for their normal and healthy development. The judge who heard the case dismissed the amparo based on the presence of various grounds for invalidity. M filed a *recurso de revisión* before a Collegiate Circuit Court. The Collegiate Circuit Court decided to lift the dismissal ordered by the judge, and to refer the matter for its review and decision to the Supreme Court of Justice of the Nation (this Court) since questions of constitutionality remained.

ISSUE PRESENTED TO THE COURT: Whether (i) Article 61, section I, of the *Amparo* Law is unconstitutional for violating the principle of progressivity; (ii) the Congress of the Union is empowered to legislate substantively on the rights of minors; (iii) certain provisions of the General Law and the Aguascalientes Law violate the best interests of the child and the right of parents to educate their children because they establish, *inter alia*, the right to access to sex education and contraceptive methods, the right of children to association and assembly, privacy and access to telecommunications; (iv) these provisions impose an undue restriction on the exercise of parental authority.

HOLDING: The *amparo* was denied for the following reasons. The challenged provisions do not violate the best interests of the child; on the contrary, they form a regulatory unit that provides for the recognition of minors as holders of human rights. They also provide that the Federal Government, the States and the Municipalities must implement measures and mechanisms to guarantee the full exercise, respect, protection and promotion of these rights. Consequently, the decision was amended due to the dismissal lifted by the Collegiate Circuit Court.

VOTE: The Second Chamber decided this case with the unanimous vote of the five justices Alberto Pérez Dayán, Javier Laynez Potisek, José Fernando Franco González Salas and Eduardo Medina Mora I, and Margarita Beatriz Luna Ramos (cast her vote against arguments).

The votes can be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/ResultadosPub.aspx>

EXTRACT FROM THE AMPARO IN REVISION 800/2017

p.2 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of November 29, 2017, issues the following decision.

BACKGROUND

p.10-11 M, in his own right and on behalf of his minor daughter, sued for the amparo and protection of the Federal Courts against the Constituent Assembly, the Congress of the Union –the Senate and the House of Representatives-, the Secretary of the Interior, the President of the United Mexican States, and the Legislative Branch of the State of Aguascalientes for the discussion, approval, issuance, publication and promulgation, within the scope of their respective competencies of:

(I) article 1 of the Constitution, published in the Federal Official Gazette on the fourteenth of August of two thousand one, by which the word "gender" was added.

(II) Articles 10, second paragraph; 37, section V; 39, first paragraph; 50, sections VII and XIII; 57, section VI; 62; 103, section I; 16, section IV; 121; 122 and 126 of the General Law on the Rights of Children and Adolescents.

(III) Articles 1 section II, 4 section XXIII, 9, 10 second paragraph, 37 section I, 39 first paragraph, 40 third paragraph, 42, 47 antepenultimate paragraph, 53, 57 section VI, 79, 80 section II, 87, 88, 90, 93, 95, 96 section I, 100, 104 sections I and XII, 108, 109 sections VI, VII, XII, XIII, 110 first paragraph and section V, IX, XIII, 112 section XVIII, XXI, 116 sections VII and XV, 119 section I, XIII, 123 and 127 sections V and VI, as well as the Sixth, Seventh and Tenth transitory articles of the Law on the Rights of Children and Adolescents for the State of Aguascalientes.

p.11-12 M stated that these legal provisions violate the role of parents with regard to the guidance and teaching of children in accordance with their moral and religious convictions; violate the best interests of minors; discriminate against adolescent boys and men on the basis of gender; and threaten the healthy development of the family.

p.12 The District Judge issued a decision on July 14, 2015, in which he dismissed the suit based on the grounds for invalidity in article 61, sections I and XXIII of the *Amparo* Law.

p.15 M filed a *recurso de revisión* against this judgment.

In its session of June 15, 2017, the Collegiate Circuit Court decided that the grievances stated against the dismissal were well founded.

p. 20 It was thus necessary to overturn the dismissal declared by the judge and review the grounds for complaint that were not reviewed, except for article 45 of the General Law, to which the grounds for invalidity set forth in article 61, section XII, of the law applied.

The Collegiate Circuit Court declared that it was incompetent to analyze the arguments questioning the constitutionality of the challenged provisions of the General Law and the Law of Aguascalientes.

p.20-21 It then referred the matter to this Court.

