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**CONSTITUTIONALITY OF THE CRIME OF FEMICIDE
(CONSTITUCIONALIDAD DEL DELITO DE FEMINICIDIO)**

CASE: *Amparo Directo en Revisión 652/2015*

REPORTING JUDGE: Olga Sánchez Cordero de García Villegas

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

DATE OF THE DECISION: November 11, 2015

KEY WORDS: right to equality and non-discrimination before the law, criminal law, legal equality of men and women, femicide, gender perspective, violence against women, discrimination, proportionality.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo Directo 652/2015*, First Chamber, Olga Sánchez Cordero de García Villegas, J., decision of November 11, 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/2021-10/ADR%20652-2015.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo Directo en Revisión 652/2015*, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 652/2015

BACKGROUND: On March 11, 2014, a criminal judge determined the criminal liability of a person (the affected party) for the crime of attempted femicide, when condemning him to a prison term. The sentence was appealed and on May 13, 2014 it was confirmed by a criminal chamber of the Supreme Court of Guanajuato. Dissatisfied with that decision, the affected party filed an *amparo directo* on June 23, 2014, arguing that the crime was unconstitutional because it violated the principles of equality and non-discrimination. The collegiate criminal court that heard the case decided to deny the *amparo* on January 9, 2015. The sentenced party filed a *recurso de revisión* against this determination on February 3, 2015, which was heard by the First Chamber of the Supreme Court (this Court), considering it to be within its jurisdiction.

ISSUE PRESENTED TO THE COURT: Whether article 153-a of the Criminal Code of the State of Guanajuato (CPEG), which establishes the crime of femicide, is unconstitutional for violating the principles of equality and non-discrimination contained in articles 1 and 4 of the Federal Constitution, or if on the contrary, it is in accord with constitutional provisions.

HOLDING: The sentence was confirmed for the following reasons. The offence of femicide contained in the article that was challenged is not discriminatory, since the distinction created by the local legislator serves an objective and constitutional purpose, seeking to ensure that women have the right to a life free of violence. It was also considered that the definition of the offence was an objective and rational measure because it guaranteed equity; it is also proportional because it does not excessively affect other rights protected by the Federal Constitution. Consequently, the sentence that was the subject of the complaint was confirmed, through which he was denied the *amparo* against article 153-a of the CPEG.

VOTE: The First Chamber resolved this case by a unanimous vote of the five votes of judges Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea (reserved the right to

formulate a concurring vote), José Ramón Cossío Díaz (reserved the right to formulate a concurring vote), Jorge Mario Pardo Rebolledo and Alfredo Gutiérrez Ortiz Mena.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=176982>

EXTRACT OF THE *AMPARO DIRECTO EN REVISIÓN* 652/2015

- p. 1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of November 11, 2015, issues the following decision.

BACKGROUND

- p. 1-2 A criminal judge of Celaya, Guanajuato, in a sentence of March 11, 2014, considered a person (the affected party) liable for the crime of attempted femicide, against a woman, condemning him to a prison term of 13 years, and to the reparation of damages in favor of the woman.
- p. 2 The affected party and his public defender filed an appeal in which a criminal chamber of the Supreme Court of Justice of the State of Guanajuato issued a decision on May 13, 2014, confirming the conviction.
- p. 2-3 The affected party filed an *amparo directo*, which was heard by a collegiate criminal court in Guanajuato. On January 9, 2015, the requested *amparo* was denied.

On 3 February 2015, the affected party filed a *recurso de revisión* before the filing office of the collegiate court. Subsequently, on February 4, 2015, the presiding Magistrate of the collegiate court referred the matter to this Court.

STUDY OF THE MERITS

- p. 14 The appellant's grievances that he is harmed by the determination that article 153-a of the Criminal Code of the State of Guanajuato (CPEG) is not unconstitutional are groundless; the affected party points out that this provision creates the crime of femicide based on the grounds of gender, in violation of the principles of equality and non-discrimination, contained in articles 1 and 4 of the Federal Constitution.

I. Equality before the law and non-discrimination

- p. 15-16 Article 1 of the Federal Constitution contains a general affirmation of the principle of equality in the enjoyment of the human rights recognized in the Federal Constitution itself

and in international treaties, by virtue of which this provision safeguards individuals in comparable situations from any discrimination in the enjoyment of the rights and freedoms enshrined in the Federal Constitution itself, which implies that the legislator must be careful when subjecting individuals to differentiated legal regimes, when this affects the exercise of the rights and freedoms recognized by the Federal Constitution; this means that this provision recognizes in all persons the human right to equality and non-discrimination.

- p. 16 The Inter-American Court of Human Rights has pointed out that the right to equality and non-discrimination encompasses two concepts: a negative one related to the prohibition of arbitrary differences, and a positive one related to the obligation of States to create conditions of equality for historically excluded groups.

This, in conjunction with article 4 of the Constitution and various international instruments, indicates that equality, rather than a concept of identity, seeks to order the legislator not to introduce distinctions between the two genders and, if it does, these must be reasonable and justifiable.

