



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.

**DNA EXPERT ANALYSIS: RIGHTS TO IDENTITY AND PRIVACY
(PERICIAL EN ADN: DERECHOS A LA IDENTIDAD Y A LA PRIVACIDAD)**

CASE: *Amparo Directo en Revision 2944/2017*

REPORTING JUDGE: Arturo Zaldívar Lelo de Larrea

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

DATE OF THE DECISION: March 7, 2018

KEY WORDS: right to genetic privacy, right to human dignity, right to identity, right to know biological origin, human dignity, recognition of paternity, molecular genetic testing, filiation, presumption of paternity, genetic secrecy.

CITATION OF THE DECISION: Mexico's Supreme Court of Justice, *Amparo Directo en Revision 2944/2017*, First Chamber, Arturo Zaldívar Lelo de Larrea, J., decision of March 7, 2018, 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/2021-10/ADR%202944-2017.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo en Revision 2944/2017*, Mexico.

SUMMARY OF THE *AMPARO DIRECTO EN REVISION* 2944/2017

BACKGROUND: JFLR sued JMGD for recognition of paternity and offered expert evidence in genetics, which JMGD refused to provide, so a judge deemed the presumption of paternity to have been proven. JMGD appealed the decision and a civil court of the Supreme Court of Guanajuato confirmed it. JMGD filed a *juicio de amparo directo* against that decision, which was denied by a civil collegiate court in Guanajuato. JMGD then filed a *recurso de revisión* before this Court.

ISSUE PRESENTED TO THE COURT: Whether the admission of the expert evidence in molecular genetics in a paternity recognition lawsuit violates the right to keep genetic information secret.

HOLDING: The decision was upheld for the following reasons. From the balance between the right to know one's biological origin and the right to privacy of genetic data, in the event of admission of the genetic expert evidence in a paternity recognition lawsuit, it was concluded that the admission and the order to submit evidence do not constitute a disproportionate impact on the right to privacy in contrast to the extensive protection granted to the right to identity. Furthermore, the intrusion into the right to privacy has a lesser degree since the data obtained only refers to the confirmation or not of that tie. Therefore, the decision denying the *amparo* was confirmed.

VOTE: The First Chamber decided the matter unanimously by five votes of the judges Norma Lucía Piña Hernández, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo, and Alfredo Gutiérrez Ortiz Mena.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=215827>

EXTRACT OF THE *AMPARO DIRECTO EN REVISION* 2944/2017

p. 1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 7, 2018, issues the following decision.

BACKGROUND

- p. 1-2 JFLR sued JMGD for the recognition of his paternity with respect to her. At trial, JFLR offered expert evidence in molecular genetics, but JMGD refused to have this test performed on him. On August 29, 2016, the family judge considered that the presumption contained in article 416-A of the Civil Code of Guanajuato (CCG) was applicable and declared the paternity of JMGD, including all the rights and obligations inherent in the filial relationship.
- p. 2 JMGD appealed the decision of the family judge. A civil chamber of the Supreme Court of Guanajuato, on October 19, 2016, confirmed the decision of the trial court. It considered that the presumption of paternity did indeed apply since he had refused to submit to the expert analysis.
- p. 2-4 JMGD filed an *amparo* claim against the chamber's decision. A civil collegiate court in Guanajuato issued a decision on March 29, 2017, in which it denied the *amparo* to JMGD. Dissatisfied with that decision, JMGD filed a *recurso de revision* before this Court.

STUDY OF THE MERITS

- p. 8 This case concerns the decision of a family judge establishing that a man is indeed the parent of the woman who sued him, because he refused to carry out the molecular genetic expert analysis, and therefore the presumption of paternity, established by Article 416-A of the GCC, applied.
- p. 8-9 This Court is in a position to examine the balance between the human right to identity and the so-called right to genetic privacy with respect to the admission and order to present DNA evidence in a paternity recognition lawsuit, but it is not in a position to address the

arguments related to the presumption, since they are raised and discussed in terms of legality and are beyond the jurisdiction of this Court.

- p. 9 From JMGD's perspective, a person's right to identity only outweighs the protection of another person's genetic information if it incorporates proof or indicative evidence in addition to DNA expert analysis.
- p. 9-10 The case raises a possible collision between two fundamental rights, namely a possible tension between one person's right to know his or her biological origin and another person's right to the privacy of his or her genetic data.
- p. 10 In this regard, this Court has understood that constitutional rights and values are not absolute, in the sense that one cannot simply displace another in the abstract, but that the norm must reflect a proportional balance of the constitutional interests at stake, within the framework of the specific case in question.

To this end, the scope or *prima facie* content of the rights in question will first be determined; second, it will be examined whether the normative assumption in question - the admission of the genetic expert analysis in a lawsuit of paternity recognition without offering additional evidence- does indeed cause a collision between them; finally, the severity of the interference of the right to privacy in the face of the impact on the protection of the right to identity will be examined.

