

This overview contains the cover page, the summary, and the extract of a decision of Mexico's Supreme Court of Justice of the Nation. 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.

## **DECRIMINALIZATION OF ABORTION (DESPENALIZACIÓN DEL ABORTO)**

**CASE:** *Acción de Inconstitucionalidad 148/2017*

**REPORTING JUSTICE:** Luis María Aguilar Morales

**DECISION ISSUED BY:** Plenary of Mexico's Supreme Court of Justice of the Nation

**DATE OF THE DECISION:** September 7, 2021

**KEY WORDS:** Abortion, right to decide, rights of women and persons able to gestate, self-determination in matters of maternity, reproductive autonomy, reproductive freedom, right to health, right to legal equality, personal autonomy, free development of personality, gender violence, sexual integrity, spousal rape.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Acción de Inconstitucionalidad 148/2017*, Plenary, Luis María Aguilar Morales, J. Decision of September 7, 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/2022-05/AI%20148-2017.pdf>

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## SUMMARY OF THE *ACCIÓN DE INCONSTITUCIONALIDAD 148/2017*

**BACKGROUND:** The Attorney General's Office (PGR) sued for the unconstitutionality of various articles of the Criminal Code of the State of Coahuila de Zaragoza (CPC). In essence, it argued that articles 195 and 196 violate women's rights to autonomy and reproductive freedom by establishing a criminal offence that prevents the termination of pregnancy at the first stage of gestation. In addition, article 224, section II, incorrectly assesses the legal interest consisting of the sexual integrity of the spouse who may suffer the crime of rape, since the state legislator established a lower penalty for that conduct than for the crime of rape in general.

**ISSUE PRESENTED TO THE COURT:** Whether the articles of the CPC that impose a penalty of imprisonment on a woman who voluntarily decides to terminate her pregnancy and any person who, with her consent, executes or aids in the execution of that act, and that impose a lesser penalty for the crime of rape when it occurs within a marriage or common-law union or civil pact, are constitutional.

**HOLDING:** The validity of article 195 was recognized; article 196 and, by extension, articles 198, first paragraph, and 199, in its subheading and first paragraph, and section I, first paragraph, were invalidated; article 224, section II, first paragraph and, by extension, article 224, section II, second paragraph of the CPC, were invalidated, based on the following reasoning. Regarding the recognition of the validity of article 195, this Court emphasized that, since it only specifies what should be understood as abortion for criminal purposes, invalidating it would make it impossible to include the crime of forced abortion, which constitutes an act harmful to the integrity of women and persons able to gestate, to the right to decide, and to the life in gestation as a constitutional interest. Regarding article 196, it considered that legislation that criminalizes the voluntary termination of pregnancy always implies the total suppression of the constitutional right of women and persons able to gestate to choose, and discards other mechanisms of protection of the unborn, therefore it was invalidated. Concerning the first paragraph of article 198, this Court emphasized that allowing it to stand would make it impossible for women or persons able to gestate who opt for termination to be assisted by health workers, since the sanction consisting

of temporary suspension of the exercise of the profession, trade or practice by the person who carried out or assisted with the procedure would remain in force; therefore, its invalidity was declared by extension. Regarding the normative provisions of article 199 corresponding to excusable pleas, it concluded that they are invalid, since they constitute an impact on the right of women and persons able to gestate to decide, and the fact that the code qualifies the conduct as unlawful for those specific cases contributes to the survival of a notion of criminality. This Court also considered that the fragment of section I of article 199 regarding abortion after rape or after improper insemination or implantation should be invalidated, because it ignores the situation this creates for a woman or person able to gestate who, in addition to having suffered the violent invasive act, is forced to endure the pregnancy. The invalidity of article 224, section II, first paragraph, was determined considering that no compelling purpose from a constitutional point of view can be found for the assignment by the legislator of a lower rank of punishment for conduct that results in the same type of injury to a woman with or without a civil relationship. Finally, this Court determined the invalidity of the normative provision contained in article 224, fraction II, second paragraph, by extension, which states that it is a crime that will be prosecuted by complaint, considering that this exacerbates the disregard with which the legislator observes sexual violations that can occur within a marriage, common law union or social pact.

