

This overview contains the cover page, the summary 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.

**CONSCIENTIOUS OBJECTION: ITS REGULATION IN HEALTH MATTERS MUST
HARMONIZE THE PROTECTION OF HUMAN RIGHTS
(OBJECCIÓN DE CONCIENCIA: SU REGULACIÓN EN MATERIA SANITARIA DEBE
ARMONIZAR LA PROTECCIÓN DE LOS DERECHOS HUMANOS)**

CASE: *Acción de Inconstitucionalidad 54/2018*

REPORTING JUDGE: Luis María Aguilar Morales

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

DATE OF THE DECISION: September 21, 2021

KEY WORDS: Right to freedom of religion, ideology and conscience, right to health protection, conscientious objection, rights of medical personnel, rights of beneficiaries of health services, gender perspective, sexual and reproductive rights of women, pregnant persons and sexual and gender diverse persons, secular State.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Acción de Inconstitucionalidad 54/2018*, Plenary, Luis María Aguilar Morales, J. Decision of September 21, 2021, Mexico.

The full text of the decision may be consulted at the following link:
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SUMMARY OF THE *ACCIÓN DE INCONSTITUCIONALIDAD* 54/2018

BACKGROUND: On June 11, 2018, LRGP, President of the National Human Rights Commission (CNDH), filed an *Acción de Inconstitucionalidad* requesting the invalidity of the Decree adding Article 10 Bis to the General Health Law (LGS), as well as its Second and Third Transitional Articles which, in essence, make it possible for the medical and nursing personnel of the National Health System (SNS) to exercise conscientious objection in order not to participate in the services provided for in the LGS, unless the patient's life is in danger or it is a medical emergency. Specifically, considering that a) they violate the principles of legal certainty, legality and constitutional supremacy, by establishing a restriction on the right to health protection that is not contemplated in the Political Constitution of the United Mexican States (CPEUM) and because the Congress of the Union and the Ministry of Health do not have the power to establish restrictions on the right to health; b) they poorly regulate the right to conscientious objection and thereby violate a person's right to health protection; and c) they violate rights such as health protection, personal integrity and life, sexual and reproductive rights and freedoms, family planning and equality.

ISSUE PRESENTED TO THE COURT: Whether I) the Mexican regulatory framework recognizes a human right to conscientious objection —autonomously or derived from the right to freedom of conscience— and what its scope and limits are; II) an analysis of the right to health protection and the different dimensions that have been recognized by this Court; and III) in the case of Mexico conscientious objection flouts the right to health protection or if, on the contrary, it is a false constitutional dilemma and they are two rights of equal rank that can coexist harmoniously.

HOLDING: Article 10 Bis of the LGS was declared invalid, essentially for the following reasons. Conscientious objection is not a restriction on the right to health, nor a fundamental right of an autonomous nature created in the LGS by the federal legislator, but a form of realization or materialization of the right to freedom of religion, ideology, and conscience. Its exercise cannot be absolute and unlimited because of the concurrence of legal rights worthy of special protection, such as respect for the fundamental rights of other people, general health, the prohibition of

discrimination, constitutional loyalty, democratic principles and, in general, all the principles and values proclaimed by the CPEUM. Conscientious objection can never result in the denial of health services to people who come to health institutions; nor will it be valid for cases in which the refusal or postponement of the service involves a risk to health or the aggravation of that risk, or when it may cause harm to health, after-effects, or disabilities in any way. In order for its regulation to be consistent with a democratic system and the protection of rights, there must be mechanisms, when health personnel are conscientious objectors and recuse themselves from performing a procedure, that uphold the individual obligation of medical and nursing personnel and the institutional obligation of health centers of properly informing the beneficiaries of health services and referring them immediately and without delay or processing to their superior or non-objecting personnel so that health care is provided. In this regard, the regulation of conscientious objection in health matters is poorly drafted, since it must harmonize the protection of the human rights of both medical and health personnel and persons holding the right to health and in this case this constitutional imperative was not achieved, because although it is possible to protect the right of medical and health personnel to freedom of religion and conscience, the limits and safeguards were not established to protect the rights of the beneficiaries of health services at the same time. The challenged law violates the right to protection of human health, especially the rights of women, pregnant persons and sexually and gender diverse persons, since these are particularly discriminated groups whose sexual and reproductive rights and health care rights have historically been violated by several factors, including the religious and ideological convictions of people who have refused to provide them with adequate health care.