I. *Prima facie* content of the rights in question

a) The right to identity

- p. 11 The right to identity has primarily been developed in the case of minors, expressly recognizing its status as a fundamental right. However, in the case of adults, this Court has also pointed out that the right to identity is a fundamental right, derived from respect for human dignity.
- p. 11-12 Human dignity has been recognized in various legal systems as a fundamental human right, which is the basis and condition of all other rights. In this way, human dignity includes the rights of personality, which includes the right to identity.

- p. 12 The right to personal identity has been defined by this Court as the right of a person to have their own characteristics, physical and internal, that individualize them before society. It is the whole and the result of all those characteristics that make it possible to individualize a person in society; it constitutes everything that makes the individuals themselves and not someone else, and it is projected outwards allowing others to know and identify them.
- p. 12 Identity formation is constructed through multiple psychological and social factors; however, people's own image is determined, to a large extent, by the knowledge of their biological origins, which are of enormous importance both from the psychological and legal point of view.
- p. 12-13 There are multiple studies that indicate that it is of the greatest importance for individuals to know where they come from. They explain that the interest in knowing one's origin contributes to the formation of personal identity, both physical and psychological, on which one's esteem and sense of personal dignity are based. Therefore, the lack of information about it can generate severe personal, psychological, and personality problems.
- p. 13 In addition, knowledge of one's own origin is linked to important legal consequences. This Court has established that the right to identity includes the right to have a name, a nationality, and a filiation. In addition, the determination of such filiation gives rise to various rights such as the assignment of surnames, the attribution of parental authority, maintenance rights, and inheritance rights.
- p. 13-14 In this sense, this Court understands that for the integral development of human beings it is of great importance to know the circumstances of their birth -which includes their biological origin- since this is part of their personal history and, to that extent, of their identity.

b) The right to privacy of genetic information

- p. 14-15 This Court has understood the right to privacy as a guarantee that no one can interfere in the sphere of the individual's personal and family private life; that is, in aspects that should be excluded from the knowledge of others and the interference of others. This recognition

is not limited to a physical space, but to any interference or nuisance, by any means, in a reserved area of personal life.

- p. 15 This Court has established that people have the right to enjoy a sphere reserved from invasion by others, which concerns them alone and provides them with adequate conditions for the deployment of their individuality, autonomy, and freedom; that is, the existence of their own environment reserved from the action and knowledge of others.
- p. 16 In short, the right to privacy is a fundamental right consisting of the power that individuals have not to be interfered with or disturbed by any person or entity, in everything that belongs to their intimate sphere and that they wish to share only with those they choose.
- p. 17 This Court has explained in its doctrine that the right to privacy is also extended as a protection for private information that cannot be obtained or disseminated without the consent of the owner.

In the Contradictory Decisions Case 81/2002, this Court expressly recognized that genetic information is protected by the right to privacy.

It was specified that the taking of a genetic sample implies collecting information that belongs to a private sphere of the human being, as long as it could "reveal other characteristics or genetic conditions, related to hereditary pathological aspects or certain tendencies or proclivity to particular behaviors", which, in the end, can compromise the right to privacy of a person.

- p. 18 In accordance with the foregoing, this Court reaffirms that genetic information is protected by the right to privacy. It is clear that genetic material is, in itself, unique and constitutive information about a given individual. To that extent, DNA is information linked to the most intimate sphere of a human being and as a result, its obtaining and use is protected by the right to privacy.

II. Collision

- p. 19 In light of the *prima facie* scope of the rights referred to, the admission and order to submit the genetic expert analysis evidence in a lawsuit for recognition of paternity indeed implies

a collision between them. The decision to admit the expert evidence provides access to a scientific solution for determining whether a person has a paternity relationship, which would provide information on biological origin and, to that extent, would make it possible to satisfy the right to identity.

However, it assumes that the defendant receives a court order to access his genetic information, from a sample collected from his own body. As a result, his genetic information would become part of the body of evidence in a public lawsuit, which strains the right to privacy.

In contrast, the non-admission of such evidence means preventing access to genetic information and its subjection to scientific and judicial scrutiny, in such a way that his right to privacy would be protected through judicial channels. However, such a decision could obstruct the determination of whether one person has a filial tie with another, which would make it difficult for a person to know his or her biological truth despite the fact that the means exist. To that extent, such a decision would compromise the exercise of the human right to identity.

III. Balancing

p. 20 In the balancing review, two or more rights interact in a particular normative scenario, in a way in which one of them achieves its effectiveness to the detriment of the effectiveness of the other. This collision cannot be resolved by shifting one right in the abstract in favor of the other, but by examining the degree of effectiveness of one of the rights, in the face of the intensity of the impact suffered by the other.