**VOTE:** The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=227921>

## EXTRACT OF THE *ACCIÓN DE INCONSTITUCIONALIDAD* 148/2017

p.1 Mexico City. The Plenary of Mexico's Supreme Court of Justice of the Nation (this Court), in its session of September 7, 2021, issues the following decision.

### BACKGROUND

p.1 By complaint filed on November 27, 2017, the Attorney General's Office (PGR) brought an *acción de inconstitucionalidad* against various articles of the Criminal Code of the State of Coahuila de Zaragoza (CPC) and indicated the Legislative and Executive Branches of that state as issuing and promulgating authorities.

p.2 The PGR maintained that the provisions (articles 195 and 196) violate women's rights to autonomy and reproductive freedom by establishing a crime that prevents the termination of pregnancy in the first stage of gestation. And regarding article 224, section II, it argued there was an incorrect assessment of the legal interest consisting of the sexual integrity of the spouse who may suffer the crime of rape, since the state legislator established a lower penalty for that conduct than for the crime of rape in general.

p.5-6 By resolution of January 3, 2019, this case was handed over to Justice Luis María Aguilar Morales to prepare a draft ruling.

### STUDY OF THE MERITS

#### I. Preliminary Issues

p.18 It is essential to state that this Court's analysis and decision are guided by the obligation to assess the case from a gender perspective as a method that aims to detect and eliminate all barriers and obstacles that discriminate against people by sex or gender condition; this means taking into consideration situations of disadvantage that, because of gender issues, discriminate and impede equality. The approach to the defined problem begins by questioning the preconceived stereotypes in the legislation regarding the functions of one gender or another and acting neutrally in the application of the legal norm in each situation.

p.19 Likewise, in terms of gender and intersectionality, the spectrum of the decision includes both women and persons able to gestate, a fundamental concept of inclusivity intended to recognize and make visible people who, belonging to gender identities different from the traditional concept of woman, have the ability to gestate (e.g., transgender men, non-binary people, among others).

## **II. Women's right to decide. Its content and limits versus the protection of the constitutional interest of the *nasciturus*.**

p.21-22 From a comprehensive reading and interpretation of the constitutional text, this Court notes that the right of women to decide (and whose protection extends to persons able to gestate) is the result of a particular combination of different rights and principles associated with the essential notion that a person's freedom to self-determine and freely choose the options and circumstances that give meaning to his or her existence is intrinsic to the human person, according to his or her own convictions. Human dignity, autonomy, the free development of personality, legal equality, the right to health (psychological and physical) and reproductive freedom, underlie this prerogative, according to the elements and with the features that will be described below.

p.23 Based on the principle of human dignity (article 1 of the Constitution), article 4 protects the right of every person to freely and in an informed manner decide on the spacing of their children. This implies the constitutional protection of the right to reproductive autonomy. This right includes the choice of and free access to all forms of contraception, assisted reproduction techniques and the possible termination of pregnancy.

### **a) Human Dignity.**

p.24-25. This Court has been clear in recognizing the superior value of human dignity, in affirming that the human being has a dignity that must always be respected, as constituting the essential prerequisite of the rest of the fundamental rights necessary for individuals to fully develop their personality, such as the right to life, to physical and mental integrity, honor, privacy, name, self-image, free development of personality, and marital status, among others. In addition, although these very personal rights are not expressly enunciated in

the Federal Constitution, they are implicit in our fundamental norm, as well as in the international treaties signed by Mexico and, in any case, they must be understood as rights derived from the recognition of the right to human dignity, because only through their full respect can we speak of the full dignity of a human being.

- p.25 The dignity of the human person is supported by two pillars, conscience and freedom, as a starting point towards the maximum realization of the free development of the unique personality. In the specific case of women and people able to gestate, this right acquires the nuances connatural to their traits and the characteristics that define them, so their dignity serves as a precondition for them to decide about themselves and their projection towards others.

Human dignity is based on the central idea that women and persons able to gestate can freely control their bodies and can construct their identity and destiny autonomously, free of impositions or transgressions.

