



Suprema Corte
de Justicia de la Nación



DERECHOS
HUMANOS

This summary contains the cover page, the synthesis and the extract of a decision of Mexico's Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

**VULNERABILITY OF PERSONS WITH MENTAL ILLNESSES AND COMPREHENSIVE
MEDICAL CARE**

**(SITUACIÓN DE VUNERABILIDAD DE LAS PERSONAS CON ENFERMEDADES
MENTALES Y ATENCIÓN MÉDICA INTEGRAL)**

CASE: *Amparo en Revisión 251/2016*

REPORTING JUDGE: Javier Laynez Potisek

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

DATE: May 15, 2019

KEY WORDS: right to health, right to receive medications, right to petition, principle of progressiveness in health matters, mental illnesses, disability, outpatients.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 251/2016*, Second Chamber, Javier Laynez Potisek, J, decision of May 15, 2019, 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/2020-12/AR%20251-2016.pdf>

SUGGESTED CITATION FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo en Revisión 251/2016*, Mexico.

SUMMARY OF AMPARO EN REVISIÓN 251/2016

BACKGROUND: In 2011, JEGG was diagnosed with various mental illnesses by the National Psychiatry Institute [Instituto Nacional de Psiquiatría] (hereinafter “the Institute”). Subsequently, in 2013 he asked the Institute for the medications necessary to treat his illness. His request was denied arguing that the Institute was not authorized to provide medications to outpatients (not hospitalized), and it recommended that he affiliate with the Federal District Health System, the competent authority to follow up on his treatment. In 2015 he made the same request, but it was denied based on the same arguments. Given this denial, JEGG filed a *juicio de amparo indirecto* alleging that such decision violated his right to the protection of his health. The district judge that heard the case granted the *amparo* to the complainant and ordered that the Institute provide him the medications he needed for his treatment. A collegiate court admitted the *recurso de revisión* filed by the Institute and requested Mexico’s Supreme Court of Justice (this Court) to exercise its authority to assert jurisdiction over the matter. This Court decided to assert jurisdiction over the *recurso de revisión*.

ISSUE PRESENTED TO THE COURT: Whether the Institute was authorized to refuse to give medications for continuing the treatment of JEGG under the argument that he was an outpatient and was authorized to refer him to another level of care with another health institution.

HOLDING: This Court confirmed the decision issued by the district judge essentially for the following reasons: the right to mental health is at the same level of importance as the right to physical health and that within the right to comprehensive health protection is the obligation to provide medications necessary to treat mental illnesses. It also stated that the Institute made a restrictive interpretation of the rule that authorizes the health institutes to provide comprehensive medical attention when it did not provide the medications necessary to treat the illness of Mr. JEGG. Furthermore, it was recognized that the Institute is authorized to refer patients to other levels of care, but in this case, the authorities did not follow the administrative procedure contemplated in the internal rules of the institute. Finally, this Court considered that the Institute

did not take into consideration the vulnerability of persons with mental illnesses when refusing to provide medications to Mr. JEGG.

VOTE: The Second Chamber decided this matter unanimously with four votes of judges Yasmín Esquivel Mossa, Alberto Pérez Dayán, José Fernando Franco González Salas, and Javier Laynez Potisek. Judge Eduardo Medina Mora Icaza was legally impeded from hearing the matter.

EXTRACT OF AMPARO EN REVISIÓN 251/2016

- p. 1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of May 19, 2019, issues the following decision.

BACKGROUND

JEGG has been a patient of the National Psychiatry Institute "Ramon de la Fuente Muñiz" [Instituto Nacional de Psiquiatría "Ramón de la Fuente Muñiz"] (hereinafter "the Institute") since 2011, where the doctors diagnosed him with various mental disorders and prescribed various medications to treat them.

- p.2 In 2013, Mr. JEGG requested the supply of the medications that he needed from the General Management of the Institute. The Director of Clinical Services denied the request because, from his point of view, the regulatory framework of the National Health Institute "does not contemplate the giving of medications to outpatients that require pharmacological treatment". It was also suggested that he affiliate with the Health Social Protection System in the then Federal District (Popular Insurance), to be able to obtain the treatment he needs. In 2015 he again asked the General Management to provide the medications prescribed for him by the doctors of that Institute. The Director of Clinical Services again refused to supply the medications.

