



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.

**REASONABLE ADJUSTMENTS AND EDUCATIONAL LEVELS IN DAYCARE CENTERS
FOR DISABLED CHILDREN
(AJUSTES RAZONABLES Y NIVELES EDUCATIVOS EN GUARDERÍAS PARA NIÑEZ
CON DISCAPACIDAD)**

CASE: *Amparo en Revisión* 166/2019

REPORTING JUDGE: José Fernando Franco González Salas

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

DATE OF THE DECISION: June 12, 2019

KEY WORDS: rights of disabled children and adolescents, right to education, right to an inclusive education, right to equality and non-discrimination, social model of disability, reasonable adjustments, educational levels, daycare centers.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión* 166/2019, Second Chamber, José Fernando Franco González Salas, J., decision of June 12, 2019, 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/2021-10/AR%20166-2019_0.pdf

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo en Revisión* 166/2019, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 166/2019

BACKGROUND: MMGR asked the heads of the daycare centers of the Mexican Social Security Institute [Instituto Mexicano del Seguro Social] (IMSS) if her son could continue in the Daycare Center in which he was enrolled after he turned 4 years old, given the lag between his chronological age and his neurological and motor development because of the Prader-Willi syndrome he suffers from. The IMSS denied the request arguing that under article 206 of the Social Security Law and 6.20 of the Standard Regulating the Operation of the IMSS Daycare Service, the Daycare Center cannot provide the service after that age. On April 27, 2017, MMGR filed an *amparo* lawsuit in representation of her son before the district courts in Morelia, Michoacán, against IMSS' refusal and the rules referred to, arguing that they violated the rights to equality and non-discrimination for reasons of age or disability, to receive early education and to health. On August 17, 2017, the judge adjudicating the case granted constitutional protection, determined that the challenged rules did not apply to the child and ordered the IMSS authorities to continue providing the service for 9 more months. Nevertheless, MMGR filed a *recurso de revisión* indicating that the daycare service should continue until it is determined, through an expert opinion, that her son has a developmental age of 4 years and conditions exist for him to be received in the preschool. The authorities challenged the assessment of the unconstitutionality of article 206 of the Social Security Law. The collegiate court reviewing the case reserved jurisdiction for this Court since it raised the unconstitutionality of that provision.

ISSUE PRESENTED TO THE COURT: Whether given the unconstitutionality of article 206 of the Social Security Law, the relief offered in the *amparo* decision was in accordance with the social model of disability and the right to education.

HOLDING: The Court decided to grant the *amparo* for the following reasons: disabled people should be protected through the social model, according to which the disability should be considered a disadvantage caused by the barriers that society generates by not correctly addressing their needs. Thus, disability should not be assessed exclusively from a medical point

of view. Instead, a multidisciplinary analysis should be done that considers the specific situation of each person and their environment. Therefore, the constitutional protection should not be limited to a parameter obtained from a medical analysis, which is exactly the conception that should be overcome for the protection of disabled people. This is especially so since the bone age is not decisive in the need to continue receiving Daycare Center services; rather, the measure should be whether the child has reached the full development necessary to enter preschool. It was also indicated that while the General Education Law establishes age requirements for entering preschool and primary school, those limits are flexible, permitting each person to access and advance grades according to their particular capacities and circumstances. This is because there are individuals who require more time to reach the development necessary to access the different educational levels they are entitled to under article 3 of the Constitution, and therefore chronological age is not an absolute condition for students to be registered at a certain educational level, especially if the student has a disability that requires the State to adopt the reasonable adjustments for their inclusion in the exercise of the right to a full and effective education. Thus, a reasonable adjustment should be applied so the child may continue to receive the Daycare Center services, taking into account his actual degree of development based on a comprehensive study of his situation, not just the certification of a medically determined age.

VOTE: The Second Chamber decided this case unanimously with five votes of the justices Yazmín Esquivel Mossa, Alberto Pérez Dayán, Eduardo Medina Mora I., José Fernando Franco González Salas and Javier Laynez Potisek.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=251482>

EXTRACT OF THE *AMPARO EN REVISIÓN* 166/2019

p. 1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 12, 2019, issues the following decision.