#### **b) Autonomy and Free Development of Personality.**

- p.26 Within the narrative of human dignity, personal autonomy, the free development of personality and the protection of a person's private sphere play key roles, since they consist of the ability to freely choose and materialize life plans and ideals of human excellence, without the unjustified intervention of third parties or of the state power itself.
- p.27 When the focus is placed on the specific case of women and people able to gestate and the exercise of their dignity in the decision whether to become a mother, the component of their freedom to establish their life project is added. This is so because the "undefined" freedom that is protected by the right to the free development of personality complements the other more specific freedoms, since its function is to safeguard the "personal sphere" that is not protected by the more traditional and concrete freedoms.
- p.28 The direct manifestation in the issue discussed here is that the decision of women and persons able to gestate whether to become mothers is protected by the scope of this right, since they are the only ones who, due to their intrinsic dignity, can decide the course that

their lives will take, such that the existence of a minimum margin of intimate decision to terminate or continue their pregnancy must be recognized.

- p.28, 29 On this specific point, the Inter-American Court of Human Rights has held that the decision whether to become a mother is part of the right to privacy, emphasizing that the effectiveness of the exercise of that right is decisive for the possibility of exercising personal autonomy over the future course of events relevant to the quality of life of the person.
- p.30 These considerations serve as a guide for this Court to make clear the obligation, in the exercise of judicial constitutional control of laws and acts of the State, to be particularly scrupulous in identifying cases that represent an interference of the power of the State in the private life of women and persons able to gestate, since personal autonomy and the free development of personality protect this specific aspect of conducting life based upon individual decisions, which cannot be limited by use of the state apparatus much less its punitive power.
- p.32 Finally, the decision reached here rests on the principle of the secularity of the Mexican State, which has a marked influence on the construction of this pillar of the right to decide and a direct link with the fundamental right to conduct life according to the life plan that is chosen.
- p.33 This does not imply that the State must remain absent or ignore the religious and ideological phenomenon; on the contrary, secularism entails the State's duty to protect people's rights to freedom of religion, ideology, conscience, and ethics, for which it must maintain an active neutral position.
- p.34 Secularism must be conceived as a democratic quality, which allows us to note that the constitutionalizing of the right to decide recognizes the existence of a multiplicity of ethical, conscientious and religious profiles, and is defined as a prerequisite for the harmonious coexistence of any conviction.
- p.34-35 Secularism is presented in the facts as a guarantee for the rights of women and persons able to gestate, as a mechanism for asserting reason over dogma, and consequently as

a project of intellectual emancipation that entails the recognition of the freedom and autonomy of people in terms of the definition of their convictions and beliefs.

**c) Legal equality.**

- p.36-37 The constitutional establishment of equality between men and women before the law was the result of the recognition of historical discrimination against women, and set the elimination of this harmful situation as a permanent goal, the importance of which has been recognized by this Court, since court precedent has established that it permeates the entire legal system, and requires taking into account structural and contextual factors, such as subordinate relationships around gender, to analyze whether the result of the content or application of apparently neutral norms, policies, practices or programs generates a disproportionate impact.
- p.37 The recognition of the right to choose is intended to eliminate the possibility of gender-based discrimination in maternity and reproductive rights. It is about recognizing that women and persons able to gestate can deploy these rights from their own characteristics, in a level of gender equality that privileges the female capacity (and those corresponding to any other gender identity) to make responsible decisions about their life plan and bodily integrity.
- p.38 The right to decide is built on gender equality, which implies the elimination of stereotypes that can be assigned to women (or to persons able to gestate) in relation to their enjoyment of the right to sexuality. In addition, in the freedom of decision in reproductive matters, it is a question of dissociating the traditional social construct that made the concepts of woman and motherhood equivalent, as well as eliminating factual or legal assumptions based on a social hierarchy of supposed biological order.
- p.39 Within the framework of these considerations, the importance is noted of considering suspect, preliminarily, punitive legal norms or premises whose only natural recipient is women (and persons able to gestate).
- p.39-40 The absence of recognition of the elements that define women (and persons able to gestate), as well as the lack of instruments, such as the right to decide, would entail the

correlative injury to gender equality, by assigning them a social role that nullifies their dignity and the possibility of choosing an autonomous and individual life plan.

p.45 The mandate of legal equality of men and women before the law, based on what has been stated, means that when there is a situation that guarantees that women will be subject to a sphere of life not chosen –and that implies that they will not be able to perform in the same way as men– and another in which they will be able to have greater opportunities, the latter should be preferred.