STUDY OF THE MERITS

I. Constitutionality of article 61, section I, of the *Amparo* Law

p.23 The principle of progressivity is not absolute; instead it is necessary to analyze whether this measure generates a reasonable balance between the fundamental rights at stake, without excessively affecting the effectiveness of any of them, since otherwise it will be regressive legislation.

p.26 The fact that the new *Amparo* Law establishes a cause for invalidity that was not expressly established in the abrogated law does not imply that there is regression as to the validity of the means of constitutional control. It is plausible that this cause was implicit in the previous *Amparo* Law.

p.29 This Court considers that the alleged right to challenge the articles of the Federal Constitution has no legal or judicial basis since it is not feasible, through the *amparo* lawsuit, to analyze the constitutional regularity of the provisions of the Federal Constitution.

p.30 Consequently, the dismissal declared with respect to the challenge to article 1 of the Federal Constitution must remain firm.

II. Power of the Congress of the Union to legislate on the substantive issue of the rights of children and adolescents

- p.31 Concurrent laws must protect the rights of minors and their best interests, and therefore such laws require substantive content to fulfil that purpose.
- p.32-33 The three levels of government must give better results since as a fundamental right it should not be treated differently.

The purpose of the unification of substantive aspects is the full harmonization of the rights recognized in article 4 of the Federal Constitution and in various international instruments, in order to achieve "the establishment of a comprehensive policy on the rights of the child."

The Congress of the Union is empowered to legislate on substantive aspects of the rights of minors.

III. Analysis of the constitutionality of articles 10, 37 section I, 39, 40 third paragraph, 42, 47 antepenultimate paragraph, 57 section VII, and 116 section IV and XII, of the General Law [inclusion of the words "gender" and "sexual preference"]

- p.34 M argues that the articles are unconstitutional because the reference to the "gender" and "sexual preference" of minors can be linked to certain acts that do not correspond to the age of a child. This violates the best interests of the child, as well as the right of parents to educate their children according to the values they deem appropriate for their normal and healthy development.
- p.36-37 The provisions challenged are limited to protecting the equal exercise of the rights of minors by establishing two legal mandates:
- (I) A clause prohibiting discrimination against minors. (II) Obligations on federal and local authorities to adopt special protection measures to give effect to the rights of those minors who are in a situation of vulnerability, among which sexual preference and gender are mentioned.

The challenged articles recognize the human right of minors to equal treatment before the law, in its dimension of prohibition of discrimination.

p.37-38 The challenged provisions are not intended to establish, develop or regulate the sexuality of minors; nor do they undermine the creation of a safe and conducive environment for children or impede the right of parents to educate their children in accordance with the values they deem conducive to their healthy development. Their purpose is to recognize and protect the human right to equal treatment before the law.

p.41 Articles 10, 37 section I, 39, 40 third paragraph, 42, 47 antepenultimate paragraph, 57 section VII, and 116 section IV and XII, of the General Law are consistent with the parameter of constitutional regularity.

p.42 The same conclusion is reached regarding the provisions of the Law of Aguascalientes, since these articles only replicate the content of the challenged mandates of the General Law.

IV. Analysis of the constitutional regularity of article 37, section V, of the General Law [discrimination against children and adolescents on the basis of gender]

p.43 According to the plaintiff, for the authorities to take the necessary measures to achieve the empowerment of girls and adolescent females implies that they must establish a legal benefit in favor of some minors solely because of their sex. Implicitly, this constitutes differential treatment of male children and adolescents who do not enjoy such protection, which results in the violation of articles 1 and 4 of the Federal Constitution.

p.43-44 The purpose of the provision is to ensure the substantive equality of minors.

Positive actions in the area of equality are intended to achieve, eventually, the elimination of historical discrimination against certain groups and, even if there is differential and preferential treatment for this group, it is not contrary to the human right to equal treatment before the law, provided that such a measure is reasonable and proportionate. The mandate is, then, constitutionally reasonable.

- p.50 Article 37, section V, of the General Law, by establishing institutional measures aimed at promoting the empowerment of girls and adolescent females, does not violate the human right to equality to the detriment of boys and adolescent males. Such positive actions are in accordance with the parameter of constitutional regularity insofar as their purpose is to achieve substantive equality – i.e., not just legal, but actual - between men and women who are of age.
- p.51-52 They do not violate articles 1 and 4 of the Federal Constitution; on the contrary, they serve their contents. The same applies to the provisions of the Aguascalientes Law.

