



**Suprema Corte**  
de Justicia de la Nación



**DERECHOS**  
**HUMANOS**

This summary contains the cover page, the synthesis and the extract of a decision of the 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.

**PAVILION 13: CONDITIONS UNDER WHICH MEDICAL CARE IS PROVIDED TO  
PATIENTS WITH HIV/AIDS**  
**(PABELLÓN 13: CONDICIONES EN LAS QUE SE PROPORCIONA ATENCIÓN MÉDICA A  
PACIENTES CON VIH/SIDA)**

**CASE:** *Amparo en Revisión 378/2014*

**REPORTING JUDGE:** Alberto Pérez Dayán

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

**DATE OF DECISION:** October 15, 2014

**KEY WORDS:** Right to health, human right to enjoy the highest level possible of physical and mental health, right to life, principle of progressiveness, resources, treatment of illnesses, medical care, HIV/AIDS.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 378/2014*, Second Chamber, Alberto Pérez Dayán J., decision of October 15, 2014, 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/2020-01/AR%20378\\_2014.pdf](https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-01/AR%20378_2014.pdf)

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## SUMMARY OF THE *AMPARO EN REVISIÓN* 378/2014

**BACKGROUND:** AHA, LBL and RGPP, patients of the National Respiratory Diseases Institute (INER), filed an *amparo indirecto* in which they claimed relief from various authorities for the failure to execute the project called “Construction and Equipping of the Clinical Service for Patients with HIV/AIDS and Co-infection by Air Transmission Diseases”, also known as “pavilion 13”, as well as the failure to authorize the transfer of sufficient resources for that purpose. The affected patients argued the violation of their right to health due to the fact that sufficient resources were not destined for the execution of the “pavilion 13” project and, in addition, of their right to life, since the people infected with the HIV/AIDS virus were exposed to contagions and co-infections of various diseases. The district judge of the Federal District that heard the matter determined not to protect the affected parties, and therefore they filed a motion for review, which the Second Chamber of the Mexico’s Supreme Court of Justice (this Court) heard through its faculty to assert jurisdiction over the case and rule on it directly.

**ISSUE PRESENTED TO THE COURT:** Whether the conditions under which the INER provided medical care to the affected patients were in line with the human right to enjoy the highest level possible of physical and mental health or if, on the contrary, they were unduly exposed to catching other infections, diseases and disorders that could prolong their treatment and even put their health and life at risk.

**HOLDING:** The appealed decision was revoked and the *amparo* was granted, essentially for the following reasons. The judicial inspection done by the district judge that heard the *amparo*, in relation to the manifestations of the responsible authorities themselves, revealed that the conditions of the INER pavilion where the affected patients were cared for were not adequate for their treatment, according to the human right to enjoy the highest possible level of health. This determination was based on the fact that the constructions were necessary for the medical care to be considered of good quality, in order to prevent, to the extent possible, patients with HIV/AIDS suffering from other attendant infections, diseases and disorders that could affect the treatment and the care they received, and that could even put their life at risk. Furthermore, it

was considered that the responsible authorities only argued that there was insufficient budget for carrying out the measures to ensure the full effectiveness of the human right to enjoy the highest possible level of health of those affected. However, they did not demonstrate that they had made every effort possible to use the resources that were at their disposal. Therefore, it was considered that the authorities violated the obligations established in articles 4 of the Constitution, 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, the *amparo* was granted to the affected parties and it was determined that the INER, in coordination with the National Health Protection Commissioner (the Commissioner) and the Technical Committee of the Health Social Protection Trust (the Technical Committee), should take all the measures necessary to safeguard the human right to enjoy to the highest possible level of health of the affected patients, considering they were carriers of HIV, and therefore they should receive their medical treatment in facilities separated from the rest of the patients, in order to avoid the contagion of any illness.

**VOTE:** The Second Chamber ruled on this matter by a majority of three votes of judges Alberto Pérez Dayán, José Fernando Franco González Salas and Luis María Aguilar Morales. Judge Margarita Beatriz Luna Ramos voted against. Judge Sergio Valls Hernández was absent.

## EXTRACT OF THE *AMPARO EN REVISIÓN* 378/2014

- p. 1 Mexico City. The Second Chamber of the Mexico's Supreme Court of Justice (this Court), in session of October 14, 2014, issues the following decision.

### BACKGROUND

- p. 5-6 On August 31, 2007, the Technical Committee of the Trust of the Health Social Protection System (the Technical Committee) held an ordinary session in which, among other matters, it authorized the request of the National Respiratory Diseases Institute (INER) for the development of the project "Remodeling and Equipping of Clinical Service 4".