In the event that the impact on the right is more severe than the degree of protection reached by the opposite right, we will be facing a disproportionate interference with a fundamental right. If, on the other hand, the level of attainment of the law protecting the norm is greater than the degree of impact suffered by the competing right, then the interference is valid and the rule must prevail.

a) Effectiveness of the right to identity

- p. 21 The impact on the protection of the right to identity resulting from the admission and order to submit evidence is significant. In fact, the expert analysis in molecular genetics has a proven efficacy to settle the question of more than 99.99% certainty.
- p. 21-22 If the test is positive, a person's specific right to know his or her biological origin is satisfied, as he or she obtains a scientific certification of who his or her father or mother is genetically speaking. If the test is negative, this right is satisfied to some significant degree because the doubt of whether or not the person was his or her parent can be ruled out. This can mean anything from narrowing or delimiting the search for your biological truth, to resolving a central question in your personal history.
- p. 22 It is true that the rule also provides that the defendant can refuse, and in that case the presumption of paternity operates if he does not present evidence to the contrary. It may appear that the right to identity is not protected; however, this idea is part of an inadequate understanding of a paternity lawsuit.

Although it could happen that a person claims paternity for improper reasons, the lawsuit of recognition of paternity cannot be understood as an inquisitive process that individuals capriciously activate, with the aim of subjecting a person to a genetic test. The process of recognition is intended to make the law recognize and protect the filial relationship between parent and descendant.

In this sense, there may be various interests and aspirations at stake that are crucial to the right to identity. In fact, when activating the paternity process, a person can start from the conviction of facing their biological mother or father, and therefore their intent is not simply that they submit to a scientific test, but to obtain legal recognition of the paternity relationship to which they consider they are legitimately entitled, as well as receive the prerogatives that accompany the filial tie.

- p. 22-23 In this regard, if the presumption is applied, and the defendant fails to offer evidence to the contrary, then the conclusion of the paternity trial fulfills its expectation: the law recognizes the person as a legitimate father or mother, and rights and obligations of paternity arise between them. Faced with this scenario, the person can see their right to

identity satisfied because they receive not only the legal certainty of the filial tie, but also the accumulation of prerogatives of paternity that are included in the human right in question.

- p. 23 In accordance with the foregoing, this Court understands that the admission and the order to submit evidence broadly protect the right to identity, in all possible scenarios of the normative assumption.

b) Impact on the right to privacy

On the other hand, the severity of the impact on the right to privacy is moderate, as will be explained below.

Although the order to submit expert analysis does not go so far as to coerce the individual, it certainly does not present them with a free or autonomous alternative. In effect, it compromises the free exercise of the right to privacy, since the person receives a judicial instruction to allow an intrusion into their genetic data, and if they refuse to comply, they are attributed, as a legal consequence, the presumption of paternity. In this sense, the admission and order to submit evidence compromises the free exercise of the right to privacy.

- p. 24 If the person agrees to access their genetic data, it does not dispel the public intrusion into their privacy, since their information will be collected and incorporated into judicial and scientific scrutiny. Furthermore, it must be recognized that the individual did not act within a framework of full autonomy, but under the possibility of the presumption of paternity. That measure, regardless of the outcome, affects the right to privacy.

On the other hand, if the individual chooses to have the presumption applied, it cannot be said that they exercised an autonomous decision on their private data. They were forced to assume that consequence in order to protect the confidentiality of their genetic information from direct interference by the State. Thus, although they manage to prevent with their decision an interference in their data, the order to submit evidence compromised the free exercise of their right to privacy.

However, these effects are not equivalent to a direct and non-consensual interference in the privacy of a person since the regulatory system does not allow the individual to be coerced into performing the expert analysis. The presumption is not a sanction, but an evidentiary consequence that can be reversed if the defendant offers evidence to undermine filiation.

- p. 24-25 In addition, there is no reason to think that the information will be used in an unlawful manner, since it is intended exclusively to prove whether there is a biological tie between both people, and not for additional data such as diseases, tendencies, and other genetic information.
- p. 25 Thus, this Court understands that the admission and the order to submit the DNA expert analysis in a paternity trial involves mild to moderate impacts on the right to privacy.

IV. Conclusion

- p. 25-26 This Court considers that while the admission and the order to submit expert analysis in molecular genetics provide intense protection for the right to identity, the degree of impact that the right to privacy may suffer is moderate. In that regard, it is unfounded that the plaintiff must provide some additional evidence to the DNA expert analysis in order to justify that measure, since it is precisely the appropriate evidence to prove the filial tie and, consequently, to protect a person's right to know their biological origin.
- p. 26 According to the balancing review, the DNA expert analysis in the particular context of a paternity trial can definitively resolve a person's search for biological origin and, to that extent, make the right to identity effective to a substantial degree; without implying an unreasonable, arbitrary, or irrational intrusion into an individual's privacy; and in contrast, its exclusion can be devastating for a person.

DECISION

This Court considers that the admission and order to submit the expert analysis does not constitute a disproportionate impact on the right to privacy.

p. 27 Consequently, the appealed decision is upheld and no protection is given from the decision of the chamber of the Supreme Court of Guanajuato.