

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.

**ACCESS TO ASSISTED REPRODUCTION TECHNIQUES
(ACCESO A LAS TÉCNICAS DE REPRODUCCIÓN ASISTIDA)**

CASE: *Amparo en Revisión 619/2017*

REPORTING JUSTICE: Eduardo Medina Mora I.

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

DATE OF THE DECISION: November 29, 2017

KEY WORDS: right to privacy, right to health, right to reproductive health, right to reproductive autonomy, right to found a family, right to enjoy the benefits of scientific and technological progress, right to personal integrity, right to equal protection and non-discrimination.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 619/2017*, Second Chamber, Eduardo Medina Mora I., J., decision of November 29, 2017, 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/2022-01/AR619-2017.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Center for Constitutional Studies of Mexico's Supreme Court of Justice, Excerpt from the *Amparo en Revisión 619/2017*, Mexico.

SUMMARY OF THE *AMPARO EN REVISION* 619/2017

BACKGROUND: A woman (the complainant) was diagnosed with primary infertility and was referred to a specialist. In the hospital where she was treated, she underwent several clinical studies to compile her medical record to be referred to the Comprehensive Assisted Reproduction Program of the National Medical Center "20 de Noviembre"; however, days later, the gynecologist who treated her informed her that she could not be directed to that medical center, since the treatment could only be carried out on beneficiaries who were up to 35 years old, and she was 36 years old. The complainant made a written request to the director of the National Medical Center "20 de Noviembre" for her registration in the program; however, her request was again denied, based on the same reason. The complainant filed an *amparo* lawsuit against this official notice arguing that the "criteria for admission of couples with infertility to be treated in the human reproduction service of the C.M.N. '20 de Noviembre' of the ISSSTE" (hereinafter "criteria") were contrary to the principles of equal treatment and non-discrimination. The district judge who heard the case decided to partially dismiss the case granting the *amparo* only regarding the operating and program inclusion policies concerning the age limitation. The complainant filed a *recurso de revisión* against that decision which was heard by the Second Chamber of Mexico's Supreme Court of Justice (this Court).

ISSUE PRESENTED TO THE COURT: Whether in this case the criteria violate the principles of equal treatment and non-discrimination because they are based on classifications such as age, sex/gender, marital status and health status.

HOLDING: The challenged decision was amended and the complainant was granted the *amparo* regarding some of the criteria for admission to the program for the following reasons. Article 1 of the Constitution prohibits any form of discrimination arising from the unfair use of the so-called "suspect classifications" such as gender, age, health status and marital status, among others. In this regard, the Supreme Court considered that the criteria related to age, marital status, and state of health were contrary to the principles of equal treatment and non-discrimination contained in Article 1 of the Constitution, so it granted the *amparo* to the complainant regarding those claims, ordering the authority not to take such requirements into consideration for registration in the program at the time of issuing the new official notice. Finally, the Court considered that non-monetary remedies and other types of remedies

beyond the restitution of rights cannot be issued in the *amparo* lawsuit, because there are differences between the types of violations analyzed in the international and domestic settings and because there is no legal basis to declare them, so it denied the complainant that request.

VOTE: The Second Chamber of the Supreme Court decided this case by the unanimous vote of the five justices Margarita Beatriz Luna Ramos (issued a concurrent opinion), Alberto Pérez Dayán (issued a concurrent opinion), Javier Laynez Potisek, José Fernando Franco González Salas (issued his opinion with reservations), and Eduardo Medina Mora I.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=2185>

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EXTRACT FROM THE *AMPARO EN REVISION* 619/2017

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (the Supreme Court), in session of November 29, 2017, issues the following decision.

BACKGROUND

p.10 A woman (the complainant) said that after several years of living as a couple and trying to get pregnant naturally, she consulted several private gynecologists to investigate why she could not get pregnant. In May 2014, she went to a private specialized clinic in which she was diagnosed with prolactinomas, a condition that causes her not to ovulate or, if she does, the quality of the eggs is inadequate.