- p. 17-18 Equality between men and women before the law implies the right of women to participate actively and fully, as men do, without discrimination on the basis of their sex, in the essential areas of society.

- p. 18 The intention to elevate women to the same level of equality was preceded by the discriminatory treatment given to women in secondary, federal, and local legislations, which prevented them from active participation and from assuming, like men, tasks of public social responsibility. Thus, the reform of article 4 of the Constitution had the effect of giving guidance for modifying all those secondary laws that included subtle modes of discrimination.

For this reason, it was left to secondary federal and local regulations to meet the constitutional imperative of legal equality between men and women. It follows that the unconstitutionality that was claimed would have to demonstrate that the secondary legislation discriminates against women on the basis of their sex.

p. 19 Equality before the law is related to the general principle of equality for those governed, provided for in article 1 of the Constitution, which establishes that every individual shall enjoy the guarantees granted by the Federal Constitution, on the understanding that these may not be restricted or suspended, except in the cases and with the conditions that it establishes, which shows the desire of our current culture to overcome the discrimination that was often granted to one or another individual on the basis of their gender.

Thus, the principle of equality is configured as one of the superior values of the legal order, which means that it must serve as a basic criterion for the production of regulations and their subsequent interpretation and application.

p. 20 Both national and international legal frameworks refer to two concepts: equality before the law and non-discrimination, concepts that are not identical, but complementary. The idea that the law should not draw or permit distinctions between the rights of individuals on the basis of the categories envisaged is a consequence of the idea that all persons are equal.

p. 22-23 Based on the foregoing, it is stated that with the equality provided for in article 4 of the Constitution and in various international human rights instruments, rather than a concept of identity, it is a question of ordering the legislator not to introduce distinctions between the two genders and, if it does so, these must be reasonable and justifiable.

p.23-24 In the *Amparo in revision 796/2011*, this Court considered that the principle of equality as a limit to the materially legislative activity constitutes a subjective right that protects its holder against the behaviors of public authorities and, in particular, the materially legislative activity contains a prohibition on acting with excessive power or arbitrarily. As a limit to materially legislative activity, it does not postulate parity between all individuals, nor does it necessarily imply material or real equality, but requires reasonableness in the difference in treatment, as a basic criterion for the normative production. The essence of equality is not to outlaw differentiations or singularizations, but to prevent them from lacking objectively reasonable justification.

p.29 In order for regulatory differentiations to be considered non-discriminatory, it is essential that there be an objective and reasonable justification, in accordance with generally

accepted standards and value judgments, the relevance of which must be assessed in relation to the purpose and effects of the measure in question, and a relationship of proportionality must therefore be present between the means used and the aim pursued.

p.29-30 Thus, the exercise of constitutionality analysis in order to determine whether differential treatment is discriminatory consists of three steps to follow: a) Determine whether the purpose is objectively and constitutionally valid. This is because the means chosen by the legislator must not only be related to the purposes sought by the law but also share its character of legitimacy. b) Examine the rationality of the measure, to ensure there is an instrumental relationship between the means used and the intended purpose. c) Assess whether there is a relationship of proportionality, which properly weighs the relationship of similar means, with the aim of determining whether, for the sake of a constitutionally valid purpose, other assets or rights protected by the Federal Constitution are not unnecessarily or excessively affected, verifying, where appropriate, whether there could be any less burdensome way for the right.

p. 31 In this specific case, it is noted that as correctly considered by the collegiate court, article 153-a of the CPEG does respect the human right to equality and non-discrimination, on the basis of gender, in accordance with the following:

a) Constitutional purpose

p. 32 The first paragraph of the contested article provides for the crime of femicide when the victim of homicide is a woman and the deprivation of life is committed for reasons of gender, based on various hypotheses in aggravation thereof.

p.32-33 Thus, it is considered that the crime of femicide, contained in the contested provision, is not discriminatory in that it privileges the life of women over that of men, since this distinction created by the legislator serves an objective, constitutional and conventionally valid purpose, seeking to ensure that women have the right to a life free of violence.

p. 33 The legislator, in order to create legal mechanisms so that women's lives are not violated, added to the CPEG the typical description of femicide, thereby recognizing that these

behaviors affect not only life, physical and mental integrity, and sexual freedom, but are also committed based on discrimination and implicit subordination on the basis of gender.

p. 39 It follows from the explanatory statement that the different legal treatment established by the crime of femicide is justified mainly in the recognition by international instruments, such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention Belem Do Pará", that violence against women is an offense to their human dignity, as well as a manifestation of the historically unequal power relations between women and men.

