



**Suprema Corte**  
de Justicia de la Nación



**DERECHOS**  
**HUMANOS**

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.

**MIGRANTS: REFUSAL TO PROVIDE HEALTH CARE SERVICES FOR LACK OF CURP IS UNCONSTITUTIONAL**  
**(MIGRANTES: ES INCONSTITUCIONAL LA NEGATIVA DE BRINDARLES SERVICIOS DE ATENCIÓN MÉDICA POR FALTA DE CURP)**

**CASE:** *Amparo en Revisión 81/2021*

**REPORTING JUDGE:** José Fernando Franco González Salas

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

**DATE OF THE DECISION:** October 13, 2021

**KEY WORDS:** right of access to health, migrants, irregular migratory situation, health care services, principle of equality and non-discrimination, public health insurance (*Seguro Popular*), lack of CURP.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 81/2021*, Second Chamber, José Fernando Franco González Salas, J. Decision of October 13, 2021, Mexico.

The full text of the decision can be consulted at the following link:

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2022-06/AR%2081-2021.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo en Revisión 81/2021*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 81/2021

**BACKGROUND:** On June 7, 2018, OOC, of foreign nationality, requested his enrollment in the Social Health Protection System (Seguro Popular) in San Luis Potosí. He was granted a health insurance policy and assigned to the medical clinic "16 de septiembre", but for a term of three months, because he did not have his Unique Population Registration Code (CURP) and birth certificate. During the term of his policy, several studies related to his illnesses were conducted and he was provided with medication to control them. On November 15, 2018, he was denied medical service and the medicine to treat his illnesses, being informed that due to his status as a migrant they could not extend the policy for any longer as he did not meet the necessary requirements. OOC filed an *amparo* lawsuit in which he challenged the adoption, approval, and promulgation of article 77, bis 7 of the General Health Law (LGS), considering it a violation of the principle of equality and non-discrimination for establishing requirements that migrants cannot meet because of their special vulnerability when they are in a State where, due to their migratory situation, they may not have all the documents requested. The District Judge who heard the case granted the *amparo* against the normative portion "all Mexicans" contained in the first paragraph of article 77 bis 1, as well as the normative portion "having a Unique Population Registration Code" of section III of article 77 bis 7 of the LGS, to the effect that the Seguro Popular authorities enroll the petitioner without requiring that he be Mexican or have a CURP, as long as he complies with the remaining requirements. The responsible authorities filed *recursos de revisión*. The Collegiate Court that heard them declared it did not have subject-matter jurisdiction since the constitutionality of a federal law was at issue and ordered the case be sent to Mexico's Supreme Court (this Court) for resolution.

**ISSUE PRESENTED TO THE COURT:** Whether it is constitutionally valid that articles 77 Bis 1 and 77 Bis 7, section III of the LGS establish the requirements for foreigners in an irregular migratory situation to have permanent access to the Seguro Popular.

**HOLDING:** The appealed decision was amended and the *amparo* was granted, essentially, for the following reasons. Article 77 Bis 1 of the LGS does contain an implicit exclusion of foreigners

in an irregular migratory situation from enjoying the benefits of the social health protection system, insofar as only Mexicans and those who are residents in national territory can have access to it, which excludes OOCC. With respect to article 77 Bis 7, section III of the LGS, this Court concluded that, since the constitutional and conventional legal framework prevented the subordination of the exercise of any right to the possession of the CURP, the State cannot require the presentation of such a document to recognize or provide a service derived from a right: health, education or work, because such a requirement is an undue interference in the enjoyment and exercise of human rights, which is contrary to the Federal Constitution; in addition, making the distinction between people with a CURP and people without one has no constitutional basis.

**VOTE:** The Second Chamber decided this case unanimously by five votes of Justices Yasmín Esquivel Mossa, Alberto Pérez Dayán, Luis María Aguilar Morales, José Fernando Franco González Salas (reserved his right to write an opinion with reservations) and Javier Laynez Potisek. Justices Alberto Pérez Dayán and Luis María Aguilar voted against the third ruling.