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

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=238286>

EXTRACT OF THE *ACCIÓN DE INCONSTITUCIONALIDAD 54/2018*

p. 1 Mexico City. The Plenary of Mexico's Supreme Court of Justice (this Court), in session of September 21, 2021, issues the following decision.

BACKGROUND

On June 11, 2018, LRGP, President of the National Human Rights Commission (CNDH), filed an *Acción de Inconstitucionalidad* requesting the invalidity of the Decree adding article 10 Bis to the General Health Law (LGS) as well as its Second and Third Transitional Articles, published on May 11, 2018 in the Federal Official Gazette (DOF), issued by the Congress of the Union and promulgated by the President of the Republic.

p.44 The challenged decree is worded as follows:

p.44-45 "Sole Article.- An article 10 Bis is added to the LGS, to read as follows:

ARTICLE 10 Bis.- Medical and nursing personnel who are part of the National Health System may exercise conscientious objection and recuse themselves from participating in the provision of services established by this Law.

When the patient's life is at risk or it is a medical emergency, conscientious objection may not be invoked, otherwise professional liability will be incurred.

The exercise of conscientious objection shall not result in any type of employment discrimination.

TRANSITIONAL ARTICLES

First.- This Decree will enter into force on the day following the date of its publication in the DOF.

Second.- The Ministry of Health will have a period of 90 calendar days after the publication of this Decree to issue the provisions and guidelines necessary for the exercise of this right in the cases established by law.

Third.- The Congress of the Union and the Legislatures of the states and Mexico City, within the scope of their respective jurisdictions, will make the legislative modifications in

accordance with the provisions of this Decree within 180 calendar days following its entry into force.

Fourth.- The actions that are generated as a result of the entry into force of this Decree will be covered with the financial, human, and material resources that the Ministry of Health currently has."

p.1-2 The foregoing is considered to have violated articles 1, 4, 14, 16 and 133 of the Political Constitution of the United Mexican States (CPEUM), as well as articles 1, 2, 4, 5 and 12 of the American Convention on Human Rights (ACHR); 18 of the International Covenant on Civil and Political Rights (ICCPR); 12.2, section d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR); 2 and 10, section f) of the "Protocol of San Salvador"; 11.1, section f) and 16.1, section e) of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); and 1, 2, section c), 3, 4, sections a), b), c) and e), 7 and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem Do Pará Convention).

p.18 On June 13, 2018, it was ordered to give notice to the Congress of the Union and the Executive Branch to submit their respective reports. Likewise, the Legislative Branch was requested to send the legislative history of the challenged norm and the Executive to send a copy of the DOF in which the challenged norm was published and, finally, it was ordered to give notice to the Attorney General's Office (PGR).

p.37 Once the pleadings of the parties had been received, on August 13, 2018, the proceeding was closed.

On January 2, 2019, it was ordered to remit the court records to Justice Luis María Aguilar Morales to propose the respective draft decision.

STUDY OF THE MERITS

p.46 Specifically, the concepts of invalidity asserted by the CNDH question the validity of the challenged norms for introducing the concept of conscientious objection as a right of healthcare workers, in detriment of the right to health care.

In this regard, to analyze the constitutionality of the challenged provisions the following must be studied:

I. Constitutional framework on freedom of religion and conscience and the right to conscientious objection

p.47 Freedom of conscience, religion and conscientious objections are three distinct concepts that, however, are intimately linked and are part of a system of rights that intertwine and sustain the interculturality and diversity of worldviews that the CPEUM protects.