Since she is a beneficiary of the Institute of Social Security and Services for State Workers (ISSSTE), she went to that institution, where after several consultations, on July 7, 2014, the family doctor referred her to the specialist, sending her with a diagnosis of primary infertility.

In the hospital, they carried out a series of clinical studies to compile her medical record so she could be referred to the Comprehensive Assisted Reproduction Program of the National Medical Center (C.M.N) "20 de Noviembre"; however, days later, the gynecologist who attended the complainant informed her that she could not be sent to that medical center since the treatment could only be performed on beneficiaries who were up to 35 years old, and the complainant was 36 years old.

p.10-11 The complainant mentions that her application for admission to the program was not rejected in writing; everything was verbal. Therefore, on February 10, 2016, the complainant sent a written request for her registration in the comprehensive assisted reproduction program to the Director of the C.M.N "20 de Noviembre".

p.11 In an official notice, the Head of the Legal Affairs Division of the C.M.N "20 de Noviembre", in response to the request of the complainant, stated that according to the General Manual of Procedures of that medical center, the maximum age of inclusion in the program of the assisted reproduction service is up to 35 years, which is not discriminatory, since that age range was determined by scientific data.

- p.11-22 Dissatisfied with that response, on April 7, 2013, the complainant filed an *amparo* lawsuit against that and other resolutions, in which she claimed, in summary, that the admission criteria established in the program were contrary to the principles of equal treatment and non-discrimination by establishing distinctions based on the participants age (women 35 years and men 55 years), marital status (legally constituted couples), family status (patients who do not have children or only one child) and health status (couples without genetic abnormalities inheritable by their children, as well as pre-conception screenings of patients who present a concomitant disease). In addition, she requested economic compensation as a remedy for the harm caused, as well as other full reparation measures.
- p.22-30 The district judge decided to partially dismiss the case, but to grant the *amparo* to the complainant specifically regarding the age limit for accessing the assisted reproduction program, arguing that this requirement has no objective and reasonable justification since the 35-year age limit is not based on objective data but on a gender stereotype, and therefore is contrary to the principle of equal treatment contained in Article 1 of the Constitution.
- p.30 With respect to the full reparation measures for the harm caused requested by the complainant, the judge determined that she could only be granted constitutional protection for the purposes of restoring her enjoyment of the rights determined as affected, and it was not possible to grant compensation or the non-monetary remedies requested.
- p.33 The complainant filed a *recurso de revisión* against that decision which was heard by a Collegiate Circuit Court. That court submitted the challenged acts related to the criteria and the request for full reparation measures to the Supreme Court, which decided to assert jurisdiction.

STUDY OF THE MERITS

- p.34 The Supreme Court will review the complainant's arguments as to whether the criteria specifically referring to age, marital status, family situation, and state of health are discriminatory because they constitute unjustified restrictions on the human reproduction service provided by the said medical center and, therefore, are contrary to the principles of equal treatment and non-discrimination.

The provisions of article 1 of the Constitution are relevant, which establish that all persons enjoy the human rights recognized by the Mexican State and, consequently, prohibit discrimination in the treatment and the recognition of equality before the law.

p.35-36 For differences in a regulation to not violate the principle of equal treatment, there must be an objective and reasonable justification, in accordance with generally accepted standards and values, related to the purpose and effects of the measure, and there must be proportionality between the means used and the purpose pursued.

p.36 In this regard, the Supreme Court precedent 2a./J. 64/2016 (10a.) titled "GENERAL PRINCIPLE OF EQUAL TREATMENT. ITS CONTENT AND SCOPE" determines that article 1 of the Constitution prohibits State entities from acting with excessive power or arbitrarily, requiring them to avoid conditions of inequality or discrimination, and imposes a basic criterion of reasonableness on any measure that does establish a differential treatment when particular circumstances require it.

