



Suprema Corte
de Justicia de la Nación



DERECHOS
HUMANOS

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BULLYING: COMPENSATION FOR SCHOOL BULLYING
(BULLYING: INDEMNIZACIÓN POR ACOSO ESCOLAR)

CASE: *Amparo Directo 35/2014*

REPORTING JUDGE: Arturo Zaldívar Lelo de Larrea

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

DATE: May 15, 2015

KEY WORDS: principle of best interests of the child, right to bodily integrity, right to dignity, right to education, right to non-discrimination, right to a fair compensation, bullying, school harassment, pain and suffering [daño moral], public and private school institutions, attention deficit hyperactivity disorder

CITATION OF THE DECISION: Mexico's Supreme Court of Justice, *Amparo Directo 35/2014*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of May 15, 2015, 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/2020-12/AD%2035-2014.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo Directo 35/2014*, Mexico.

SUMMARY OF THE *AMPARO DIRECTO* 35/2014

BACKGROUND: AMGH enrolled her son DBG in the first grade in the “Institute”. In his second year, DBG became a victim of psychological mistreatment by his Spanish teacher (MLPV) and his classmates (with the knowledge and consent of MLPV). As a result, his problems with anxiety, low self-esteem, frustration, depression and adaptation intensified. Later, it was confirmed that DBG has Attention Deficit Hyperactivity Disorder (ADHD), so his mother met with various authorities of the “Institute”, who promised to address the problem. When no solution was specified, DBG stopped going to school and, subsequently, the Spanish teacher resigned. Therefore, AMGH, in her own right and in representation of DBG, sued the “Institute” and MLPV for compensation for the psychological harm caused to her son. A civil judge in the State of Mexico issued a final decision that absolved the “Institute”. AMGH filed an appeal which confirmed the ruling of the court below. DBG’s mother then filed an *amparo*, which was granted by a federal collegiate civil court in the State of Mexico. The collegiate court ordered the reinstatement of the proceeding in order for other evidence to be taken into account, including the opinion of the minor. The civil judge again absolved the co-defendants. Therefore, AMGH filed an appeal, which confirmed the decision below. AMGH filed a second *amparo* which was taken up by the First Chamber of the Mexico’s Supreme Court of Justice (this Court), exercising its authority to assert jurisdiction.

ISSUE PRESENTED TO THE COURT: Whether there was pain and suffering (*daño moral*) inflicted on DBG as a result of MLVP’s bullying and the failure of the “Institute” and its staff to comply with the legal and general duties of care.

HOLDING: The appealed decision was vacated and AMGH was granted the *amparo*, in her own right and in representation of her son DBG, for essentially the following reasons. Bullying is a particularly complex process that constitutes a threat to the dignity, bodily integrity and education of the affected child and also affects the lives of those who observe it, creating an atmosphere of insecurity and anxiety incompatible with learning. In this regard, the protection of childhood and adolescence by the State must be particularly high, because of the special vulnerability of

minors in general, and the devastating effects that violence and/or intimidation can produce in them. In addition, in some specific situations, bullying can constitute a type of discrimination, if the harassment is the result of any of the categories protected by article 1 of the Constitution. Furthermore, it was considered that when private institutions provide public educational services to minors, they are bound by the principle of the best interests of the child and they have the obligation to protect the rights of the child to dignity, integrity, education and non-discrimination. In this case, the liability of both the teacher for her actions and the “Institute” and its staff for their failure to comply with their duties was proven according to the test established by this Court for assessing acts constituting bullying, since the psycho-emotional changes presented by DBG resulted directly from the conduct of MLPV and the negligence and indifference of the “Institution” and its staff to resolving the situation. Therefore, the *amparo* was granted since a serious impact was caused on highly protected rights of the victim and present and future economic impacts resulting from the pain and suffering (daño moral) were caused. Thus, based on the right to receive fair compensation, according to the degree of liability of the teacher and of the “Institute” and their economic capacity, the order was issued for a new decision in which the “Institute” is ordered to pay compensation for pain and suffering for \$500,000 pesos.