The votes can be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=280444>

## EXTRACT FROM THE *AMPARO EN REVISIÓN* 81/2021

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court (this Court), in session of October 13, 2021, issues the following decision.

### BACKGROUND

p.8 On June 7, 2018, OOCC, of foreign nationality, went to the offices of operational zone number 1 of the National Commission for Social Health Protection in San Luis Potosí (Seguro Popular) to request access to the mentioned healthcare insurance. He was granted a health insurance policy and assigned to the medical clinic "16 de septiembre", but for a term of 3 months because he did not have his Unique Population Registration Code (CURP) and birth certificate.

During the term of his policy, several studies related to his illnesses were conducted and he was provided with the medication to control them.

p.8-9 On November 15, 2018, he was denied medical service and medicine to treat his illnesses, being informed that due to his status as a migrant they could not extend the policy for any longer as he did not meet the necessary requirements.

p.9 OOCC filed an *amparo* lawsuit against those denials.

In the lawsuit, he argued that the responsible authority violated articles 1 and 4, fourth paragraph of the Federal Constitution, as well as articles 5 of the Convention on the Status of Aliens; 8, point 1, section c) of the Declaration on the Human Rights of Individuals who are not nationals of the country in which they live; 25, paragraph 1, of the Universal Declaration of Human Rights; 12 of the International Covenant on Economic, Social and Cultural Rights; 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; and 8 of the Immigration Law (LM), for having denied him the right to health.

p.9.10 Once the *amparo* lawsuit was admitted, the Deputy Legal Director of the State Regime of Social Health Protection of the State of San Luis Potosí, when submitting his answer to the complaint, indicated that the refusal was legally and constitutionally valid, in

accordance with article 77, bis 7 of the General Health Law (LGS) which establishes various requirements to enjoy the benefits of the Seguro Popular.

- p.11 In response to the answer to the complaint submitted by the mentioned authority, OCCC expanded his claim, essentially stating the following: that the creation and application of article 77 bis 7 of the LGS is a violation of the principle of equality and non-discrimination, for establishing requirements that migrants cannot meet due to their special vulnerability when in a State where, due to their migratory situation, they may not have all the documents requested; and that the criterion used by the legal norm is unconstitutional, because there is discrimination on the basis of origin, thereby violating the human dignity of migrants by limiting the rights of access to health.
- p.13 As a preliminary matter, the District Judge who heard the case held that, although OCCC was affected by article 77 bis 7 of the LGS, it could not be examined in isolation, but based on article 77 bis 1, first paragraph, of the same law, as it is part of the regulatory system that establishes the requirements that must be satisfied for incorporation into the Seguro Popular.
- p.14 In the analysis of articles 77 bis 1 and 77 bis 7 of the LGS, the judge said that they require a person to be Mexican and to meet certain other requirements, among them having a CURP, to be able to enroll in the system. This wording shows the implicit exclusion of foreigners with irregular status in the country.
- p.12 The judge issued a decision in which she granted the requested *amparo* to the effect that the normative portions declared unconstitutional not be applied to the legal sphere of OCCC, and the authorities of the Seguro Popular incorporate him into said system without requiring him to be Mexican or have a CURP, as long as he complies with the remaining requirements.
- p.16,18 The responsible authorities filed *recursos de revisión* against this decision.
- p.5 In an online ordinary session of February 11, 2021, the Collegiate Court hearing the *recursos de revisión* issued a decision in both matters declaring it did not have subject-

matter jurisdiction to resolve them, since they involve a matter of constitutionality of a federal law, ordering the case be sent to this Court for its resolution.

By resolution of March 19, 2021, this Court took up the *recursos de revisión* filed by the responsible authorities, which were registered under case file 81/2021, ordering they be turned over to Justice José Fernando Franco González Salas for study and resolution.