This multiplicity of worldviews, cultures, beliefs, and ideologies has generated one of the most complex phenomena of judicial interpretation, consisting of conflicts between conscience and legal duty. These are cases in which conscience –in general terms referring to religious, ideological, ethical, or personal belief– conflicts with obligations arising from a valid norm or act.

To solve this clash between conscience and legal duty, the law has a particular concept that has been called "conscientious objection" and which has been conceived in general terms as the refusal of a person, for reasons of conscience, to submit to conduct that in principle would be legally enforceable, whether the obligation comes from a norm or a legal act.

p.47-48 In this regard, conscientious objection is not limited to the protection of religious freedom, reaching farther to also cover ethical and ideological convictions and, in general, any strictly individual belief that is valid in a democratic State. Moreover, these freedoms are consistent, and even enforceable, in a secular State like Mexico.

a) Mexican model of secularism

p.48 The principle of secularism is recognized in articles 24, 40 and 130 of the CPEUM, and stands as one of the fundamental principles of the Mexican State.

Thus, article 40 of the Constitution expressly establishes that the Mexican State is a representative, democratic, federal, and secular Republic, while article 24 recognizes the right to freedom of religion, ideology, and conscience.

- p.49 Article 130 reaffirms the Mexican model of secularism and another of its main elements in the principle of separation of State and church.
- p.50 The Mexican model of secularism protects a duty of religious neutrality on the part of the State, so the Government cannot adopt an official church and must remain respectful of all religious affiliations and the exercise of the rights of freedom of ethical convictions, conscience, and religion.
- p.50 The characteristic feature of a secular State lies in two fundamental elements: the separation of church and State and the protection of freedom of religion, conscience, and ethical and ideological convictions.
- p.52 In this respect, scholars have distinguished at least two models of secularism in relation to the degree of action of the State regarding freedom of ethics, religion, and conscience: that of the "guarantor State" and that of the "non-intervening State".

The guarantor State understands the State as the protector of religious freedom through cooperation between Church and State, allowing the State to actively protect and encourage the exercise of religious freedom. The non-intervening State implies a sharp separation between Church and State.

The Mexican model of secularism would seem to fall somewhere in between the "guarantor State" and the "non-intervening State", where a separation between the State and religious affiliation is demanded, but public freedoms, especially religious, ideological, ethical convictions and conscience are also protected; therefore, any act that violates the principle of secularism, or these freedoms, would be in violation of the CPEUM.

b) Religious freedom

- p.57-58 The current design of article 24 of the Constitution is one of the broadest and most protective of public freedoms. Specifically, in Mexico everyone has the right to freedom of ethical convictions, conscience, and religion, which also implies protection of each person's ideology and not just religious convictions.

p.58, 59 In the *Amparo en Revisión* 1595/2006, the First Chamber of this Court held that religious freedom has two facets or dimensions: one internal and one external.

In its internal facet, religious freedom is intimately related to ideological freedom and addresses the capacity of people "to develop and act in accordance with a particular vision of the world in which the relationship of mankind with the divine is defined".

The external facet is multiple and is often closely intertwined with the exercise of other subjective rights, such as freedom of expression, freedom of assembly, freedom of work or freedom of education, among many others.

p.59-60 External manifestations of religious freedom can be individual or collective. Collectively, this freedom is exercised with acts of public worship, while individual acts can be externalized by wearing religious symbols or by peacefully spreading religious thoughts and activities.

p.64 There is a consensus among scholars and international law that religious freedom includes freedom of conscience and conscientious objection, the latter understood as the individual right to "disregard a personal legal obligation when complying with it would produce serious harm to the individual's conscience or professed beliefs".

p.68 This Court has developed a broad notion of the principle of secularism and the right to freedom of religion, conscience and ethical convictions and has recognized that there is both religious freedom and a "freedom to turn away from religion".