VOTE: The First Chamber ruled on this matter by a unanimous four votes of the judges Olga María del Carmen Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, Jorge Mario Pardo Rebolledo (reserved the right to formulate a concurring opinion) and Alfredo Gutiérrez Ortiz Mena (reserved the right to formulate a concurring opinion). Judge José Ramón Cossío Díaz was absent.

The votes may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=168595>

EXTRACT OF AMPARO DIRECTO 35/2014

- p. 1 Mexico City. The First Chamber of the Mexico's Supreme Court of Justice (this Court), in its session of May 15, 2015, issues the following decision.

BACKGROUND

- p. 10 AMGH filed a claim for pain and suffering (*daño moral*) against the "Institute" and its teaching staff, specifically the teacher MLPV. She based her claim on the school's failure of care and on the incitation to bullying, abuse, harassment and violence of the teacher MLPV against her minor son, DBG, who at the time the events took place, was only 7 years old. She indicated that such aggressions were related to the fact that the minor showed indications of Attention Deficit Hyperactivity Disorder (ADHD).
- p. 11 The relevant proven facts show that AMGH enrolled her minor son in first grade 2008-2009, in the "Institute". During that school year the minor already showed characteristics of ADHD, such as restlessness and being easily distracted. However, he had not yet been diagnosed with this disorder. DBG concluded the first year of school with apparent normality, and therefore AMGH reenrolled the minor in second grade 2009-2010. During that year he was assigned MLPV and DRL as head teachers in Spanish and English respectively.

When the minor began second grade, at 7 years old, he began to manifest discontent with the treatment he received from his Spanish teacher, because she yelled at him and constantly denied him recess. He also refused to go to school because he was subject to attacks by his schoolmates. He stated that his teacher mistreated him emotionally and psychologically, saying things like he was a mental retard, and encouraged his schoolmates to harass him, even fomenting physical aggression.

- p. 12 The psycho-pedagogy of the "Institute" stated that the minor presented characteristics of ADHD. So AMGH focused on treating the problem and channeled her son with the clinical psychologist who, among her conclusions, warned of other problems in the minor such as anxiety, low self-esteem, frustration, depression and problems adapting.

As a comprehensive treatment she suggested, among other things, the taking of an electroencephalogram and provided various suggestions to the minor's teachers to obtain better responses in conduct.

- p. 13 Nevertheless, the problems in the emotional state of DBG intensified as a result of the constant physical and verbal aggression he suffered, by both his schoolmates and his teacher.

The report prepared by the teacher MLPV also shows that she knew of the harassment DBG suffered. It is also seen that the teacher only indicated negative aspects of the minor.

- p. 14-15 Almost 9 months after the school bullying of DBG began, it was finally diagnosed that the minor had ADHD and a meeting was held with the teaching staff and leadership of the "Institute" with AMGH, in order to inform her that they did not know how to treat her son, and that lately he had isolated himself from his classmates. When the meeting ended the teachers promised that the class would reintegrate DBG. The mother states that practically no actions were taken by the school staff, since the abuses and harassment resumed just a week after that meeting.

- p. 15 However, and given the resumption of the aggressions, AMGH decided that DBG would not return to the school for the period of the last month and a half of the school year 2009-2010. Finally, on July 9, 2010, the teacher MLPV presented her resignation to the "Institute".

- p. 15, 18 The school bullying, the violence, the harassment, the segregation, the jokes, and the social exclusion that DBG suffered, at 7 years old, by his teacher and his classmates, were corroborated, other than the statements by the mother and the child, with various psychological and sociological evidence, which coincided in indicating that DBG suffered physical and psychological mistreatment in his school.

- p. 1-2 Therefore, on January 27, 2011, AMGH, in her own right and in representation of her minor son DBG filed an ordinary civil lawsuit against the "Institute" and the teacher MLPV, for compensation for the psychological damage caused to her minor son by the various

physical and psychological aggressions that occurred during the minor's stay in second grade (2009-2010).