- p. 6 INER's request reveals that: it is a body that suffers the greatest consequences of AIDS; each year it hospitalizes around 170 patients with HIV and pulmonary complications; those suffering from HIV/AIDS remain more than four weeks in that institute; and that due to the physical characteristics of the institute, it would not comply with the recommendations of the World Health Organization (WHO), among other bodies.

Thus they need facilities that generate a balance between the specialized medical care and the appropriate control of microorganisms, through mechanisms of containment, since the conditions in which it is attending patients that have to be hospitalized with HIV/AIDS are not appropriate.

- p. 7 On June 23, 2008, the Technical Committee analyzed the request of the INER to substitute the project "Remodeling and Equipping of the Clinical Service 4" for the new project "Construction and Equipping of the Clinical Service for patients with HIV/AIDS and Co-infection by Air Transmission Diseases" (pavilion 13), for the same authorized amount.

In this respect, the Technical Committee indicated that the modification reflected the fact that, as a result of the review and discussion of the preliminary design done with the company responsible for the prior master plan, the INER decided would be better to construct a new pavilion in order to avoid disrupting the patient care for a year while remodeling the area where they are currently treated.

- p. 7-8 Thus, on July 3, 2008, the Committee approved the cancellation of the project “Remodeling and Equipping of the Clinical Service 4” and authorized the application of the resources only for the preparation of the master plan of the “pavilion 13” project.
- p. 8 The Financing Office of the National Health Social Protection Commission (the Commission), issued the letters of instruction to transfer funds to the INER for the contracting of the “pavilion 13” master plan and the result was analyzed for viability and compliance with various technical, administrative and budgetary requirements.
- p. 56-57 Once the INER prepared the master plan it again petitioned to the Technical Committee for the amount of the estimated cost. The justifying report rendered by the National Health Social Protection Commissioner (the Commissioner) shows that the main reason the “pavilion 13” project has not been done is due to a lack of resources.
- p. 8-9 AHA, LBL and RGPP, patients of the INER, filed an *amparo indirecto* against the various responsible authorities, claiming relief, essentially, for the failure to execute the “pavilion 13” project, as well as the failure to authorize the transfer of sufficient resources for that purpose.

A district judge in the Federal District that heard the matter issued a decision on June 21, 2013, in which, in one part, he dismissed the proceeding and, in another, denied the *amparo*.

- p. 17-18 The patients challenged the decision filing a motion for review and, in session of February 20, 2014, a collegiate court of the Federal District that heard the matter issued a ruling in which it confirmed the dismissal declared in the proceeding and, once the claims in question prior to the merits of the matter were analyzed, it requested this Court to exercise its authority to assert jurisdiction over the case and rule on it directly to hear the matter.

### **STUDY OF THE MERITS**

- p. 25 First this Court should specify the content and scope of the human right to enjoy the highest possible level of health.

## **I. General principles on the human right to enjoy the highest level possible of physical and mental health**

p. 27 The right to health established in article 4 of the Federal Constitution can be understood as the obligation of the State to establish the necessary mechanisms so that all persons have access to health services leading to a particular general wellbeing made up of the physical, mental, emotional and social state of the person, from which one more fundamental right arises, consisting of the right to physical-psychological wellbeing.

Thus, it is a complex right that deploys a broad series of fundamental legal positions for private parties and for the State, in the understanding that the protection of health and the development of the corresponding health care systems is one of the fundamental tasks of contemporary democratic States and it represents one of the keys of the State of wellbeing.

p. 28 Thus, the full realization of the human right to health is a fundamental requirement to ensure that people can develop other rights and liberties, and therefore the pursuit of social justice cannot ignore the role of health in human life and the opportunities to achieve a life free of avoidable or treatable diseases and, above all, to avoid suffering a premature death.

p. 28-29 Now, it is essential to limit this study to the legal content and scope of the human right to enjoy the highest possible level of physical and mental health, protected in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which imposes positive obligations on the States parties, including - for the particular circumstances of this case - the measures necessary to reduce mortality, treat illnesses and, especially, create conditions that ensure full medical care and medical services in case of illness.

p. 32 In addition, article 2 of the ICESCR establishes content obligations – immediate – and result obligations – mediate or for progressive completion. The first refer to rights being exercised “without discrimination” and that the State “adopt measures” within a

reasonably brief time period, that are deliberate, concrete and oriented as clearly as possible directed to the satisfaction of the convention obligations.