It was appropriate to point out that for the occurrence of the crime of femicide, the main cause was related to gender, in order to have normative provisions that had greater precision and protection of women's rights.

p. 39-40 The legislature also noted that, in accordance with the provisions of both national and international legal instruments, there was a need to improve the normative conditions for the eradication of issues adverse to women's access to and development and enjoyment of rights, power and participation in all aspects of social life; in such a way that it sought to achieve a greater scope and protection of women's rights, in particular their right to live free from any type of violence.

p. 40 In these terms, this Court recognizes that the human rights of women need the protection of the State and, therefore, the Federal Government and the States must issue regulations and implement public policies that regulate and protect those fundamental rights.

p. 40-41 A necessary reference in the issue of violence against women is the González y Otras case ("cotton field"), in which the Inter-American Court of Human Rights stated that the duty of prevention covers all those measures of a legal, political, administrative, and cultural nature that promote the safeguarding of human rights and that ensure that possible violations thereof are effectively considered and treated as an illegal act, for which sanctions can be imposed and compensation for the victims required.

p. 41 It is also considered that the aforementioned gender distinction in the crime of femicide does not violate the purpose of the constitutional reform of article 4 of the Federal

Constitution, which consisted of seeking gender equality, since there is an end that is reasonably justified.

- p. 42 Consequently, the crime of femicide serves a constitutional purpose, since it seeks to achieve greater protection of women's rights, especially their right to live free from any type of violence, in such a way that the criminal conduct that threatens the lives of women, must be based on reasons of gender.

Therefore, this Court considers that the aforementioned contested provision does have an objective and valid purpose from a constitutional point of view.

b) Reasonableness

- p. 42-43 It must be determined whether the method adopted is aimed at achieving the intended purpose. Since it is a relationship between means and ends, it must be determined whether the specific mechanism chosen by the legislator leads to the desired result, which would demonstrate its rational nature; in other words, it is necessary to analyze whether the option adopted by the legislator is suitable for achieving the desired end.
- p.43 The measure being studied responds to the purpose established in the previous section, since it finds its justification in the constitutional order by seeking equality and non-discrimination of women and by attacking the obvious violence against women, providing mechanisms and measures to protect their personal integrity when there are aggressions against them and aggressors, which makes it possible to consider that the rule is reasonable in terms of its purpose.

The definition of the crime of femicide is an objective and rational measure, since it is agreed that equity is guaranteed by establishing mechanisms to protect the integrity of women who have suffered violence.

- p.43-44 Consequently, it is concluded that the article analyzed constitutes an adequate and rational measure to achieve the desired goal.

c) Proportionality

p. 44 In this section, it is necessary to determine whether, for the sake of the purpose described, other property or rights protected by the Federal Constitution, particularly the human right of equality and non-discrimination before the law, are not excessively affected.

The core of the principle of equality is established in terms of sufficient reason to justify unequal treatment of equals; the problem is therefore concentrated on the justification for this.

This Court, in a case in which the law distinguishes between two or more facts, events, persons or groups, must analyze whether that distinction rests on an objective and reasonable basis or whether, on the contrary, it constitutes discrimination.

p. 45-46 In this specific case, although the definition of the crime of femicide is only aimed at the gender "woman", the distinction is not offensive, since it tends to balance the exercise of civil, political, economic, social, and cultural rights between men and women in the State of Guanajuato, given the great imbalance in which the latter find themselves.

p. 46 Consequently, the regulations under study comply with the requirement of proportionality, since it generates the same legal situation for all women who are found under this hypothesis.

Furthermore, it should be noted that this classification is not directed at a right as a perpetrator of the crime, but at a vulnerable situation specific to the victim, in this case, a socially vulnerable group in the specific community where the law applies; in addition, equality does not refer to an absolute identity between man and woman, which would imply denying the obvious differences, primarily physical and biological, but to an equivalence in rights and obligations that, in this case, are not in any way violated.

p. 47 Thus, this Court reiterates that the legislative measure to define the crime of femicide when the victim is a woman does not unnecessarily or excessively affect other assets or rights protected by the Federal Constitution, such as the human right to equality before the law.

Especialmente ya que en el enunciado de la materia que dio origen al artículo impugnado, se estableció que la necesidad de reorientar el delito de femicidio deriva no sólo de la gravedad de la conducta desplegada por el autor, que tiene un impacto directo en la sensibilidad social y evidencia la repudiación de las normas de convivencia colectiva, sino también busca proteger, en cualquier circunstancia, el superior bien jurídico de las mujeres y de todo ser humano, la vida, con el propósito de prevenir y erradicar cualquier afectación en su dignidad y derechos.

- p. 47-48 There is also an appropriate balance between the description given in the contested provision and the purpose it pursues. The local legislator took into consideration that gender-based violence against women is an extreme manifestation of it, in which the common denominator is inequality and discrimination, which generates a situation of greater vulnerability for women in the enjoyment of their human rights and above all their right to a life free of violence, to their security in the public space, to personal freedom, among other rights, which aspects are considered so serious at the international level.
- p. 48 Also, since the local legislator has harmonized the creation of the crime of femicide with international standards on women's human rights, this is in accordance with the constitutional reform of June 10, 2011, to article 1 of the Federal Constitution, which essentially included the concept of person and subjected it to the enjoyment of the human rights recognized not only by the Federal Constitution, but also by all international treaties signed by the Mexican State.
- p. 48-49 The determination of the case by the collegiate court was correct, in the sense that article 153-a of the CPEG, which defines the crime of femicide, is constitutional, as it does not violate the principles of equality and non-discrimination.

DECISION

- p. 49 Considering the foregoing, the sentence under appeal, which denied the *amparo* sought, must be upheld.