The civil judge of the State of Mexico that heard the matter issued a final decision in which he determined to absolve the "Institute" of the claims made, since the content of the evidentiary materials did not prove the physical and psychological mistreatment of the minor.

- p. 3 AMGH filed an appeal that was heard by a civil chamber of the State of Mexico, which confirmed the lower court ruling.
- p. 3-4 AMGH then filed an *amparo* before a federal collegiate court, which granted it to the effect of ordering the reinstatement of the proceeding, for the original judge to receive the opinion of the minor, as well as collect any other evidence that he may consider necessary to determine whether or not the minor was mistreated.
- p. 4 The civil judge of the State of Mexico issued his ruling in observance thereof, in which the "Institute" and the teacher MLPV were again absolved since, in his judgment, the evidence contributed was still insufficient to prove the mistreatment of the minor.
- p. 5-6 AMGH then filed an appeal and the civil chamber of the State of Mexico that heard the matter issued a ruling determining that AMGH did not present in the hearing appropriate and decisive evidence to demonstrate convincingly that the minor had suffered mistreatment, bullying and discriminatory conduct by the teaching staff of the "Institute".
- p. 7-9 Finally, AMGH filed an *amparo* and the collegiate court decided to ask this Court to exercise its authority to assert jurisdiction over the *amparo*, which it did.

STUDY OF THE MERITS

- p. 19 The situation faced by the minor DBG constituted school bullying, incited and encouraged by his teacher, since the school and its educational staff did not respond appropriately. Such conduct generated an illegitimate and unconstitutional act on personal aspects of

the child, that ultimately violated his dignity and affected his rights to bodily integrity, education and non-discrimination.

I. Extent of the bullying phenomenon and its complexity

p. 21-22 “Bullying” is an English word that refers to school harassment. The phenomenon analyzed here is limited to the harassment or bullying against children occurring in public or private educational institutions. The standard of liability that is established in this decision, as well as the type of harassment that is studied, is based on the enhanced protection of children and the legal and professional duties of educational institutions.

p. 26 From an analysis of the sources used, this Court considers that school bullying is any act or omission that repeatedly assaults a child or adolescent physically, psycho-emotionally, economically or sexually, occurring under the care of school institutions, whether public or private.

p. 27 It should also be specified that school bullying can occur between students, or between students and teachers, as the National Human Rights Commission indicates.

Not all social problems that schools have are part of the bullying phenomena, nor is all conduct that can be described under this name equally serious regarding harm and consequences.

In addition, it can be complicated to clearly identify the aggressors or bullies, since it can occur as a group action, in which the liability can be dispersed. It is also easy to confuse the conduct constituting bullying with isolated aggressions. The time in which the phenomenon occurs, and its seriousness can vary widely. All these characteristics make the identification and remediation of bullying a particularly complex process.

II. Enhanced protection of children’s rights

p. 28 The duty to protect the best interests of the child in any judicial dispute where the rights of children are involved constitutes a recurring doctrine of this Court.

- p. 29 The principle of best interests requires all state authorities to protect children's rights through "enhanced" or "compounded" measures, and that the interests of children be protected to a greater degree.
- p. 30-31 It is important to mention that the constitutional protection children deserve is not equivalent to what other vulnerable group must receive, since when the victim of a particular type of violence is a minor, the diligence of the State must be particularly high, both because of the special vulnerability minors generally have, and the devastating effects violence and/or intimidation can produce on developing personalities. In this regard, the fight against school bullying is an imperative derived from the recognition of the human rights of minors and from the enhanced protection that children require due to their particular situation of vulnerability.
- p. 31 Comparative law and specialized doctrine have indicated that school harassment or bullying constitutes a threat to dignity, bodily integrity and education of the affected children. Similarly, in some specific situations school harassment can constitute a type of discrimination.
- The rights to dignity and bodily integrity, to education and to non-discrimination are protected in the Federal Constitution and in various international treaties signed by Mexico.
- p. 32 Furthermore, this Court has held that the constitutional protection of integrity includes the accusation of any act inflicting physical, psychological and moral harm to others. Thus, the sphere of dignity includes the protection not only of bodily integrity, but of the mental, moral and spiritual intangibility of a person.
- p. 33-34 Furthermore, the education children are entitled to is conceived to prepare them for daily life, strengthen their capacity to enjoy all the human rights and promote a culture in which the values of human rights prevail, since education must seek to advance the fight against discrimination and inequality.
- p. 34-35 Schools play a critical role in the construction of resilience and feelings of wellbeing in the child, which have also been linked to reducing the possibility of the child being victimized