Furthermore, the last paragraph of the article 1 of the Constitution categorically prohibits any form of discrimination based on ethnic or national origin, gender, age, disabilities, social status, state of health, religion, opinions, sexual preferences, marital status or any other that violates human dignity and aims to nullify or harm the rights and freedoms of individuals.

p.36-37 In addition, , the principle of equal treatment guarantees that the suspect classifications set out above may only be used legislatively when there is a strong justification; therefore, in the event that a law that is challenged directly or indirectly affects any of the suspect classifications, the judge must examine it with strict scrutiny because the imposition of a discriminatory law would prevent those affected from making fundamental decisions in their lives or about their identity and would place a disproportionate burden on them in their most personal decisions.

p.54 Having explained the above, the Supreme Court will determine whether in this case there was a violation of the principles of equal treatment and non-discrimination contained in article 1 of the Constitution. In the first act challenged, the complainant argues that the criteria contravene these principles, since they

are based on classifications prohibited by that article, such as age, sex/gender, marital status and state of health.

p.55 Specifically, the criteria include: i) age limit of patients (thirty-five years in the case of women and fifty-five years in the case of men), ii) the patients must be legally constituted couples, iii) the patients have one or no children, iv) the couples do not have genetic abnormalities inheritable by their children, and v) the patients who present a concomitant disease undergo preconception screening to assess the potential risk of pregnancy.

p.56 Article 1 of the Constitution prohibits any form of discrimination based on any suspect classification; therefore, if a law that is challenged directly or indirectly affects any of these classifications, the judge must apply a strict scrutiny review.

p.57 The methodology the judge must use to determine if the challenged regulation based on a suspect classification is unconstitutional is: i) verify whether the distinction based on the suspect classification serves a compelling constitutional purpose, ii) analyze whether the measure is entirely aimed at achieving the constitutionally compelling purpose, and iii) the legislative distinction must be the least restrictive measure possible to achieve that compelling purpose.

In the event that the dispute is not based on a suspect classification, the judge must apply a rational basis test to the rule, which requires: i) analyzing whether the restriction is constitutionally admissible; ii) determining whether the legislative measure is necessary to attain the purposes on which the constitutional restriction is based, and iii) verifying that the restriction is proportional, i.e. there must be a relationship between the importance of the purpose sought by the regulation and the adverse effects it produces on other constitutional rights and interests.

p.58 In this regard, the Supreme Court will analyze each of the requirements indicated by the complainant to determine whether they should be considered suspect classifications and, if they are, whether they are justified.

I. The age limit

p.58-59 The first requirement established by the criteria is that treatments can be performed on patients up to 35 years of age.

- p.60-61 This requirement is based on a suspect classification - age - since the authorities are expressly denying access to assisted reproduction services to female patients over 35 years of age.
- p.61 The authorities established the age limit considering that this restriction increases the chances of success of assisted reproduction techniques and avoids affecting the physical and psychological health of both women and their offspring; i.e., their intention is to regulate the right to health protection contained in article 4 of the Constitution.
- Since the right to health is a legitimate and therefore compelling constitutional purpose, it must be understood that this challenged requirement satisfies the first step of the strict scrutiny test applied to the measure.
- p.61-62 The second step of the strict scrutiny test is to analyze whether the distinction – the age limit – is closely associated with the compelling constitutional purpose, in this case the right to health. To determine the above, two questions must be answered: i) who is included and who is excluded in the suspect classification used and ii) what is the precise content of the constitutional mandate of the right to health established in article 4 of the Constitution.
- p.62 The right to health established in article 4 of the Constitution includes the right to reproductive health, which consists of, on the one hand, the right to make decisions about one's own life plan and body and, on the other hand, access to reproductive health services, among which is the appropriate treatment for infertility.
- p.62-63 The age limit requirement is not directly related to the purpose of the right to health, since this right includes access to reproductive health services, so the authorities must guarantee that patients who request it can access the infertility treatments offered by the C.M.N "20 de Noviembre".
- p. 64 The Supreme Court concludes that the age of 35 is not the only determining factor in the success of treatments. Therefore, the challenged requirement is based on a suspect classification (age), which is not directly connected with the right to health recognized by article 4 of the Constitution, since this right includes the right to reproductive health and, consequently, to infertility treatments.