**d) Right to health (psychological and physical) and reproductive freedom.**

p.45-46 The health of women and person's able to gestate, as an essential basis for choosing whether to continue or end a pregnancy, must be assessed as the right to maintain an optimal psycho-emotional state. This approach starts from conceiving the right to choose as the most intimate, personal, and important decision that can be faced, and therefore any limitations that completely inhibit the possibility of reflecting and debating internally the future must be dispelled when, having conceived, motherhood can become a reality, to maintain full psychological and emotional wellbeing.

p.46 That assessment seeks to demystify the assertion that the recognition of the right to decide can result in assigning a lower value to the act of conceiving since, on the contrary, the objective is to assess it in all its magnitude, emphasizing that only the determined participation of women can afford the greatest protection of the elements at stake, specifically: their right to choose and the protection of the constitutionally relevant interest that is the product of conception, recognizing at all times the greater importance that such a dilemma presumes internally for the person, and that only through the free exercise of the right to decide can the most adequate protection of their psychological condition be guaranteed.

p.46-47 A second manifestation of the right to health with a direct impact on the protection of women and person's able to gestate in the broadest spectrum should also be assessed. This Court, in accordance with the provisions of the United Nations Committee on Economic, Social and Cultural Rights, understands the right to health as a fundamental

and indispensable guarantee for the exercise of other human rights and not only as the right to be healthy.

- p.48 The State has three types of obligations arising from the right to health: respect, protection, and compliance (guarantee). These obligations guarantee claims in terms of availability, accessibility, non-discrimination, acceptability and quality of health services.
- p.52-53 In this scenario, the aspects related to the possibility of termination of pregnancy entail, by definition, natural health care (psychological and physical), such that the right to health and the freedoms associated with it are indispensable conditions of the right to choose the course of reproductive life, as a means of protection based on the principle of non-discrimination which implies that medical facilities, goods and services must be accessible to the most vulnerable and marginalized sectors of the population.
- p.54 From the above it is possible to affirm that the State is obligated to reasonably prevent the risks associated with pregnancy and with abortion in unsafe conditions which, in turn, includes both an adequate, timely and exhaustive assessment of the risks that the gestation process represents for the restoration and protection of the health of each person, and early access to the abortion services that may be necessary to preserve the health of the pregnant woman. Under this parameter of constitutional regularity of the right to health and its protection, it is not enough to have the freedom to adopt, autonomously, decisions about one's own health and reproductive freedom, since it is essential to have the assistance to be able to execute them properly and, in addition, the infrastructure to carry them out: safe, available, accessible, acceptable, affordable, respectful, and high-quality medical services.

**e) The right to decide and its specific implications.**

- p.58 Reproductive freedom, in its specific aspect of the right to decide, implies that it is not for the State to know or evaluate the reasons for continuing or terminating a pregnancy since they belong to the sphere of privacy of women and person's able to gestate, and they can be of the most diverse nature.

For this Court it is unavoidable to consider the situation of profound inequality, marginalization, and precariousness in which many women find themselves in our country and the influence of these circumstances on the personal decisions they make. This involves an intersectional look at the problems that impact the issue of abortion.

p.67 The internal and external limits of the right to choose, reflect 7 essential implications:

p.67, 68 First. Sex education as a pillar of public policy on reproductive health. It must be based, in relation to the right to choose, on the fact that the legal termination of pregnancy will never constitute or be understood as a method of "family planning", considering that act as the last available option. The implementation of cross-cutting public policies should be guided by a gender and non-discrimination perspective that identifies the specific needs of each social sector.

p.68 Second. Access to information and advice on family planning and birth control methods. It is the obligation of the State to provide information on the subject, as well as the necessary services, which include accompaniment by a health specialist and advice on family planning to facilitate, if requested, the adoption of the contraceptive method that fits personal needs, reproductive expectations, and health status.

p.69 Third. The recognition of women and persons able to gestate as holders of the right to decide the continuation or termination of their pregnancy. It is a matter of locating the issues regarding the integral development of the pregnancy or its early termination in the corresponding situation, such that only these people, in their privacy, know the importance of each reason that leads them to decide.

p.70 Fourth. The guarantee that the women or the pregnant person makes an informed decision in relation to the termination or continuation of their pregnancy. The State is obligated to provide, in a context of confidentiality, sufficient information for them to make that key decision in their reproductive life, so it must be conducted with full respect for dignity, and provided promptly, without delay and without compromising the exercise of rights.