in the future. They offer to children the possibility of learning and internalizing the values of solidarity, tolerance, non-discrimination, and mutual respect, which are important resources for the promotion of non-violence and to overcome tension and mediate conflicts, between students and between students and teachers, and even in the community.

p. 35 School harassment, however, changes the environment that should be fostered in the school; in these cases children are exposed to violence, and can even be subject to it.

Thus, the negative effects of school violence go beyond the impact on the affected minor. This situation affects the lives of those who observe it, creating an atmosphere of insecurity and anxiety incompatible with learning. The models of violence learned in school and in the home are reproduced in broader contexts, in the neighborhood or in the community in general.

p. 35-36 Children have a right to feel secure in school and not be submitted to the recurring oppression or humiliation of harassment. The security of children in the school constitutes a fundamental basis for the exercise of their rights to dignity, integrity and education.

p. 36 In addition to affecting the above mentioned rights, bullying can also constitute discriminatory treatment when its motive is the fact that the victim belongs to a group specially protected in article 1 of the Constitution.

In this regard, the judge must be especially careful when there is evidence that the school bullying occurred for some reason related to a category specially protected by the Constitution.

Various studies and reports clearly show that disabled children are in a situation of special risk.

p. 37-38, 40 In this case, the minor DBG was diagnosed with ADHD and, although we cannot clearly define ADHD as a form of disability, this Court considers that children with ADHD are especially vulnerable and therefore teachers, schools and administrative authorities

should take enhanced protection measures to prevent, treat and remedy any situation of harassment the minor suffers.

- p. 40 Federal and local authorities should adopt special measures to protect the rights of children and adolescents that are vulnerable because of specific circumstances and to guarantee that those children are not subject to mistreatment or discrimination.

In that regard, the educational authorities have the obligation to create the conditions for exercising the right to education of children in conditions of equality.

- p. 40-41 Therefore, to protect the rights of children, the State must guarantee that education is provided with equity, in integrated, safe spaces, free from violence, where the children can develop their abilities and skills, and can learn the values that will allow them to live in society.

- p. 41 As was indicated in *Amparo Directo en Revisión 1621/2010*, some duties derived from rules regulating fundamental rights can govern the conduct of private parties as well as actions of the State.

With respect to situations of school harassment, parents delegate the care of their children to teachers and directors, confiding that in those schools they will receive the care, attention and education they need.

Therefore, this Court considers that private institutions are bound by the principle of the best interests of the child and obligated to protect the rights of the child to dignity, integrity, education and non-discrimination.

- p. 41-42 The above should not be understood to mean that the State is displaced from its duty to ensure the protection of the rights of minors when they are under the care of a private educational center. Rather, the enforceability of the duties of protection have a complex nature, in that the rights correlated to such duties are enforceable against, on one hand, all public powers in the State – from the lawmaker and the administration, public schools and teachers of the State, to the courts – but on the other hand, so are private parties, such as teachers, educators, directors or private schools in general.

- p. 42 Therefore, schools are obligated to provide enhanced protection of minors that suffer any disability, based on this susceptibility to suffering discrimination in the form of school harassment.

III. Test for the evaluation of the acts constituting bullying

DBG's mother sues for two things: (1) compensation for the pain and suffering (*daño moral*) caused to her son by bullying attributed specifically to his teacher and, (2) compensation for the pain and suffering caused to her son by the negligence of the "Institute" and its educational staff in addressing the bullying situation.