Thus, the challenged requirement excluding women over 35 years of age from access to assisted reproduction services, due to the sole fact of their age, is clearly discriminatory because this factor is not directly linked to the objectives of the right to health.

II. Legally constituted couples

p.65 The second requirement established in the criteria is that they are legally constituted couples, who must present their marriage or common law marriage certificate to prove it.

p.66 This requirement is based on a suspect classification - marital status - since the responsible authority is allowing access to assisted reproduction services only to those couples who are legally constituted.

p.67 For common law marriages, the requirement can also be considered to be based on a suspect classification, since it is differentiating between single persons who join in common law marriage and those who do not.

The purpose of enabling only legally constituted couples to have access to the human reproduction services of the C.M.N "20 de Noviembre" is to protect the organization and development of the family. The Supreme Court recognizes that the protection of the family is a legitimate purpose, so it must be legally protected; consequently, this requirement satisfies the first step of the strict scrutiny of the measure.

p.68 However, in relation to the concept of family, in the *Acción de Inconstitucionalidad 2/2010*, the Plenary of the Court established that the Constitution protects the family understood as a social reality, and therefore this protection must cover all the forms and manifestations of family existing in society.

p.69 This would include covering those families that are created through marriage; de facto unions; with a father or a mother and children (single-parent family) or any other way that denotes a similar bond.

Since the concept of family includes a mother and children (single-parent family), single people should also have access to assisted reproduction services and, consequently, the condition imposed by the challenged criteria is not directly connected with the right it seeks to protect.

p.70 Because the second step of the strict scrutiny test was not passed, the Supreme Court considers it unnecessary to carry out the other steps of the analysis.

Since the requirement that only legally constituted couples can have access to the assisted reproduction services of the C.M.N "20 de Noviembre" is not directly related to the right to a family contained in article 4 of the Constitution, it must be considered contrary to the principles of equal treatment and non-discrimination provided for in article 1 of the Constitution.

III. Patients who have one or no children

The fourth requirement indicated in the criteria determines that those patients who have one or no children will have access to these services.

p.70-71 However, in this case the challenged requirement does not introduce a suspect classification, since that requirement distinguishes between persons who have one or no children and those who have two or more, so there is no reason for the Supreme Court to be particularly demanding in examining the reasonableness of the distinction indicated.

p.71 Given the above, it is necessary to analyze: i) whether the distinction pursues a constitutionally admissible purpose, ii) whether it is rational for the attainment of such a purpose, and iii) whether it is proportional and avoids the unnecessary sacrifice of other interests and rights.

It is clear that the fourth condition of the challenged criteria granting access to couples who have one child or none has an objective purpose expressly contemplated in the Constitution such as the development of the family, since it offers single women or couples who have not been able to have children or have only one the possibility of exercising their right to reproductive health, reproductive autonomy and to form a family.

p.72 Likewise, the challenged measure is adequately implemented to comply with the constitutionally indicated purpose. And while the State is obliged to guarantee and protect the right to found a family, to reproductive health and to the reproductive autonomy of all people, the measure established in the criteria is proportional.

Since the purpose of access to assisted reproduction techniques is to enable people to exercise their right to found a family, it is appropriate that patients who do not have children or have only one child should be given preference for admission to the assisted reproduction service in the C.M.N "20 Noviembre", in relation to those people who have two or more children, since they have already

exercised their right on more than one occasion; thus unnecessary or disproportionate harm would not be caused to these people with the imposition of this measure.

p.73 Therefore, the requirement that only those patients who have one or no children may access assisted reproduction services is the least restrictive measure, since this requirement seeks to provide access to the largest number of patients who need to use assisted reproduction techniques to exercise their right to found a family; therefore, this condition does not contravene the principle of equal treatment contained in article 1 of the Constitution.