p.72, 73 Fifth. The right to decide comprises two spheres of protection of equal relevance, clearly differentiated, and that are triggered in the choice of the woman or pregnant person. A first sphere of the right to choose corresponds to the person who voluntarily chooses the path to motherhood, and consequently merits having the State provide the specialized accompaniment that corresponds to that decision and implies the protection of the binomial woman or person able to gestate/fetus. The second sphere of protection results from the choice of the woman or pregnant person to terminate their pregnancy, and includes actions equivalent to the first sphere, which must be deployed under the same principles.

p.73, 74 Sixth. The guarantee that women or pregnant persons who so decide can terminate their pregnancy in public health institutions in an accessible, free, confidential, safe, expeditious and non-discriminatory manner. This characterization of the right to choose implies, firstly, that the health authorities have equipment and personnel in the medical field trained in the practice of safe termination of the gestation process; secondly, it implies that this body of specialists has the skills to provide women or pregnant persons with care that respects their dignity and confidentiality, and which is prompt and non-discriminatory.

p.74 In this regard, although medical personnel have the right to exercise conscientious objection, this should not impact or obstruct exercising the right to decide; therefore, in this case, the specialist in charge must refer the patient to another professional in a timely manner.

p.75 Seventh. The right of the woman or pregnant person to decide to terminate a pregnancy must be circumscribed to a short period close to the beginning of the gestation process. This is the result of the encounter between the right to choose, which is limited by the constitutional protection that the unborn deserves.

**f) The *nasciturus* as a constitutionally protected interest and its scope of protection in the Mexican legal system.**

p.80 Under the current law, the *nasciturus* is not considered a person as holder of human rights, and thus the exercise of these rights is determined from birth.

- p.85 While it is clear that the embryo or fetus is not a holder of human rights, the interest in providing a spectrum of protection is limited to the expectation the embryo or fetus constitutes by definition; only the person born alive can be considered the holder of fundamental rights, and this can only exist if the State ensures a sphere of protection for its prior natural stage: the gestation process.
- p.86-87 This Court is conclusive in affirming that the gestation process constitutes a constitutionally relevant value linked to the expectation of the birth of a human being from the existence of a fetus or embryo, a category that implies its recognition as an interest that obviously merits the protection of the public powers.
- p.87, 88 The increase over time of the value of this constitutional interest is related to the fact that the characteristics included in any discussion of what defines a human being develop progressively throughout the gestation period.
- p.96 The right to decide, in relation to the woman or pregnant person who opts for the termination of pregnancy, only exists within a short period close to conception, as a mechanism to balance the elements that coexist and provide a sphere of protection for both the embryo and reproductive autonomy.
- p.97-98 The solution that is proposed is considered the most balanced one and is guided by the principle of human dignity that addresses both the rights of women and person's able to gestate and the inherent value of the unborn.
- p.98 This Court considers that the period in which a procedure for the termination of pregnancy may be carried out as part of the exercise of the right to decide must be reasonable; for its determination, the legislator can resort to the available scientific information, the considerations of public health policy that seem applicable, and the parameters set in other entities where it has been implemented in their laws.

Just by way of reference, it is worth mentioning that this Court reviewed the constitutional validity of the regime of legal termination of pregnancy established in the then Federal

District (now Mexico City), and found the period established for carrying out such a procedure appropriate and reasonable.

p.99 This Court, in order to determine the validity of the regime implemented, considers of special relevance that the legislator analyzed the period of the development of gestation based on scientific information, which informs us that, within the first 12 weeks, there is only an incipient development, as well as the safety of the termination of pregnancy, without serious consequences for the health of the woman.