Pursuing this idea of the two-dimensionality of religious freedom, the State must guarantee that people effectively have the right to profess a religion or ideology, as well as not to profess any.

c) Freedom of conscience and conscientious objection

p.69-70 These concepts are recognized in article 24 of the CPEUM, as well as in articles 12 of the ACHR and 18 of the ICCPR, and they consist of the right of every person to have beliefs or ideas, and to keep them private or manifest them in both word and deed with behaviors and attitudes, accommodating these to one's own beliefs or convictions.

Freedom of conscience is constructed as a broader and deeper concept of religious freedom, since neither the courts nor any authority is competent to decide which beliefs or convictions are religious or not that corresponds exclusively to the person.

p.70-71 The freedoms of religion and belief are, in principle, internal phenomena of individuals and cannot be controlled by law. However, when those devotions and beliefs are voluntarily or involuntarily externalized, they become legally relevant and controllable expressions. It is precisely this sphere that corresponds to and gives rise to freedom of conscience: the norm of conscience becomes a legal norm that dictates to a person what they should and should not do, what is right and what is not according to a certain religion or worldview not necessarily religious.

p.71 Thus, freedom of conscience has a threefold content: a) it implies the right to the free formation of conscience; that is, to have one's own convictions and, consequently, one's own worldview (these phenomena are legally irrelevant and not controllable by law); b) it includes the freedom to express and manifest such convictions or not to, and to involve or transmit them to others; and c) it entails freedom to behave in accordance with those convictions (beliefs and ideas), as well as not to be forced to behave contrary to them.

This last facet of freedom of conscience is what becomes legally relevant and gives rise to conscientious objection.

p.72 Conscientious objection is an individual reaction —generally— to a genuine contradiction between a norm of conscience and a legal duty, such that one rule prohibits what the other imposes as mandatory, or vice versa. It is not a simple difference of opinion in relation to the norm or act; the conscientious objection must be linked to a strong religious, ideological or belief conviction.

Of course, not just any contradiction entails a real conscientious objection, since there must be a threat to the essence of the personal conscience or convictions, that is, when the contradiction compromises the dignity of the person.

p.73 It is important not to confuse conscientious objection with civil disobedience or resistance, which are quite different formulas. Conscientious objection is usually carried out

individually, while civil disobedience is carried out collectively; conscientious objection seeks only the non-application of a legal norm or duty –but without intending to alter the normative framework– civil disobedience seeks to alter or modify the current law; civil disobedience is based on political principles only, while conscientious objectors can base their arguments on ethical, ideological, religious or any other principles that affect their dignity.

p.76 Thus, it can be argued that conscientious objection is a form of realization or materialization of the human right to freedom of religion, ideology, and conscience, so it is part of its essential core and shares the direct binding force of every right recognized by the CPEUM.

p.78 Conscientious objection does not constitute an absolute or unlimited right that can be invoked in any case and in any form. It is not a general right to disobey the laws. On the contrary, conscientious objection is valid only when it is a genuine contradiction with the dictates of a respectable conscience in a constitutional and democratic context, so it cannot be invoked to defend ideas contrary to the CPEUM.

p.79 The right to conscientious objection can be limited by the concurrence of legal rights worthy of special protection, such as respect for the fundamental rights of other persons, general health, the prohibition of discrimination, constitutional loyalty, democratic principles and, in general, all the principles and values proclaimed by our CPEUM.

In this regard, a conscientious objection that seeks to ignore the fundamental principles of the Mexican State can never be valid.

II. Right to health care

The right to health care is recognized in the fourth paragraph of article 4 of the CPEUM.

p.81 According to the international commitments of the Mexican State, the right to health guarantees the availability, accessibility, non-discrimination, acceptability, and quality of health services and requires public authorities to respect, protect and fulfill that right.