- p. 43 This Court has indicated that for the triggering of the right to compensation for pain and suffering the liability of the defendant must be proven, which can have a contractual or noncontractual origin. The latter can be subjective or objective.
- p. 44 Cases of bullying are subjective in nature inasmuch as the conduct of the aggressor or the negligence of the "Institute" is relevant. Therefore, liability in cases of school harassment can be derived from both positive conduct and failures of care of the staff responsible for the minor.
- p. 47 According to the evolution of damages law in the Mexican legal system, as well as the right to fair compensation, this Court considers that the adequate test for evaluating liability in the case of school bullying should be the same attached to subjective liability. Each of the elements that compose the test must be evaluated from the enhanced protection that meri the rights of children to dignity, education and non-discrimination.

The application of such test will depend on the type of liability claimed. If the suit claims bullying by aggressive actions or conduct, the following must be corroborated: (1) the harassment of the victim, which means the existence of the bullying is proven and it can be attributed to specific aggressors (teachers or students); (2) the physical or psychological harm the minor suffered; and (3) the causal link between the conduct and the harm.

- p. 48 In contrast, when the suit claims failures in care of the School, the unlawful act or harmful conduct will be the negligence of the school; in this case the following must be corroborated: (1) the existence of the bullying, (2) the negligence of the school in responding to the school harassment, (3) the physical or psychological harm, and (4) the causal link between the negligence and the harm.
- p. 48-49 In the judicial sphere, the complexity of school bullying and its relationship to children's rights justify a series of presumptions and differentiated standards for the evaluation of the facts. Thus, this Court considers it appropriate to apply a lower standard for both the attribution of liability and for the evaluation of the acts constituting bullying.

a) Existence of bullying or school harassment

- p. 49 To apply the above described liability exams, it has to be corroborated that the case analyzed constitutes bullying.
- p. 50 Thus, if a case shows the occurrence of verbal or physical aggressions, more or less repeatedly, it will be valid to assume that a situation of harassment exists.
- p. 56 In this case, the proven facts show conduct from which the existence of bullying can be inferred.

In addition, it was shown that these acts were repeated, generating a pattern of violence against DBG. Furthermore, the aggression that the minor suffered clearly arose in the school environment, since he was under the care of his teachers and the directors of the school.

Finally, it was also shown that such acts were based on the minor's ADHD, since the studies of the specialists also state that the teacher treated DBG in a harmful way, and that instead of ensuring his integration into the group, she isolated and humiliated him and denied him the attention he needed.

Therefore, this Court considers that the bullying conduct attributed to the teacher MLPV, as well as the generation of an environment of aggression against the minor, were proven.

b) The negligence of the school and its educational staff

p. 57 In the case of liability for failure to act, the conduct of the person responsible will be unlawful when that person fails to comply with a legal obligation or duty of care owed and a harm is produced. Therefore, for there to be liability the harm caused must be accompanied by a duty of care of the responsible person regarding the victim.

p. 66 According to the regulatory framework on protection of children's rights in the school environment, as well as a broad understanding of children's rights, this Court considers that teaching centers have the unquestionable responsibility of guaranteeing safe spaces so that minors can pursue their studies free of aggressions and harassments. The adequate supervision and oversight of what happens in schools is something legitimately required from teachers and directors.

In cases of bullying, schools should diagnose, prevent, intervene and positively change the school environment.

p. 68-69 With respect to the standard that should be applied to determine the liability of schools, this Court considers that, once it is demonstrated that the bullying occurred in a situation under the control of the school – while students engaged in educational activities or were under the supervision of the employees of the school – it will be the educational center that has to show that it complied with the due diligence that providing educational services requires.

p. 70 In this case not only did the school not prove that it acted diligently, there is ample evidence that corroborates that it was negligent, including indifferent, with respect to the situation of bullying that DBG was experiencing.

p. 73 Thus, both the “Institute” and the teaching staff completely evaded their responsibility of control, oversight, protection and information.

These failures constitute true unlawful acts to the extent they are contrary to the legal and general duties of care. Indeed they constitute discrimination, to the extent that the

improper attention that DBG received resulted from, in part, the ignorance and insensitivity of the school in treating a minor with ADHD.

c) Evidence of the pain and suffering [daño moral]

For there to be liability, in addition to unlawful conduct there must be an injury.

p. 76 School bullying can affect economic or non-economic rights or interests. In the second case we have pain and suffering [daño moral]. Such damage broadly has both economic and non-economic consequences, which in turn can be present or future.