### **III. Validity of Article 195 of the CPC.**

p.100-101 The first of the two norms questioned by the PGR, article 195 of the CPC, only establishes that "whoever causes death to the product of conception commits abortion, at any time during pregnancy".

p.101 This provision has no point of contact with the right of women and persons able to gestate to decide; hence, its constitutionality cannot be questioned through this type of approach. Specifically, the provision is found in Chapter Seven titled "abortion", the first article of which is the aforementioned 195, which in turn is titled: "abortion for criminal purposes". As can be seen, this rule only communicates the core of the conduct: what should be understood by abortion for criminal purposes.

p.104 The Plenary Court is aware of the part of the objective element that indicates "at any time during pregnancy" and that, according to the characteristics of the right to choose, could be considered to have implications for a woman's right to terminate her pregnancy in a period close to the beginning of gestation; however, the transversality of that part runs along a separate path, which includes the protection of the embryo in a scenario of desired maternity, in which case, indeed, the protection extends throughout the pregnancy, as the norm indicates. The elimination of this normative part would make it impossible to include the crime of forced abortion, which constitutes an act harmful to the physical and psychological integrity of women, to the right to decide when the woman voluntarily wishes to include maternity in her life plan, and to the life in gestation as a constitutional interest.

p.105 Consequently, it is necessary to recognize, from that point of view, the constitutional validity of that provision.

#### **IV. Study of article 196 of the CPC.**

p.106 Article 196 of the CPC states that "one to three years imprisonment will be imposed on a woman who voluntarily performs her abortion or on the person who causes her to have an abortion with her consent."

The comprehensive reading of this norm confirms that this crime called self-provided or consented abortion has a frontal and direct impact on the reproductive freedom of women and persons able to gestate to decide whether to be a mother, which is a constitutional right.

The decision of the local legislature to criminalize the conduct implies that it has the legitimate right to protect one or more legal interests. The purposes that, jointly or individually, have been used as sufficient cause to criminalize this behavior have included: that it is immoral, prevention of maternal mortality and protection of life in gestation.

p.106-107 To consider the action of terminating the pregnancy immoral and, in that regard, turn that assessment into the establishment of criminal measures, cannot be considered a legitimate end that supports the rationality of the norm. Criminal law, as a last resort of the state to protect legal interests, cannot involve ideological positions of a moral nature in relation to the termination of pregnancy, since it is strictly a matter of human rights and protection of constitutionally defined interests within a secular and democratic State.

p.107 It is also not possible to use the argument of preventing maternal mortality as a purpose of the criminal prohibition, since current medical science guarantees that a termination of pregnancy carried out by specialists in an early period of the gestation process represents the least possible risk for the woman or pregnant person.

p.107,108 In the establishment of a crime whose objective, connatural to criminal norms, is to completely prohibit the practice of the voluntary termination of pregnancy, the purpose of protecting the legal interest of potential life is noted.

- p.108-109 This Court does consider that norms that seek to protect human life in gestation and create a culture of respect for dignity pursue legitimate aims. However, considering that the rule pursues a purpose associated with the safeguarding of an interest whose protection is in the public interest, does not mean that for this reason its validity must be recognized in the Mexican legal system. This Court notes that the punitive route designed by the state legislature does not reconcile the right of women and persons able to gestate to decide with the constitutional purpose, but instead nullifies it completely through a mechanism that does not achieve the intended purposes (inhibit the practice of abortions) and, correlatively, produces harmful effects.
- p.110 The criminal legislative formula that was chosen by the Local Congress that contains the criminalization of the voluntary termination of pregnancy at any time, implies the total suppression of the constitutional right to choose of women and persons able to gestate. If the abstract formulation of the illicit conduct included the scenario of voluntary termination of pregnancy that occurs during the period close to the beginning of the gestation process, then it included an event that cannot be classified as criminal, since it is the exercise of a constitutional right held exclusively by women.
- p.112 In view of the fact that the right to decide is built on pillars with their own individual implications, the criminalization that completely nullifies this prerogative of women and persons able to gestate results in the immediate violation of all the elements involved: the dignity of women is disrupted by the disregard of their own characteristics that individualize and define them; their autonomy and free development of personality are significantly affected by preventing the possibility of choosing one's own life project; a mechanism of gender violence is created that reinforces roles that inhibit the achievement of legal equality and their mental and emotional health is injured by the impossibility of considering alternative decisions, which in turn generates the impediment of achieving full wellbeing.
- p.113 Regarding the argument that this punitive provision is derived from the mandate that laws must protect minors from their conception, it does not follow that the protection required by the norm be manifested through the use of the punitive power of the State to punish

with imprisonment, and at the cost of any result, the woman who decides to terminate her pregnancy.

p.113-114 The instrumentation by the local state legislature far exceeds its own purposes, since it would mean accepting the annulment of constitutional rights that cannot be subject to limitations in state provisions.