V. Analysis of the constitutionality of article 50, sections VII and XI, of the General Law [violation of parental authority of parents and the best interests of minors]

- p.54 M alleges that guaranteeing minors access to contraceptive methods, as well as providing advice and guidance on sexual and reproductive health, violates parental authority and creates a harmful environment for minors.
- p.57 The human right of minors to enjoy the highest possible level of health is an inclusive prerogative, encompassing not only timely and appropriate prevention, but also the right to grow and develop to the fullest and to live in conditions that enable them to enjoy that human right.
- p.58 The child's right to health consists of a series of freedoms and rights. Among the freedoms of growing importance as capacity and maturity increase is the right to control one's own health and one's own body.
- p.66 The normative provisions challenged are not in violation of the best interests of the child, nor do they generate an environment harmful to minors; rather they are an integral part of the human right to the highest possible level of physical and mental health of minors.
- p.70 The General Law does not deny the parental rights to educate and guide minors; on the contrary, its provisions expressly recognize them and even impose the obligation on federal and local authorities to provide them with the tools to carry out their role.

VI. Analysis of the constitutionality of articles 57, second paragraph, and 103, section I, of the General Law [violation of the exercise of parental authority]

- p.73 M argues that the articles infringe the right to exercise parental authority over minors because they limit such exercise by imposing an obligation on parents to exercise it in accordance with the provisions of the Law.
- p.76 Ensuring that any action or measure taken with respect to minors does not violate the rights recognized for minors is constitutionally reasonable. The exercise of parental authority is constrained by the observance of legal principles aimed at the protection of minors.
- p.77 Subjecting the exercise of parental authority and, in general, the care of minors to the provisions of the General Law is a basic necessity so that minors can enjoy a full life in conditions commensurate with their dignity and that guarantee their integral development.

Parental authority is not configured merely as a right of the parents, but for the benefit of the children. It is aimed at the protection, education and integral formation of the child, whose interest is always prevalent in the parent-child relationship.

- p.79 Consequently, the General Law does not violate the right of parents or other caregivers to educate minors. The same conclusion is reached with respect to the provisions of the Aguascalientes Law.

VII. Analysis of the constitutionality of article 62 of the General Law [freedom of conscience and religion]

- p.81-82 M states that the article is unconstitutional since, while it is good that there is freedom of conscience and religion, it is inappropriate to treat minors as if they were adults.
- p.83 The purpose of the challenged provisions is: (I) to recognize and guarantee the human right of minors to have freedom of thought, conscience, ethics and religion; (II) to establish that such freedoms may only be limited by law when necessary to protect the fundamental rights and freedoms of others; and (III) that minors may not be

discriminated against in any way for exercising their freedom of ethical convictions, thought, conscience, religion and culture.

- p.89 As they mature and acquire greater awareness, it will be minors who exercise the right to freedom of thought, conscience and religion. The parental function must necessarily decrease progressively, while children acquire, during adolescence, an increasingly active role in the exercise of their elective capacity, until they transition to adulthood.

VIII. Analysis of the constitutionality of article 50, section XIII, of the General Law [voluntary sterilization]

- p.90 M argues that the articles are unconstitutional because they prohibit forced sterilization and imply that, on the contrary, if it were consented, it is allowed.
- p.93 This Court does not find that the legislator has granted a right to minors to voluntarily undergo sterilization procedures; only the obligation of the authorities to carry out and implement programs against the forced sterilization of minors is inferred.
- p.94 It is not possible to examine the constitutional regularity in the abstract of the voluntary sterilization of minors, since the constitutionality of such legal question would be analyzed in specific cases, for example, if a provision is issued that expressly provides for access to such a procedure.