BACKGROUND

- p.1-2 On April 27, 2017, in Morelia, Michoacán, MMGR, in her own right and in representation of her minor son, filed an *amparo* lawsuit against the Daycare Center Guardería Integradora Monarca (the Daycare Center), surrogate of the Mexican Social Security Institute [Instituto Mexicano del Seguro Social] (IMSS); the Office of the Daycare Centers Department of the State of Michoacán of the IMSS; the IMSS Delegate in the State of Michoacán; and the Head of Health Services in Labor, Economic and Social Benefits of the IMSS. The Daycare Center had suspended the daycare services for her son because he turned 4 years of age chronologically, without considering that he is a disabled child and actually has a lower bone and mental age as a result of suffering from Prader-Willi syndrome.
- p.3-5 On May 10, 2017, MMGR also mentioned the approval and publication of article 206 of the Social Security Law, and number 6.20 of the Standard Regulating the Operation of the IMSS Daycare Service, stating that they violate the right to equality and non-discrimination by reason of age or disability, to receive early education and to health, recognized in articles 1, 3 and 4 of the Federal Constitution. Furthermore, they are contrary to the human rights set forth in international instruments, such as the Convention on the Rights of the Child. The legal provisions challenged determine the right of a child to remain in an IMSS daycare or one of its surrogates based solely on a parameter of chronological age, and therefore they violate the human rights of the minor because they do not address his particular human characteristics. She added that the rights to substantive equality, the protection of health and social security and the inclusion of disabled children and adolescents were violated. She stated that the fair outcome would be for that Institution to accommodate children through the processes of quantitative and qualitative changes from 45 days after birth to 4 years of age developmentally around disability.

- p.5-6 On August 17, 2017, the District Judge issued a decision granting constitutional protection requiring the authorities to: remove the minor from the application of article 206 of the Social Security Law and number 6.20 of the Standard Regulating the Operation of the IMSS Daycare Service; invalidate the official notices of the Head of the IMSS Daycare Centers Department and of the Head of Health Services in Labor, Economic and Social Benefits of the IMSS, and issue an order to allow the child to remain at the Daycare Center for 9 months after he turns 4 on April 23, 2017, as redress for the infringement of his rights.
- p.8 The Judge established that article 206 of the Social Security Law, through which it was determined to discharge the minor from the Daycare Center because he turned 4, is unconstitutional to the extent that he is unable to meet the criterion of the rule requiring minors to continue with their preschool basic education instruction because of his functional diversity resulting from Prader-Willi syndrome. That purpose is also not accessible to the child given the lack of educational centers in the state of Michoacán for disabled children.
- p.9 On December 4, 2017, MMGR filed a *recurso de revisión*. On the 14th of that month and year, the authorities of the Regional Delegation of the IMSS filed a *recurso de revision*, as did the Director of Economic and Social Benefits of the IMSS on December 19, 2017.
- p.10 A Collegiate Court in Administrative and Labor Matters heard the appeal and on February 8, 2019, it ruled on the procedural and validity aspects, reserving jurisdiction for this Court over the claim of unconstitutionality of article 206 of the Social Security Law. On March 13, 2019, this Court assumed its original jurisdiction and turned the case over to Justice José Fernando Franco González Salas.

STUDY OF THE MERITS

- p.14 The dispute in this case is limited to analyzing the substantive grievances relative to the constitutionality of article 206 of the Social Security Law, as well as the redress for the unconstitutionality found by the court.

The IMSS authorities attempt to demonstrate that article 206 of the Social Security Law is not unconstitutional and to challenge the probatory assessment done by the court that concluded that it was unconstitutional. The grievances are inoperative.

- p.15 According to article 87 of the Amparo Law, in the case of an *amparo* against general rules, only the bodies of the State entrusted with their issuance or promulgation may challenge the decision.

The appellants are the authorities of the Michoacán Regional Delegation of the IMSS, and the delegate of the Director of the Economic and Social Benefits of that Institute, who are administrative authorities that issued various acts applying the article in question that are invalidated as a result of the unconstitutionality determined by the court, but they are not a State body that issued the legal provision analyzed. It is recognized that one of those acts is section 6.20 of the Standard Regulating the Operation of the IMSS Daycare Service. However, this standard has a lower rank than the challenged legal provision and was subject to the granting of the *amparo* as a result of the invalidity declared by the court with respect to the former.