p.121 The vast majority of criminal offences require people to refrain from injuring third parties in their person and/or property, but in the case of abortion the imposition is so serious that women take on the high risk of harming or injuring themselves rather than facing motherhood, whatever the personal reasons that put them in that situation.

p.121-122 This idea highlights the extreme situation women are put in through the criminalization of the behavior because, even with the risk of facing criminal charges, they decide to assume the possibility of losing their lives, suffering a permanent or temporary injury, both physical and psychological, or being infected with some disease.

p.124-125 Likewise, this Court notes that the prohibition formula chosen by the state legislature ruled out other mechanisms for protecting the fetus, tacitly rejecting the possibility of working together with pregnant women and gestating persons so that they make a decision informed of all the implications (medical and psychological advice and accompaniment); it also ruled out stronger public policies through the services of sex education, advice and accompaniment in matters of family planning, access to and use of contraceptive methods, among other ways available to protect the rights and interests at stake.

p.125 These considerations are also intended to banish the negative connotations associated with the concept of *abortion*, in relation to the position the woman or person able to gestate who goes through such an event is put through socially, since this has a stigmatizing effect that perpetuates a gender stereotype in relation to the role of women in society; in that regard, this decision attempts to contribute to its reorientation.

p.127 Since the plaintiff's claim of invalidity is well founded, article 196 of the CPC should be declared invalid.

## **V. Invalidity of normative provisions contained in articles 198 and 199 of the CPC by extension.**

### **a) Unconstitutionality of the normative premise that punishes assistance in cases of voluntary abortion (by extension).**

p.128 Article 198, titled "Suspension of rights of certain persons who cause abortion", complements the notion of a total prohibition of the termination of pregnancy, and provides for additional sanctions against a person who is a specialist in health sciences or with skills related to childbirth care, who carries out the medical procedure or assists in its execution.

p.129 Maintaining this normative provision alive would make it impossible for the woman who chooses termination to be assisted by medical personnel, since the sanction on persons who carry out or help with the medical procedure consisting of the temporary suspension of exercising their profession, trade or practice would remain in force.

The provision is invalid because it is part of the same normative system of absolute prohibition of voluntary abortion, specifically in the aspect of consent. Thus, the interdependence of those provisions in the legislative design of the corresponding chapter shows that it indeed suffers from the same defect.

### **b) Unconstitutionality of normative premises presented as excusable pleas (by extension).**

p.132-133 In relation to the four cases contained in article 199 of the CPC, the normative provisions that establish "non-punishable abortion" and "will be excused from the penalty for abortion" are invalid, since the fact that the law, for those specific cases, qualifies the conduct as illicit, impacts the right of the woman to decide, in which measure they harmfully contribute to the survival of a notion of criminality in relation to the act of aborting even in cases in which conception took place in a framework of absence of consent of the woman (abortion after rape or after improper insemination or implantation and unintentional abortion caused by the pregnant woman) or it is intended to provide

coverage and protection of health (abortion due to danger to the pregnant woman and abortion due to serious genetic or congenital alterations).

p.133 Regarding this aspect, the first part of the norm will be composed only of the expression "shall not be prosecuted", which clearly communicates the notion that it is an exclusion of the crime to the extent that the state apparatus of procuration and administration of justice will not investigate or adjudicate a woman's decision to terminate her pregnancy in these cases.

**c) Unconstitutionality of the normative premise that limits the termination of pregnancy resulting from the crime of rape (by extension).**

p.134 Section I of article 199 of the CPC regarding abortion after rape, or after improper insemination or implantation, is also invalid.

In contrast to conception occurring with the consent of the mother, there must be a clear differentiation on the applicable rules for the termination of pregnancy if the cause constitutes illicit conduct that violated the sexual and reproductive rights of the woman or person able to gestate.

p.136 The provision is unconstitutional because the configuration does not correspond to the premise it intends to regulate.

p.138 The time limitation in the referenced rule has numerous harmful consequences beginning with not considering the important negative repercussions that the crime presumes for the victim. The harmful implications of the norm include forcing the woman or pregnant person to undertake and carry through the pregnancy, which constitutes a form of violence against women that exacerbates the effects of the crime and creates a scenario of revictimization, as well as a serious and direct injury to the set of rights described.