IX. Analysis of article 13, sections XVI, XVII and XX, of the Law on the Rights of Children and Adolescents for the State of Aguascalientes [right of association, privacy and access to information technologies]

- p.95 M argues that the challenged sections are unconstitutional because they violate the right of parents to educate their children according to their own convictions. This is because (i) children cannot have unrestricted freedom to associate and assemble; and (ii) the right to privacy of minors must always be monitored by parents to prevent them from being perverted or disoriented.
- p.96 The challenged provisions recognize the human rights of minors: (I) to associate and assemble; (II) to privacy and; (II) to access to information and communication technologies, as well as to broadcasting and telecommunications services. Thus, they

recognize, at the secondary level, the rights derived from articles 6 of the Federal Constitution and 15, 16 and 17 of the Convention on the Rights of the Child.

a) Right of association and assembly

p.99 The right of association and assembly cannot be conceived identically for children and adolescents. Each of these stages of childhood presents a differentiated degree of freedoms and duties with respect to its exercise: the higher the levels of learning, knowledge and maturity, the greater the possibilities for minors to have a wider margin of autonomy to exercise, by themselves, such rights.

p.101 In conclusion, the Aguascalientes Law, by recognizing the right of association and assembly, does not violate the best interests of the child, nor the right and duty of parents to ensure the well-being of their children and their healthy development.

b) Right to privacy

p.103 The right to privacy of minors does not imply that the parental roles of guidance, teaching and care are ignored. It means, rather, that those roles are adapted to each stage of childhood in such a way as to allow children and, above all, adolescents to exercise gradually, by themselves, their right to privacy in an informed and responsible manner. The Aguascalientes Law, by recognizing the right to privacy, does not violate the best interests of the child, nor the right and duty of parents to ensure the well-being of their children and their healthy development.

c) Right to information technology

p.105 This Court, aware of the possibilities, benefits and risks of information technologies and their easy access, considers that parents cannot ignore their duty to protect the child against all information. Although minors have the right to access information and communication technologies, as well as broadcasting and telecommunications services, this cannot be understood to mean that children can and should access any material and information through such means of communication and at any stage of childhood.

p.107 In conclusion, the Aguascalientes Law, by recognizing the right to communications, as well as access to telecommunication and radio broadcasting services, does not violate

the best interests of the child, nor the right and duty of parents to ensure the well-being of their children and their healthy development.

X. Analysis of the constitutionality of articles 19, section IV, and 96, section I, of the Law on the Rights of Children and Adolescents for the State of Aguascalientes [right to identity and free development of personality]

M states that the articles are unconstitutional because it is incorrect to establish the right to identity of minors and that the authorities must collaborate in the search, location and obtaining of the information necessary to prove or restore the identity of minors. This function supplants the role of parents.

a) Right to privacy

p.108 The article recognizes the human right to identity. For its effective protection, local authorities must collaborate with the search, location and obtaining of the information necessary to prove or restore the identity of children and adolescents.

The rule is limited to sending to the local authorities the location and safekeeping of the official data that make it possible to identify a minor, such as: (I) name; (II) nationality; (III) cultural affiliation; (IV) kinship; and (IV) in general, any other information with which the minor's identity can be determined or restored.

b) Right to the free development of personality

p.108-109 M states that the provision is unconstitutional since minors cannot enjoy the free development of their personality, because children are in training and cannot freely develop their personality except with the advice of the parents.

p.111 Minors do have the right to the free development of their personality. The development of their being and their abilities as a person should not be understood in isolation, but as an integral and interdependent part of the right to education, training and teaching that both the state and parents or other caregivers must provide.

p.111-112 This Court considers that the recognition for minors of their free development of personality does not violate or prevent parents from advising, guiding and forming their children. On the contrary, such an educational function is a necessary prerequisite for

children and adolescents to truly display the gifts, skills, capacities and characteristics that make them unique and that allow them to lead a full and satisfactory life within society progressively.

XI. Analysis of article 27 of the Law on the Rights of Children and Adolescents for the State of Aguascalientes [adoption of minors]

- p.112 M argues that the article is contrary to the parameter of constitutional regularity since it does not seek the best interests of the child because it refers to people interested in adopting minors, which can be a plurality of individuals. Children have the right to have a father and a mother and not to be cared for by any person, collective or individual.
- p.114 The fact that the challenged article has the phrase "interested persons" does not imply that it should be considered unconstitutional. The essential aspect of the right of minors to have a family through adoption is the suitability, virtues and qualities of whoever intends to adopt them.
- p.115 The suitability of applicants for adoption is not limited to their marital status, specifically, to marriage, but to the qualities and skills to raise a child and that, precisely, determine them as the most beneficial option for the well-being and healthy development of the child. This must be assessed by the competent authority.

RESOLUTION

- p.116 The arguments put forward by M are unfounded. Therefore, the decision is amended – in relation to the dismissal by the Collegiate Circuit Court - and the *amparo* against the articles of the General Law and the Aguascalientes Law is denied.