This Court has also indicated that the pain and suffering [daño moral], broadly speaking, must be certain from a qualitative perspective, even when its amount cannot be exactly determined.

p. 78 Therefore, the pain and suffering of the child from bullying will be proven when various aggressions that, even if individually mild, end up producing harm to the moral integrity when carried out repeatedly, systematically and regularly.

p. 79-80 This Court considers that pain and suffering must be proven by the plaintiff, showing the existence of some of the psychological effects related to bullying, such as depression, low grades, low self-esteem, and a broad catalog of symptomology related to school harassment. To prove those effects, it is sufficient for expert witnesses in psychology to allege them.

p. 80-81 In this case, the content of the psychological evaluations shows that DBG presents symptoms of distress, anxiety, low self-esteem, night phobias, dream regressions and difficulty in relating to other people. These symptomologies have affected the physical and emotional health of DBG to such a degree that he has not been able to reintegrate into normal school activity, which allows us to conclude that the pain and suffering is fully evidenced, since in fact DBG presents significant psycho-emotional alterations that have had repercussions on his social, emotional and academic spheres.

d) Causal link between the conduct and the harm

p. 81 Finally, it is necessary to demonstrate that the harm experienced is a consequence of the conduct of the agent.

p. 82 In this case, it was shown that the segregation, the verbal and physical aggressions, that DBG suffered, were incited, encouraged and motivated, in part, by the conduct of the teacher MLPV. Such conduct ended up seriously affecting the integrity and morale of the minor. In addition, that conduct and the consequent harm that was caused to DBG, could have been avoided if the “Institute” had fulfilled its duties of care, required by both human rights rules and various administrative instruments.

Thus, it is clear that the pain and suffering was caused by the aggressions and neglect suffered by DBG. In other words, the causal link between the conduct and the harm is shown, thereby evidencing the civil liability of both the teacher MLPV individually and the “Institution”.

IV. Compensation for the damage

p. 82-83 It is established doctrine of this Court to consider that the right to receive “fair compensation” must be taken into account to determine the proper compensation for the harm caused to a person’s feelings.

p. 84 It is also considered that the punitive nature of compensation for pain and suffering [daño moral] can be derived from a literal interpretation of article 7.159 of the Civil Code for the State of Mexico (Civil Code), since that article requires that in determining the “compensation”, the degree of impact, the degree of responsibility and the economic situation of the responsible party, among other circumstances, must be evaluated.

p. 85-86 Furthermore, the economic situation of the victim can only be weighed to evaluate his or her economic impacts resulting from the pain and suffering. It would be contrary to the principle of equality to calibrate the compensation corresponding to the non-economic consequences of the harm, since the economic situation of the victim is not useful to measure the quality and the intensity of the non-economic harm, and therefore it does not

lead to satisfying the right to a fair compensation, because the social condition of the victim does not affect, augment or diminish the pain suffered.

- p. 86 Thus, it can be interpreted that article 7.159 of the Civil Code is constitutional, only if it is interpreted in that the economic situation of the victim can only be analyzed to determine the compensation corresponding to the economic consequences resulting from the pain and suffering [daño moral].
- p. 88 Regarding the parameters and quantification of the amount of the compensation of the pain and suffering, to ensure that the compensation set is fair, this Court has established various parameters that help the judge to remedy the harm caused. This is addressing, on the one hand, the right to fair compensation and, on the other hand, the nature of the institution of pain and suffering [daño moral].
- p. 89 It is admittedly difficult to measure the suffering of a child, in a situation of school harassment, seeing him or her alone, humiliated, attacked continuously and without any protection from those that should have provided it.
- p. 90 In this case the following should be weighed with respect to the victim: A) The qualitative aspect of the harm or pain and suffering [daño moral] strictly speaking, which is composed in turn of the valuing of: i) the type of right or interest harmed, ii) the existence of the harm and iii) the seriousness of the injury or harm. B) The economic or quantitative aspect resulting from the pain and suffering [daño moral]. In this aspect the judge must measure: i) the expenses accrued resulting from the pain and suffering [daño moral], and ii) the expenses to accrue. Regarding the liable party: i) their degree of liability and ii) their economic situation.
- p. 90-91 It should be emphasized that the sum that is imposed must be reasonable, fulfill the purpose of repairing but also dissuading, imposing responsible, justified reparations duly grounded in the above indicated considerations.
- p. 92-93 In this case, the impact on the feelings, emotions and psychological integrity of the child has extreme importance, given that it involves the dignity, integrity, education and non-