For these extraordinary cases (where the woman or person able to gestate is the victim of a crime of complex execution and serious consequences), the need for the legal system, the rules, and their practitioners to function within the framework of a time period unconstrained in this way is noted, the inclusion of provisions that allow accompaniment

(medical and psychological) in the most agile way possible being necessary, but which may also be extended to ensure that a safe procedure can be carried out in relation to the woman or person able to gestate.

p.139 Accordingly, the invalidity must be declared of the normative provisions "non-punishable abortion" and "will be excused from punishment" contained in the title and in the first paragraph of article 199, respectively, as well as the fragment "within twelve weeks from conception" placed at the end of the first paragraph of section I.

## **VI. Analysis of the constitutionality of article 224, section II, of the CPC (penalty provided for the crime of rape by spouses).**

### **a) Analysis of the original text of article 224, section II, of the CPC (penalty for the crime of rape by spouses).**

p.149-150 In the opinion of this Court, the argument of the unconstitutionality of the norm is essentially grounded, since the approach taken by the local Congress in the formulation of the criminal conduct in question produces two simultaneous readings that are unacceptable from the constitutional point of view: a) the sexual integrity of persons raped by those with whom they are united in marriage, common-law union or civil pact has a lower value in relation to those victims of rape who do not have that specific quality; and b) the crime of rape committed by the person with whom one is united through such civil ties is not of the same gravity as the crime committed against someone with whom that relationship is lacking.

p.154-155 This Court notes that the assignment by the legislator of a lower rank of punishment than for conduct that results in the same type of injury to a woman, with or without a civil relationship, cannot have any compelling purpose from a constitutional point of view because this differentiated criminalization does not protect any other right involved or comply with a mandate of special relevance; hence, the legislative distinction must be invalidated because it intrinsically contains the understanding that the injury to the sexual integrity of a woman who has a civil relationship in the aforementioned terms does not

criminally merit the same level of reproach for the aggressor as those that women suffer by an aggressor with whom they do not have those ties.

p.155 This Court upholds the criterion that the civil bond cannot be understood, in any circumstances, as a space of privileges that, under the protection of privacy and intimacy in which it operates, justifies the imposition of practices against the will of any of its members through moral, physical, or psychological violence.

p.156 The norms such as the one analyzed here also serve as mechanisms that affect women's access to justice to the extent that: they constitute legislative barriers to the full recognition of their rights (freedom and sexual self-determination); contribute to perpetuating harmful stereotypes associated with a conception of women that lacks legal equality with men; and, consequently, prevent the institutions of procuration and administration of justice from deploying the widest protection of their rights and freedoms in the event they are victims of a crime.

Consequently, pursuant to these conclusions, the first paragraph of section II of article 224 of the CPC must be invalidated.

**b) Invalidity of the normative provision contained in article 224, section II, second paragraph of the CPC by extension.**

p.156-157 The invalidity must be extended to the provision in the second paragraph of that section establishing that the crime will be prosecuted by complaint.

p.157 The distinction in the way an investigation can be initiated in relation to probable unlawful conduct is between crimes that can be prosecuted *ex officio* and those requiring a complaint, which is associated –as a general rule– with less harmful crimes where the individual interest of the victim that the offender be prosecuted and sanctioned is removed. This legislative formula heightens the disregard by the state legislator of the sexual violations that can occur within a marriage, common-law union or social pact.

Consequently, based on the above conclusions, the second paragraph of section II of article 224 of the CPC must be invalidated.

## DECISION

- p.160 This *acción de inconstitucionalidad* is partially valid and partially substantiated.
- p.160,161 The validity of article 195 of the CPC is recognized. Article 196 of the CPC is declared invalid. The invalidity of article 196 of the CPC is declared and, by extension, that of articles 198, first paragraph, in its normative provision "whether or", and 199 in its subheading and first paragraph, in its normative provision "will be excused from penalty for abortion and", and section I, first paragraph, in its normative provision "within twelve weeks from conception", which will be applied retroactively to November 26, 2017, from the notification of these rulings to the Congress of Coahuila.
- p.161 The invalidity of article 224, section II, first paragraph of the CPC is declared and, by extension, that of article 224, section II, second paragraph, which will take effect from the notification of these rulings to the Congress of Coahuila.