- p. 33 In this regard, the Mexican State has, on the one hand, an immediate obligation to ensure to people at least an essential level of the right to enjoy the highest possible level of health and, on the other hand, an obligation to progressive completion, consisting of achieving its full exercise up to the maximum resources it has.
- p. 34 Thus, when the contracting State, arguing a lack of resources, fails to fully realize the right to the enjoyment of the highest possible level of health, or would not ensure its essential levels, it must not only prove the lack of resources, but also that it has made all possible efforts to use the resources that are at its disposal, having in mind that in the use of its discretion in developing public policies, and for the decisions pertaining to the distribution or redistribution of resources, it must take vulnerable groups into account, as well as situations of risk, in the understanding that it cannot adopt decisions that are arbitrary or discriminatory.
- p. 37 From the above it can be concluded that the right to enjoy the highest possible level of health should be understood as a right to enjoy a range of facilities, goods, services and conditions necessary to reach a state of general wellbeing, in the understanding that there are essential elements that inform the development of the human right to health, which are availability, accessibility, acceptability and quality.
- p. 38 According to General Observation number 14 issued by the Committee on Economic, Social and Cultural Rights (CESCR), the struggle against diseases involves the individual and collective efforts of States to facilitate, among other things, the relevant technologies, so that the creation of conditions that ensure medical care and medical services for people who are ill is not limited to equal access and opportunity to basic preventive, curative and rehabilitation services, but includes the appropriate treatment of diseases, ailments, injuries and disabilities.

Thus, according to the CESCR, there will be a direct violation of the obligations of the ICESCR when, among other matters, the Mexican State would not adopt all the suitable

measures to give full effect to the universal right to enjoy the highest possible level of physical and mental health, which includes the establishment of good quality public goods and services that are acceptable from the cultural, scientific and medical point of view, and that have the relevant technologies to give an appropriate treatment to the illnesses, taking into account that special care must be given to vulnerable or marginalized groups.

## **II. General framework of HIV/AIDS**

- p. 39 According to the WHO, HIV/AIDS is a global public health problem. The infection is usually diagnosed through blood analysis and, although there is no cure, patients can keep the virus under control and lead a healthy and productive life if they follow an effective treatment with antiretroviral drugs.

The human immunodeficiency virus – HIV – attacks the immune system and debilitates the monitoring and defense systems against infections and some types of cancer.

- p. 40 The most advanced phase of the HIV infection is known as acquired immunodeficiency syndrome or AIDS and can take between two and fifteen years to manifest, depending on the patient. AIDS is defined by the appearance of certain types of cancer, infections or other serious clinical manifestations.

To the extent that the infection progressively debilitates the immune system, the patient can present other signs and symptoms. In the absence of treatment, serious illnesses like tuberculosis, meningitis cryptococcosis or different types of cancer can also appear, for example lymphomas or Kaposi sarcoma, among others.

- p. 42 People who suffer from HIV/AIDS are especially vulnerable to contagion of opportunistic diseases, which not only delay and complicate the treatment of HIV/AIDS itself, but also can put their life at risk, and therefore it is indispensable that the clinical establishments have the appropriate measures to prevent, to the extent possible, that patients with HIV/AIDS contract other concomitant infections, illnesses and disorders at the time of receiving the respective treatment.

## **III. Application of the general principles of the human right to enjoy the highest possible level of physical and mental health to this case**



p. 44 The dispute in this proceeding is limited to determining if the conditions in which medical care has been provided to AHA, LBL and RGPP are in line with the right to enjoy the highest level of health possible, and thus are not unduly exposed to suffering other infections, illnesses and disorders, that threaten their personal well-being, and even can put their life at risk.

This Court has not forgotten that the responsible authorities themselves have already recognized that the medical treatment that is provided to patients with HIV/AIDS in “pavilion 4” of the INER is inadequate and does not comply with the international quality standards.

p. 51 Furthermore, addressing the conclusions found in the judicial inspection evidence, it can be determined that the conditions of “pavilion 4” are not adequate for the treatment of the affected patients, according to the human right to enjoy the highest possible level of health, since it has been shown that the works are necessary for the medical care to be considered of good quality, preventing, to the extent possible, that the patients with HIV/AIDS suffer other concomitant infections, illnesses and disorders of different types that have repercussions on the treatment and care they receive and that may even put their life at risk.