In addition, the ICESCR imposes immediate obligations on States, such as to ensure that the right to health is exercised without any discrimination and to adopt measures for its full realization, which must be deliberate and concrete.

p.84-85 Thus, the right to the highest attainable standard of health should be understood as a right to the enjoyment of a whole range of facilities, goods, services and conditions necessary to achieve a state of general wellbeing, which not only encompasses timely and appropriate health care, but implies, among other things, that: a) the Mexican State has a sufficient number of public health establishments, goods and services and health care centers, the nature of which will depend in particular on its level of development; b) such establishments are available to the population, in particular vulnerable or marginalized groups; and c) those establishments, in addition to being culturally acceptable, must be scientifically and medically appropriate and of good quality.

p.86-87 In cases such as the norm in question, it is clear that it regulates the rights of medical and nursing personnel to recuse themselves from performing a health procedure; however, this Court notes that a deficient regulation of conscientious objection could conflict with the rights of the beneficiaries of health services, to whom excessive burdens could be transferred which are likely to undermine their right to the highest level of health protection, especially when the patients are women, persons able to gestate and sexually and gender diverse persons.

p.87 In this regard, this Court guides its analysis and decision from the obligation to assess the case from a gender perspective, which implies considering situations of disadvantage that, due to gender issues, discriminate and prevent equality.

p.88 It should be borne in mind that one of the moments in which freedom of religion, ideology and conscience can collide occurs when medical and nursing personnel refuse to carry out a procedure for the termination of pregnancy in cases that Mexican law contemplates or that this Court has recognized as part of the reproductive and sexual rights and freedoms of women and persons able to gestate.

p.92-93 In its General Comment 22, the Committee on Economic, Social and Cultural Rights states that the right to sexual and reproductive health is part of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and that comprehensive sexual and reproductive health care encompasses four interrelated and essential elements:

p.93 a) Availability. An adequate number of functioning care facilities, services, goods, and programs should be available to provide the fullest possible set of sexual and reproductive health services.

This means that, inter alia, ensuring that trained medical and professional personnel and qualified providers are taught to provide all sexual and reproductive health care services is a vital component of ensuring availability.

It is emphasized that conscientious objection should not be an obstacle to accessing services, as enough health care service providers should always be available and capable of providing such services in public and private establishments at a reasonable geographical distance.

b) Accessibility. Health facilities, goods, information, and services relating to sexual and reproductive health care should be accessible to all individuals and groups without discrimination or barriers.

p.94 c) Acceptability. All sexual and reproductive health facilities, goods, information, and services must be respectful of the culture of individuals, minorities, peoples, and communities and consider gender, age, disability, sexual diversity, and life cycle issues. However, this cannot be used to justify the refusal to provide facilities, goods, information, and services tailored to specific groups.

d) Quality. Sexual and reproductive health facilities, goods, information, and services must be of good quality. This requires developed and trained health care personnel, as well as scientifically approved medicines and serviceable equipment.

p.94-95 States should also avoid hindering access to sexual and reproductive health services and, where conscientious objection is permitted, should adequately regulate this practice to ensure that it does not impede anyone's access to sexual and reproductive health care services, in particular by requiring that cases be referred to an accessible provider with the capacity and willingness to provide the required service and which does not impede the provision of services in urgent or emergency situations.

p.96 Thus, on the basis of the precedent of this Court and the various international instruments and the comments of the bodies that interpret them, it can be seen that the obligation to provide health services falls on the State and, although medical and nursing personnel participate in an important way, the final responsibility for guaranteeing full and effective access to health services lies with the Mexican State, for which it must have the appropriate provisions that regulate the conscientious objection of medical and nursing personnel and, at the same time, guarantee the enjoyment of health protection to the maximum degree possible.

III. Study of the concepts of invalidity

a) First. Alleged violation of the principles of legal certainty, legality, and constitutional supremacy, by imposing restrictions on the right to health protection.

p.103 The CNDH maintains that the articles are unconstitutional in stating that medical and nursing personnel can recuse themselves from participating in the provision of health services, since this establishes a restriction on the right to health protection that is not provided for in the CPEUM, which is a violation of the principles of legal certainty, legality and constitutional supremacy because the Congress of the Union and the Ministry of Health are not constitutionally empowered to establish restrictions on the right to health.

p.105 This Court determines that this concept of invalidity is unfounded, since the CNDH makes an erroneous assumption when considering that conscientious objection is a human right recently created by legislation or a legal restriction of the right to health protection recognized in article 4 of the CPEUM.