IV. Couples without genetic abnormalities inheritable by their children

The fifth requirement of the criteria is that only couples without genetic abnormalities inheritable by their children can have access to the assisted reproduction techniques offered by that institute.

p.74 This requirement is based on a suspect classification - state of health - because it establishes that only couples and single women without genetic abnormalities inheritable by their children will have access to assisted reproduction techniques. However, it can be concluded that the authority intends to protect the right to health of women and possible offspring with this requirement. Because the right to health is a constitutionally legitimate and valid purpose, the challenged requirement must be understood as satisfying the first step of strict scrutiny of the measure.

Having established the above, the Court must determine whether such a restriction is closely linked to the protection of the right to health.

p.75 The right to health recognized in article 4 of the Constitution establishes that everyone has the right to obtain general well-being in terms of the physical, mental, emotional, and social state of the person.

In this regard, the measure would be closely linked to the constitutionally protected purpose, since, with that requirement, the authority intends to guarantee the state of physical, mental, and emotional well-being of both the patients and the possible offspring.

Since the measure is closely linked to the compelling constitutional purpose, it is appropriate to examine whether that distinction is the least restrictive measure possible to effectively achieve the compelling constitutional purpose.

p. 76 Regarding genetic anomalies, the Supreme Court observes that they are not necessarily inheritable, so before determining whether a genetic anomaly may have repercussions on the possible offspring, it would be necessary to carry out the studies to determine this.

In this regard, the requirement that only couples or single women who do not have inheritable genetic anomalies can have access to the assisted reproduction techniques, in order to preserve the right to health of both the woman and the possible offspring, is not the least restrictive measure to achieve the protection of the constitutional mandate; without carrying out a study and without allowing them to make a decision, the authority is restricting their right to access the assisted reproduction services offered by the C.M.N "20 de Noviembre".

Therefore, a less restrictive measure could be that the authority carries out studies on the patients and informs the woman or the couple of any possible genetic anomalies so that she or they can decide whether to go forward with the procedure.

p.77 Thus, this condition must be considered a violation of the principles of equal treatment and non-discrimination contained in article 1 of the Constitution.

V. Patients who have a concomitant disease will undergo preconception screening to assess the potential risk of pregnancy.

The sixth requirement of the criteria is that patients who present a concomitant disease will be given a preconception screening to assess the potential risks of pregnancy.

p.78 This requirement is based on a suspect classification - state of health - because it establishes that patients who have a concomitant disease will have access to assisted reproduction techniques only if they undergo preconception screening to assess the potential risk of pregnancy.

It can be concluded that the authority intends to protect the right to health of women and possible offspring with this requirement. The right to health is a constitutionally legitimate and valid purpose, so it must be understood that the challenged requirement satisfies the first step of the strict scrutiny of the measure.

The right to health recognized in article 4 of the Constitution establishes that everyone has the right to obtain general well-being in terms of their physical,

mental, emotional and social state. This right encompasses the right to reproductive health, which includes the possibility for people to have access to reproductive health services, including the right to infertility treatment.

p.79 In this regard, the measure would be closely linked to the constitutionally protected purpose, since with that requirement the authority intends to guarantee the state of physical, mental, and emotional well-being of both patients and the possible offspring, given that prior to the implementation of assisted reproduction techniques, a preconception screening is carried out to evaluate the risks of pregnancy; in addition, this condition allows access to reproductive health services.

In this case, the measure is closely linked to the constitutionally pursued aim, and it is therefore appropriate to examine whether that distinction is the least restrictive measure possible to effectively achieve the compelling constitutional purpose.