## STUDY OF THE MERITS

p.20 In view of the background of the case, the legal problem for which this Court assumed jurisdiction is to review the constitutionality of articles 77 Bis 1 and 77 Bis 7, section III, of the LGS, regarding the requirements for foreigners to have permanent access to the Seguro Popular.

### I. Constitutionality of article 77 Bis 1 of the LGS

p.25-26 The President of the Republic considered that the *amparo* judge violated the provisions of articles 74 and 75, first paragraph, of the Amparo Law, by virtue of the fact that OCCC expressly indicated the issuance and promulgation of the LGS, specifically its article 77 Bis 7, section III, as the acts challenged, while the judge went further and determined the violation of the said article based on the analysis of another provision that was not challenged, article 77 Bis 7, section I, in order to correct a deficiency of the complaint of the challenged act, which leaves the authority in a state of defenselessness, since its pronouncement as a challenged act had not been requested.

That grievance is unfounded.

p.26 First it must be said that the appellant authority's argument that the legal provision the federal judge introduced to the *litis* was article 77 Bis 7, section I of the LGS is inaccurate; the provision that the judge considered was article 77 Bis 1, first paragraph of the LGS.

p.26-27 In addition, as has been seen, the *amparo* judge based her determination to introduce the constitutional analysis of the first paragraph of article 77 Bis 1 of the LGS on the precedent of this Court 2a./J. 91/2018 (10a.), with the heading: "*AMPARO AGAINST LAWS. THE FEDERAL JUDGE IS EMPOWERED TO INTRODUCE IN HIS DECISION THE*

*ANALYSIS OF NORMS THAT WERE NOT PART OF THE LITIS, AS LONG AS THEY ARE CLOSELY RELATED TO THE CHALLENGED SUBJECT MATTER, BECAUSE THEY CONSTITUTE A NORMATIVE SYSTEM".*

- p.28 She clarified that the above determination does not imply that the federal judge can change the litis by introducing into the study provisions not challenged that do not correspond to the fundamental claim of OCCC or that are not in force at the time of filing the *amparo* lawsuit, since the subject matter of the challenge is what makes it possible to argue the existence of a connection between various legal provisions, because they contain normative elements that complement one another, which justifies the need to carry out a comprehensive analysis of those closely related articles.
- p.29 The refusal to enroll OCCC in the Seguro Popular and, therefore, to provide health services, arose from two fundamental issues: One, for not having a CURP and, the other, because in the opinion of the judge, access to said Code is reserved for Mexicans, as provided for in article 77 Bis 1, first paragraph of the challenged law, which excludes OCCC.
- p.31 The appellant authority also argues that although before the mentioned reform, article 77 Bis 7 of the LGS provided that to enjoy the benefits of the Seguro Popular, section I must be satisfied which established "*to be residents in national territory*", contrary to the judge's statement, it is inaccurate that based on paragraph 77 Bis 1 of the law foreigners are discriminated against by imposing requirements that can only be met by people of Mexican nationality.

This is because the requirements provided for in the then article 77 Bis 7 of the challenged law only required proving residence in national territory, without noting a requirement of Mexican nationality, which is consistent with the provisions of articles 1 and 4 of the Federal Constitution that only refer to persons, without mentioning nationality to access the rights established therein.

In that regard, the appellant insists that although article 77 Bis 1 of the LGS dictated that "*All Mexicans have the right to be incorporated*" into the mentioned System, the

challenged article 77 Bis 7 of the law corrected this and indicated only that they must be residents in the territory, without referring to the nationality of the interested parties.

The grievances formulated are unfounded and to show this, the following considerations must be taken into consideration.

p.31-32 This Court has analyzed in various precedents the principle of equality contained in article 1 of the Federal Constitution as a human right establishing that every person should receive the same treatment and enjoy the same rights on equal terms with other persons, they are in a similar situation that is legally relevant.

p.32 Likewise, the precedent of this Court has established that the right to equality is composed of two principles: equality before the law and equality in the law.