Conscientious objection is not a restriction of the right to health, or a fundamental right of an autonomous nature created in the LGS by the federal legislator.

p.106 Conscientious objection is a form of realization or materialization of the human right to freedom of religion, ideology, and conscience, so it is part of its essential core and shares the direct binding force of any right recognized by the CPEUM.

p.106-107 Therefore, since it is a materialization of the right to freedom of religion, ideology and conscience, its exercise cannot be absolute or unlimited, because when conscientious objection restricts the exercise of the rights of other persons or legally relevant property, the matter becomes a problem of limits to the exercise of fundamental rights or of collision between rights, and it must be elucidated from the general theory of fundamental rights.

p.107 Thus, conscientious objection is not a limit or a restriction on the right to health.

Moreover, this is a false dilemma since conscientious objection cannot be conceived as a limit to fundamental rights. On the contrary, as a realization of the human right to freedom of religion, ideology and conscience, this concept is not absolute, nor can it be invoked in just any case.

Conscientious objection may be limited by the concurrence of legal rights worthy of special protection, such as respect for the fundamental rights of others, general health, the prohibition of discrimination, constitutional loyalty, democratic principles and, in general, all the principles and values proclaimed by the CPEUM.

p.108 Likewise, the rule contained in article 10 Bis of the LGS is strictly included in the sphere of general health, since it only allows medical and nursing personnel who are part of the SNS to exercise conscientious objection to recuse themselves from participating in health services that oppose the development of their freedom of religion, ideology, and conscience.

Thus, the right of conscientious objection referred to in the challenged article 10 Bis cannot be understood with a scope different from the scope of health services contemplated in the LGS.

p.110 In this regard, it is clear that article 10 bis is not a human right created by the Congress of the Union or a limit to the right to health; this concept was issued by the Congress of the Union in the use of the powers that, in matters of general health, are conferred to it in article 73, section XVI, of the CPEUM.

That said, this Court also determines that the arguments challenging the Second and Third transitional articles of the Decree, in which the same defect of constitutionality is claimed stating that these provisions unduly delegate to the Ministry of Health and the states the power to regulate the exercise of conscientious objection, are unfounded.

p.111 Regarding the Second transitional article, this Court does not see that this enabling norm has a constitutionality defect, since the Congress of the Union did not establish the right of conscientious objection when it added article 10 Bis to the LGS. On the contrary, it is the materialization of the freedom of religion, ideology, and conscience, recognized in article 24 of the Constitution.

p.113 In view of the foregoing, this Court considers that the Second transitional article challenged is not unconstitutional for establishing that the Ministry of Health must regulate the exercise of conscientious objection in the provision of health services contemplated in the General Law on the matter, since this enabling clause is consistent with the system of concurrences contemplated in the Mexican Constitution.

Similarly, the Third transitional article is also not unconstitutional because it establishes that the Congress of the Union and the legislatures of the states have to adjust their legislation to the content of the Decree by which article 10 Bis was added to the LGS, since that mandate only means that those legislative bodies, within the scope of their constitutional and legal competences, must adjust their legal system to make it consistent with the legal reform now challenged.

p.113 In this way, the first concept of invalidity raised is unfounded.

b) Second and third. Violation of the right to health protection –and other related rights– due to the deficient regulation of conscientious objection.

p.115-116 The CNDH seeks to show that when legislating on conscientious objection for medical and nursing personnel belonging to the SNS, the Congress of the Union did so deficiently and disproportionately, affecting the right to health by not establishing adequate measures for its protection.

p.117 To ensure that conscientious objection does not become a formula for evading the satisfaction of the rights of users of health services and even affecting their right to the preservation of their highest level of health, conscientious objection cannot be institutional; rather, the State must establish safeguards to ensure that non-objecting medical and nursing personnel are always available to provide health care in the best possible conditions.