The Supreme Court considers that this requirement is not limiting the right of access to reproductive health but is establishing a requirement that helps protect the right to health, since prior to patients having access to reproductive health services they undergo a preconception screening to avoid potential risks in pregnancy.

p.80 In this regard, this requirement can be considered as the least restrictive measure because, although a screening prerequisite is established, depending on the result of the analyses, patients may be able to access the assisted reproduction program offered by the C.M.N "20 de Noviembre"; therefore, this condition does not contravene the principles of equal treatment and non-discrimination contained in article 1 of the Constitution.

p.83 The Supreme Court considers that the complainant's arguments regarding the request for full reparations for the violation of her human rights are inapplicable. Thus, to justify this and give a complete response to the complainant, the following topics will be addressed: i) it will be analyzed whether the type of remedies declared by the Inter-American Court of Human Rights are compatible with the constitutional and legal framework of the *amparo* lawsuit and,

subsequently ii) a response will be given to the complainant in relation to whether she has the right to the full reparations she requests.

I. Full reparations in the *amparo* lawsuit

- p. 84 The issue in this case is to determine whether the human rights violations analyzed in *amparo* lawsuits can be remedied in that setting with the type of remedies that the Inter-American Court of Human Rights has used; i.e., whether the *amparo* judges can issue measures that go beyond the restitution of the affected person in the right violated, such as compensation, satisfaction measures or guarantees of non-repetition.
- p.85-86 The *Amparo* Law in force expressly establishes that the way to remedy a violation of a fundamental right is restitution. And, in this regard, the law itself grants broad powers to *amparo* judges to order the necessary measures to achieve the restitution of the right.
- p.86-87 On the other hand, the way to achieve the restitution of the violated right adopts certain particularities when the act challenged is a general regulation. In these cases, the restitution of the affected party in the enjoyment of the right is not achieved by annulling the general regulation whose invalidity has been declared in the *amparo* lawsuit, but by suspending its application in that specific case to the affected person and extending the effects of unconstitutionality to the acts whose validity depends on the regulation in question.
- p.87 Moreover, if the mere suspension of the application of the unconstitutional regulation is not sufficient to restore the affected person to the enjoyment of the right, as is the case in many situations, the *Amparo* Law also grants broad powers to the *amparo* judges to declare other measures to achieve restitution.
- The foregoing considerations not only show that the restitution of the right is the measure that has traditionally been associated with the remedies of the *amparo* judgment, but also that the current *Amparo* Law continues to maintain restitution as the main measure through which violations of fundamental rights are remedied in the framework of the *amparo* lawsuits.
- p.88 Having established the foregoing, the Supreme Court proceeds to examine whether the other measures of "full reparations" contemplated in the inter-American doctrine, such as economic compensation and other non-monetary

measures, can be declared by the *amparo* judges to remedy violations of fundamental rights.

Economic compensation is a remedy that serves to compensate for the damages caused in cases where the violation of a fundamental right could not be remedied through the restitution of the right or when it has proved insufficient. In this regard, economic compensation can only be declared once the prerequisites of suits for the attribution of liability have been established: the carrying out of an action or omission that meets some attribution factor (subjective or objective); the occurrence of damages; and the existence of a causal relationship between the harm experienced by the victim and the action or omission of the injuring agent.

p.88-89 If the *amparo* lawsuit is a summary constitutional process whose exclusive purpose is the restitution of things to the state they were before the violation, it would be logical to assume that the *amparo* judges cannot order the responsible authority to pay economic compensation as a remedy. From this perspective, an *amparo* decision does not prejudge the civil liability of the authority for carrying out the challenged act; in addition, a summary procedure such as the *amparo* would be inadequate to establish the prerequisites of that liability, which should be determined in ordinary processes that have that purpose.

p.89 In this vein, the Court considers that there is no provision in the *Amparo* Law that allows judges to declare economic compensation as remedies for the human rights violations declared in those decisions.

p.90 Having clarified the above, the Supreme Court also understands that there is a procedure in the current *Amparo* Law through which economic compensation can be established extraordinarily in exceptional cases where it is impossible to restore the affected party in the violated right: the ancillary proceeding of substitute compliance.

p.92 Thus, it is clear from the constitutional text that the substitute compliance of the *amparo* decisions consists in the payment of compensation for damages. Although the *Amparo* Law qualifies the compensation as "restitution", in fact it is a remedy consisting of an economic compensation that can only be pursued exceptionally in cases where it is not possible to carry out the restitution.