On the one hand, the first requires that the legal rules be applied uniformly to all persons in the same situation and, in turn, that the courts may not arbitrarily modify their decisions in cases that share the same *litis*, except when they consider that they must depart from their precedents, at which time they must provide reasonable and sufficient legal grounds and reasoning.

On the other hand, the second principle operates *vis-à-vis* the legislative authority and aims to control the content of the legal norm to avoid legislative differentiations without constitutional justification or in violation of the principle of proportionality broadly speaking.

p.33 Thus, to determine whether a rule makes objective and reasonable distinctions or whether, on the contrary, they are discriminatory, this Court has used different argumentative tools depending on the nature of the distinction –strict scrutiny and ordinary scrutiny– which allow the constitutional courts to determine whether the measure is appropriate to achieve the desired purpose, in the sense that it does not have defects of over-inclusion or under-inclusion, resulting in a violation of the principle of equality and non-discrimination.

p.33-34 However, regardless of the level of scrutiny that is applicable, it has also been argued that to analyze violations of the principle of equality, it must be established that the legislator did in fact draw a distinction, either by tacit exclusion or by express exclusion. That is, it



must be verified that some group has been excluded from some benefit granted to another similar group, or that differentiated legal regimes have been established for similar factual cases. And once it has been established that the legislator made a distinction, it is necessary to establish whether that measure is justified.

p.34 Now, based on the above, this Court notes that the appellant authority is incorrect in its grievances, because although as it argues, section I of article 77 Bis 7 of the LGS establishes: "*ARTICLE 77 Bis 7.- Families whose individual members satisfy the following requirements will enjoy the benefits of the Social Health Protection System: I. They are residents in national territory (...)*", this does not validate the defect of unconstitutionality suffered by article 77 Bis 1, first paragraph of the law quoted, which at the time of the presentation of the lawsuit said: "*ARTICLE 77 Bis 1.- All Mexicans have the right to be incorporated into the Social Health Protection System in accordance with article four of the Political Constitution of the United Mexican States, regardless of their social status. (...)*".

This is so because, as noted, even though the LGS does not expressly refer to the nationality of the interested parties, article 77 Bis 1, first paragraph, expressly establishing that the right to be incorporated into the Social Health Protection System, in accordance with article 4 of the Federal Constitution, is for all Mexicans, implicitly excludes those who are not.

p.34-35 This is so notwithstanding that this legal provision refers to article 4 of the Federal Constitution, which provides that "*Everyone has the right to health protection. The Law will define the bases and modalities for access to health services (...)*", because as can be seen, the fundamental norm itself establishes that it will be the law –understood as the LGS– that will define the bases and modalities for access to health services, which law implicitly limits those who are not Mexicans from being incorporated into the social health protection system.

p.35-37 Likewise, even considering that article 77 Bis 7, section I of the LGS only refers to being a resident in national territory to enjoy the mentioned system, that must also be

considered, implicitly, as an exclusion of foreigners in an irregular migratory situation such as OCCC, since OCCC does not fall under any of the premises for permanence established in Chapter II of the LM, titled "*ON THE STAY OF FOREIGNERS IN NATIONAL TERRITORY*", particularly article 52, which are: as a visitor (with and without permission to carry out remunerated activities, regional visitor, border worker, for humanitarian reasons, and for adoption purposes), temporary resident (student) and/or permanent resident.

p.37 Hence, in accordance with the decision of the Federal ruling, article 77 Bis 1, first paragraph of the LGS, certainly contains an implicit exclusion of foreigners in an irregular migratory situation from enjoying the benefits of the social health protection system, insofar as only Mexicans and those who are residents in national territory can enroll in it, which excludes OCCC.

Moreover, the unconstitutionality declared by the judge is further corroborated by the reform of articles 77 Bis 1, first paragraph and 77 Bis 7, section I of the LGS, published in the Federal Official Gazette (DOF) on November 29, 2019.