discrimination of the minor, which rights merit a specially enhanced protection in that a minor with special needs is involved.

- p. 93 Regarding the existence of the harm and its level of seriousness, the harm resulting from the school harassment in this case proves a serious level of impact, given that the social behavior of the child changed, since his family and school life was profoundly affected.
- p. 94-95 Regarding the economic aspect, in the initial claim the mother indicated that she had incurred in various medical and therapeutic expenses to address the ramifications of the harm caused to DBG. However, the evidentiary material in the court record does not contain any evidence to show the medical and therapeutic expenses the mother refers to.
- p. 95 Nevertheless, the expenses to be accrued can be shown, resulting from the psychological treatment the minor deserves.

Following the expert witness recommendations and given the impossibility of predicting the evolution of DBG and the specific number of sessions that could be necessary, this Court estimates that it is appropriate to establish a psychological session every fifteen days for a period of three years. In this way, according to the parameters used in the other *Amparo Directo* 31/2013, the economic consequences resulting from the pain and suffering [daño moral] can be quantified in the sum of \$64,800.00 pesos.

- p. 96-97 Regarding the degree of liability of the co-defendants, both the “Institute” and the teacher MLPV engaged in a series of unlawful behaviors, which can also be qualified as serious.
- p. 97 The actions the teacher MLPV encouraged are of greater seriousness and of high social reproach, since in addition to the failure in her duties as a teacher, she engaged in conduct harmful to the dignity of DBG, which has generated serious consequences in the emotional, family and school sphere of the minor.
- p. 98-99 With respect to the negligence the school is sued for, the negligent conduct of both the “Institute” and its teaching staff is highly reproachable, since notwithstanding their obligation to generate an adequate school environment and create instruments of conduct that protect the students from abuse and harassment by other students or the staff, they

completely failed to do so, and even permitted such violence, not only putting the minor in a situation of risk, but generating an inadequate environment for all the students.

- p. 99 Regarding the economic situation, to the extent the reparation for pain and suffering [daño moral] has a punitive and restitution facet, the capacity of payment of the responsible party must be evaluated in order to effectively dissuade it from committing similar acts in the future.
- p. 99-100 It terms of article 7.168 of the Civil Code the school must respond for both the liability of the teacher MLPV and the negligence of the “Institute”. For this reason, only the economic position of the school will be evaluated. This Court considers that the different elements found in the court record lead to the conclusion that the Institution has an average economic situation.

DECISION

- p. 102 In this regard, given the serious effect on the dignity of the minor, the high degree of responsibility of the teacher and the school and the average economic capacity of the latter, this Court considers that the federal protection requested by AMGH, in her own right and in representation of her minor son DBG, should be granted, reversing the challenged decision and issuing in its place another one restating the holdings of this Court and ordering the “Institute” to pay compensation for pain and suffering [daño moral] in the amount of \$500,000.00 pesos.
- p. 102, 105 Finally, this Court indicates the need for the competent authorities to create clearer and more specific regulatory instruments, based on which both public and private schools can construct a strategy to combat bullying which contemplates: I) preventing school harassment, constructing a social environment of respect and security in the schools, II) identifying the existence of latent problems of school harassment, III) effectively impeding the persistence of violent conduct, and IV) supporting and guiding the minor and his or her parents or guardians to guarantee the rehabilitation of the affected party.