- p.92-93 To conclude, it should be mentioned first that economic compensation is a secondary remedy that in the *amparo* lawsuits can only be declared in the context of the ancillary proceeding for substitute compliance once the "impossibility" of restoring the violated right has been established. Secondly, even in view of the impossibility of restoring the enjoyment of a violated right, the payment of compensation is conditioned on providing elements in the substitute compliance ancillary proceeding to prove both the existence of the damages claimed and the causal connection between the action of the responsible authority and those damages, in addition to the fact that elements must be provided for the quantification of the amount of any damages to be compensated.
- p.93 Finally, the non-monetary remedies developed by the Inter-American Court of Human Rights constitute the newest aspect of its doctrine on remedies, which have been ordered mostly in cases involving serious and/or systematic human rights violations committed in the countries of the region. Hence, the Supreme Court understands that the *amparo* lawsuits on human rights violations, in general terms, before the courts of the Federal Judiciary Branch, do not bear any similarity with the cases analyzed by the Inter-American Court of Human Rights that gave rise to exceptional remedies.
- Based on the above, the Court considers that non-monetary remedies cannot be ordered in *amparo* lawsuits, not only because of the differences between the types of violations that are analyzed in international settings as opposed to domestic ones, but also because there is no legal basis to order them. In the same vein, there is also no legal basis for *amparo* judges to declare guarantees of non-repetition like those found in inter-American doctrine.
- p.95-96 In addition, the Supreme Court considers that although the obligation to remedy human rights violations contained in article 1 of the Constitution has various implications in our legal system, in the context of the *amparo* lawsuits it can only have the effect established in article 77 of the Amparo Law; i.e., it can only imply the restitution to the complaining party of the right to the full enjoyment of the violated right, before the violation that appears as an act challenged in the *amparo* lawsuit was committed, since, generally, it is only through that measure that violations of fundamental rights can be repaired in the framework of the *amparo* lawsuits.

p.96 Having established the above, the Supreme Court decides that the complainant does not have the right to have greater remedies issued in her favor due to the violation of her human rights of equal treatment and non-discrimination, since it is considered that with the constitutional protection that she has been granted, consisting of not applying to her the operating policies of section 36 "Assisted Reproduction Procedure (G.I.F. and F.I.V.T.E.)" contained in the General Manual of Procedures of the National Medical Center "20 de Noviembre", specifically in the part that states that: "treatment may only be carried out on the beneficiaries who are up to 35 years of age", as well as the requirements regarding the marital status and state of health contained in the criteria, is sufficient to consider that the complainant will be restored in the full enjoyment of the rights violated, restoring things to the state they were in before the violation was committed.

DECISION

p.98 The effects of the decision are as follows:

A. That requirements one, two and five of the criteria are not to be applied in the legal sphere of the complainant.

On the other hand, since it is a well-known fact that demand for this benefit ordinarily exceeds the service capacity of the National Medical Center "20 de Noviembre", this Center, after a medical assessment determining the viability of performing the treatment if suitable, must process the request of the affected party according to the degree of preference she has in relation to other applicants prior to her, substantiating any waiting time that may delay the admission to the human reproduction services that this center provides.

B. Finally, it is specified that the complainant does not have the right to have greater remedies issued in her favor due to the violation of her human rights of equal treatment and non-discrimination, since it is considered that the constitutional protection that has been granted to her is sufficient to restore the full enjoyment of the rights violated, returning things to the state they were in before the violation was committed.

p.99 The Supreme Court amends the challenged judgment and, consequently, grants *amparo* to the complainant.