In this regard, it is clear that the adjustment to the infrastructure of the INER is required under articles 2 and 12 of the ICESCR of the Mexican State since, as the CESCR has indicated, it must have establishments, public health goods and services and healthcare centers that are acceptable from the cultural point of view and that are appropriate from the scientific and medical point of view and are of good quality.

p. 52 In addition, the CESCR established that the state obligation to create conditions that ensure medical care and medical services for people in cases of illness, which is found in article 12, paragraph 2, part d), of the ICESCR, is not limited to equal and opportune access to basic preventive, curative and rehabilitation health services, but includes appropriate treatment of diseases, ailments, injuries and disabilities, which of course covers the measures to prevent, to the extent possible, in public health establishments

undue exposure of people with HIV/AIDS to the risks of co-infection of opportunistic illnesses that lengthen their medical treatment and that submit them to greater suffering, or could even lead to risks to their life.

- p. 54 We can conclude from the above that the need to make structural modifications to the responsible institute has been shown, in order to minimize to the extent possible the risks of contagions and co-infections of opportunistic illnesses for the patients who suffer from HIV/AIDS.

#### **IV. The obligation of the Mexican State to adopt measures to the maximum extent of its resources and the inefficacy of the authority's arguments**

The ICESCR recognizes that the State obligation to protect, respect and promote the human right to enjoy the highest possible level of health, cannot ignore the particular situation of each country, and therefore there will not be a violation of economic, social and cultural rights, even if it is shown that a particular right has not been fully achieved or reached an optimum state of efficacy, provided the State has demonstrated that it has used all the resources it has at its disposal in an effort to satisfy the convention obligations. Thus, it is not expected for each State to immediately comply with the full realization of the right to health, but rather for it to take adequate measures that will ensure that objective, as fast and effectively as possible.

- p. 57-58 Thus the simple assertion of budgetary limitations by the Mexican State is not sufficient for demonstrating that it has adopted all the measures to the maximum of its resources to achieve the full realization of the human right to enjoy the highest possible level of health, because the State entities are obligated to contribute evidence supporting their claim by proving their financial situation, especially since in all matters claiming the violation of the economic, social and cultural rights that make up the constitutional corpus, the national judges must distinguish between the State's incapacity to comply with the human rights obligations that the Mexican State has undertaken and the reticence of such State to comply with those obligations, since that will permit the determination of what actions or omissions amount to a violation of those human rights.

p. 58 Thus, the judicial bodies may review whether, in fact, the failure to fully realize the constitutional or conventional right is the result of the lack of state resources or, when the nature of the case permits, ensure that such failure to allocate resources is not the result of arbitrary or discriminatory decisions by the State authority.

The above is supported by the fact that, while in principle this courts should not substitute the functions of the Executive and Legislative Powers regarding the preparation of public policies and the allocation of resources, the Federal Constitution itself requires the Judicial Power to compare the actions of such democratic bodies with the standards contained in the Supreme Law and in the human rights treaties that form part of the Mexican legal system and that, of course, are binding on all state authorities.

p. 60 As a result of the above, this Court considers that the responsible authorities have not demonstrated that they have made all possible efforts to use the resources that are at their disposal to achieve the full effectiveness of the human right to enjoy the highest level of health possible for AHA, LBL and RGPP, since they only asserted the lack of budget to take the measures to achieve that objective, but failed to contribute to the proceeding the evidentiary material to support that assertion.

### DECISION

This Court considers that in this case the violation of the obligations established in articles 4 of the Constitution, 2 and 12 of the ICESCR is proven and, therefore, it is appropriate to revoke the appealed decision and grant the *amparo* to the affected parties.

p. 62 In view of the above, this Court determines that the INER, in coordination with the Commissioner and the Technical Committee shall take all the measures necessary to safeguard the human right to enjoy the highest possible level of health for AHA, LBL and RGPP, considering that they are carriers of HIV, and therefore they must receive medical treatment in facilities separated from the rest of the patients, in order to avoid contagion of any disease.

p. 62-63 Thus, compliance with the decision implies the that the responsible authorities should consider what measure would be the most suitable to be able to provide those affected

with appropriate medical treatment for their illness, such as through remodeling Clinical Service 4, where they are currently treated, or by the construction of a new hospital pavilion.

- p. 63 If it is proven that neither of the mentioned options is compatible with the public policies in health implemented by the responsible authorities, they must take steps they consider relevant so that AHA, LBL and RGPP, to a reasonable level of satisfaction – qualified by the judge – are cared for in another hospital or the clinics of the health sector in which they can receive their treatment in adequate and appropriate conditions for their illness, in order to guarantee their right to obtain the highest possible level of health.