Conscientious objection should never result in the denial of health services to persons who come to health institutions, and should not be valid for cases in which the refusal or postponement of service (due to the lack of availability of sufficient non-objecting personnel) implies a risk to health or the aggravation of that risk, or when it may cause harm to health, after-effects or disabilities in any way.

p.117-118 For this reason, its regulation must ensure that the three levels of government have sufficient non-objecting medical and nursing personnel to ensure that medical care is provided in the best possible conditions, in accordance with the rules of health, without compromising the health or life of the person requesting the service, and without the exercise of conscientious objection entailing an excessive or disproportionate burden to the detriment of the beneficiaries of health services.

p.118 Likewise, in order for the regulation of conscientious objection to be consistent with the democratic system and the protection of rights, it is necessary to contemplate the mechanisms that ensure the individual obligation of medical and nursing personnel, and also the institutional obligation of health centers, to properly inform the beneficiaries of health services and refer them immediately and without delay or processing to their superior or non-objecting personnel when health personnel are conscientious objectors and recuse themselves from performing a procedure, so that the health care is provided.

Now, based on the above considerations, we look at whether article 10 Bis of the LGS is in accordance with the general limits and conditions that a constitutionally valid conscientious objection must have.

p.121 This Court notes that the regulation of conscientious objection in the LGS is too vague and deficient since it is not expressly restricted or limited and, therefore, runs the risk of being read as a license to arbitrarily deny the provision of health services to patients.

p.122 Article 10 Bis of the LGS, by authorizing medical and nursing personnel of the SNS to refrain from providing the required service when they consider that this would be contravening what is dictated by their conscience, impedes the patient's access to such services. Likewise, this normative statement interpreted literally has the immediate effect of hampering the availability of the right to health, thus causing patients not to be treated in a timely manner which, even when there is no medical emergency or danger of death, does become a blatant violation of the right of all people to the maximum and integral enjoyment of their health.

p.124-125 Therefore, although conscientious objection in health matters has a much broader scope, a gender perspective obliges this Court to take into account the situation of women and pregnant persons, as well as sexually and gender diverse persons, when resolving this *Acción de Inconstitucionalidad*, since these are particularly discriminated groups whose sexual and reproductive rights and health protection have historically been violated by different factors, including the religious and ideological convictions of people who have refused to provide them with adequate health care, as has been the recurrent case of the legal termination of pregnancy or the prescription of the emergency contraception pill.

In this vein, the drafting of article 10 Bis of the LGS regulates conscientious objection poorly and almost absolutely, without expressly containing the limits imposed by the CPEUM, which generates a risk in the protection of the rights of the beneficiaries of the right to health, especially in the case of women, persons able to gestate and sexually and gender diverse persons.

p.126 From this perspective, this Court considers that an adequate regulation of conscientious objection in health matters must harmonize the protection of human rights of both medical and health personnel and persons having the right to health.

This constitutional imperative was not achieved in the case of article 10 Bis of the LGS, because although it is possible to protect the right of medical and health personnel to their religious freedom and conscience, the legal text did not establish the limits and safeguards necessary to at the same time protect the rights of the rest of the beneficiaries of health services.

p.131 This is not changed by the fact that the Second and Third transitional articles establish, respectively, the obligation of the Ministry of Health to issue provisions and guidelines for the exercise of conscientious objection and of the local legislatures to make the pertinent legislative modifications, since the guidelines that guarantee the due protection of the right to health must be clearly established in a formal and material law.

p.131 Based on the foregoing considerations, it is clear that the contested norm violates the right to protection of human health, especially the sexual and reproductive rights of women, pregnant persons and sexually and gender diverse persons.

p.132 Therefore, since this *Acción de Inconstitucionalidad* is well-founded, this Court declares the invalidity of article 10 Bis of the LGS, because its regulation of conscientious objection in health matters is deficient.

DECISION

p.141 Article 10 Bis of the LGS, added by the Decree published in the DOF on May 11, 2018, as well as the Second and Third transitional articles of the aforementioned Decree, are declared invalid.

The Congress of the Union is urged to regulate conscientious objection in health matters considering the reasons stated in this decision.