This is shown by the fact that this reform was intended, according to its statement of purpose, to achieve compliance with the current regulatory framework, in order to create a system of universal and free access to health services and associated medicines for the population that lacks social security, guaranteed by the State under criteria of universality and equality, which must generate the conditions that allow for providing free, progressive, effective, timely and non-discriminatory access to quality medical services, including surgical, pharmaceutical and hospital interventions that comprehensively meet health needs, through the combination of health promotion interventions, prevention, diagnosis, treatment and rehabilitation, prioritized according to criteria of safety, efficacy, effectiveness, adherence to professional ethical standards and social acceptability.

p.38-39 This Court notes that the modified provisions no longer implicitly exclude those who are not Mexicans, or foreigners who do not have residence in national territory; rather, consistent with the provisions of articles 1 and 4 of the Federal Constitution, currently the

mentioned provisions provide that the right to receive public health services, medicines and other associated supplies free of charge, regardless of social status, is for all people who are in the country and/or in national territory, who do not have social security.

p.39 Consequently, in accordance with the foregoing, the appellant's grievances are unfounded.

## **II. Constitutionality of article 77 Bis 7, section III of the LGS**

p.40 The President of the Republic argued in his grievances that a correct analysis of article 77 Bis 7 of the LGS, shows that it does not restrict OOC from enjoying the benefits of the Seguro Popular by requesting that he cover the requirements established in said provision, such as having a CURP, since the CURP can be processed and obtained by both those born in national territory and foreigners who are in the country, and hence it is a requirement applicable to any person in national territory, without distinguishing their nationality.

He also said that this requirement aims to guarantee the right to health protection in terms of the unique identity of people, so its application is not discriminatory towards people of foreign nationality nor exclusive to people of Mexican nationality; in addition, it empowers the health authority to verify the unique identity of the individual beneficiary of the Seguro Popular and is not a discriminatory act against foreigners.

p.40-41 These grievances are ineffective, following the criterion held in the *Amparo en Revisión* 346/2019 resolved by the Second Chamber of this Court, according to which obtaining the CURP cannot be equated with a fundamental right, given that the objective of its creation is the design of a population registration instrument by the public administration; therefore, its assignment is not required of all persons and even less may its use or possession be linked to the enjoyment or exercise of a fundamental right, which means that the State cannot require the presentation of the CURP to recognize or provide a service derived from a right: health, education or work, because such a requirement is an undue interference in the enjoyment and exercise of human rights, which is contrary to the Federal Constitution.

p.49 In this regard, in a case very similar to the present one (which ruled on whether the third paragraph of article 59 of the LM, which provides that temporary and permanent residents have the right to obtain the CURP, violated the rights of equality and non-discrimination and, if this piece of legislation prevented or hindered persons in a different migratory status from enjoying or exercising other fundamental rights, such as the right to work, health and education), this Court specifically decided that the CURP could not be required to recognize or provide a service derived from any of those rights —health, education or work—.

p.50 Thus, it is clear that this criterion must be applied in this case; especially since the mentioned precedent specified that in future litigation on this matter the federal courts and judges must issue their decisions in accordance with the guidelines established by this Court, always ensuring that the authorities do not make the exercise of fundamental rights depend on the exhibition of a document whose nature and scope address, solely and exclusively, aspects of public policy in terms of population control.

Finally, it should be noted that on June 18, 2018, the "*Normative Instructions for the Assignment of the Unique Population Registration Code*" was published in the DOF, in which new legal premises were established through which foreigners can acquire said Code temporarily, even without having a temporary or permanent residence card as was the case before, and in more situations.

p.50-51 Thus, in accordance with the foregoing, since the grievances analyzed are unfounded and ineffective, the challenged decision will be amended in the terms established.

## DECISION

p.51 Regarding the review, this Court amends the appealed decision and protects OOC against articles 77 Bis 1, first paragraph and 77 Bis 7, section III of the LGS. Therefore, jurisdiction is reserved for the Collegiate Court hearing the case, so it may study the issues under its jurisdiction.