Therefore, the IMSS authorities lack standing to bring substantive grievances regarding the constitutionality of the general rule. Thus, there is a technical impediment to reviewing the merits of the grievances stated on those questions, and therefore they are inoperative.

- p.16 The complaint of MMGR and her son challenges the redress granted by the court to reinstate their enjoyment of the right to the daycare services due to the unconstitutionality of article 206 of the Social Security Law. In particular, they challenge the court's determination to limit the providing of that service to a period of 9 months, only taking into account the bone age of the minor. This grievance is operative.

As held in numerous precedents of this Court, the protection of disabled persons should be reviewed based on the social model, according to which the disability must be considered a disadvantage caused by the barriers that civil society generates by not adequately addressing the needs of people with functional diversity.

p.16-17 In relation to the application of the social model in the area of social security, when deciding the *Amparo Directo en Revisión 2204/2016*, the Second Chamber of this Court established that undertaking this model involves considering two aspects: on the one hand, it is not disabled people who should adapt to their environment; on the contrary, it is society that should accommodate its structures and eliminate barriers that limit their integration; and on the other hand, since all human beings have equality in dignity, disabled people cannot be treated as mere objects of assistance.

p.17 In that precedent it was held that, consistent with this model, the verification of the disability should not be assessed exclusively from a medical focus; rather, a multidisciplinary analysis should be done that considers the specific situation of each person and their environment, which provides certainty on the disability a person has considering the impact that decision will have on the proceeding in question.

Then, based on that criterion, MMGR and her son are right that the constitutional protection should not be limited to a parameter obtained from a medical analysis, referring to the bone age of the minor, and therefore limiting the service to 9 months based on a medical model is precisely the limitation that should be overcome for the protection of disabled people. This is especially so since the bone age is not decisive in the need to continue receiving the services of the Daycare Center, but rather whether the child has developed the skills necessary to enter preschool education.

p.17-18 Indeed, when deciding the *Amparo en Revisión 462/2017*, the Second Chamber of this Court considered that although article 65, section I, second paragraph, of the General Education Law, and the regulations applicable in the area, establish a certain minimum age as of December 31st of the school year of entry as a prerequisite to entering preschool and primary school, that regulatory system is flexible, making exceptions to the age limits that permit each individual to access and advance in the educational grades and levels according to their particular capacities and circumstances.

p.18 It was also determined that the provisions in the General Education Law that indicate a minimum age limit for entering preschool and primary school seek to unify the school

grades at those educational levels, and to ensure fulfillment of the educational goals through the establishment of homogenous groups regarding children's chronological and generalized development, but inclusive and with diversity.

In that precedent, it was concluded that the regulatory system of education does permit the early entry into different educational grades and levels in cases where students, based on their particular or special characteristics, should enter a higher grade or level than the one corresponding to them according to the general rules established by the system.

The same logic behind early entry for those who already have the skills to study at a higher educational level should apply to those who require more time to reach the necessary development to be ready for the educational levels guaranteed to them by article 3 of the Constitution. Thus, chronological age should not be imposed as an absolute condition to require children to be enrolled at a certain educational level, above all if the child has a disability that obligates the State to adopt reasonable adjustments to achieve their inclusion in the exercise of the right to a full and effective education.

It should be noted that since only MMGR and her son raise the issue of the period granted for the continuation of the services, that period cannot be less than the 9 months already established in the appealed decision.

DECISION

p.19 Therefore, the relief granted in the *amparo* should be modified, with the first three guidelines prevailing, but ordering that a new determination be issued requiring as a reasonable adjustment the continuation of the Daycare Center services for the time necessary for the child to be ready to receive a preschool education, taking into account his actual degree of development based on a comprehensive study of the situation of the child, without limiting the opinion to a medically determined age, on the understanding that the period cannot be less than 9 months. Therefore, MMGR and her son are covered and protected for the purposes explained.