- p.2-3 JEGG filed an *amparo indirecto* and claimed: a) from the General Director of the Institute, the failure to respond to the document in which he requested the supplying of the medications; b) from the Director of Clinical Services of the Institute, the official letter of 2015 which refused to supply the medications to him, and c) from both authorities, the failure to procure his health and wellbeing, given the refusal to supply him the medications he needs. The district judge granted the *amparo* for the Institute to supply the medications to Mr. JEGG.

p.5-7 The General Director and the Director of Clinical Services of the Institute jointly filed a *recurso de revisión*. The collegiate court admitted it and asked this Court to exercise its authority to assert jurisdiction over the matter. In the session of February 24, 2016 this Court decided to assert jurisdiction over the *recurso de revisión*.

STUDY OF THE MERITS

p.8 This matter leads us to analyze the mode in which mental health services are provided in the country and the obligations of the authorities in relation to the right to mental health. The matter is also particularly relevant because it reveals the vulnerability and lack of protection of patients that are attended in the mental health system, many of them persons with disabilities.

p.9 This Court considers it advisable to first develop the perspective and content of the right to health, which the authority considers it did not violate. Taking into account the particularities of the case, the specific context of the mental health systems will be presented in this first part. Secondly, it will be analyzed whether the right to mental health includes the supply of medications and, if so, the conditions in which it should be guaranteed.

I. The right to mental health and the obligation of providing medications

p.9-10 The fourth paragraph of article 4 of the Constitution guarantees the right of every person to health protection. The applicable international treaties and national provisions understand that the “right to health” has implications for both physical and mental wellbeing. Thus, article 12.1 of the International Covenant on Economic, Social and Cultural Rights refers to the “enjoyment of the highest level possible of physical and mental health”. Similarly, the San Salvador Protocol refers to the “enjoyment of the highest level of physical, mental and social wellbeing”. Furthermore, the General Health Law guarantees a state of physical and mental wellbeing of the person.

- p.10 Given that the national and international legal provisions do not distinguish between the protection the States must give to physical and mental health, this Court concludes that there is a mandate for the Mexican State to protect the right to physical and mental health with the same intensity and under the same conditions.
- p.13 Article 12, paragraph 2, part d), of the International Covenant on Economic, Social and Cultural Rights indicates that the States parties are obligated to create the conditions that ensure everyone medical assistance and medical services in case of illness.
- p.15 Mexico has recognized this right to comprehensive health services. Article 77 bis 1 of the LGS establishes that to protect the right to health, the State must guarantee that the medical services “comprehensively satisfy health needs, through the combination of interventions that promote health, prevention, diagnosis, treatment and rehabilitation”. In addition, article 77 bis 37, establishes the right “to receive comprehensive health services” as one of the rights of the beneficiaries of the Health Social Protection System.
- p.16 In turn, the LGS establishes that basic health services include the availability of medications and other essential health products. Furthermore, it obligates the Health Ministry to guarantee the permanent existence and availability of the medications that are found in the Basic Table of Products of the Health Sector to the population that needs them.

It is from the above considerations that we can conclude that the proper protection of the right to health involves providing the services necessary for comprehensive protection and that the supply of medications is part of these comprehensive services.

- p.17 Taking into account that the precedents of this Court indicate that the right to health establishes some obligations that are immediate and others “of results” in which the “principle of progressiveness” must be applied for their compliance, the question of how the State must comply with this obligation arises.

First of all, the principle of progressiveness does not imply that the obligations in relation to economic and social rights can be postponed indefinitely arguing that the resources are limited and insufficient or that the changes needed are complicated. Secondly, in principle it must be demonstrated that there are plans, policies or legislation, intended to make the necessary changes. Thirdly, there are negative obligations that do not require resources to be implemented. And finally, the obligations must be addressed regardless of the material or technical resources.

- p.19-20 Addressing the duties imposed on this Court by article 1, second and third paragraphs, of the Constitution, the conclusion is reached that the progressive obligation of the right to health in relation to the supply of medications implies at least giving them without discrimination to all persons in general, and in particular to vulnerable groups. This obligation does not imply that any drug that is requested should be supplied. The international conventions referred to defer to the states parties to define what are the “essential” or “basic” medications. However, once they have been defined or established by the states, there is a duty to give them equitably.
- p.20 In our country, the law recognizes the right to receive the medications that are listed in the “Basic Table and Catalog of Medications”, and therefore pursuant to the conventional obligations indicated, and specifically the principle of progressivity, the Mexican State cannot regressively deny medications from that Basic Table to someone who needs them, nor much less supply them in a discriminatory manner.
- p.21 Taking into account all these considerations, this Court reaches the following conclusions: first, the right to mental health does include the supply of medications and, second, this obligation requires they be supplied without discrimination, and that programs exist intended to supply them to the entire population and in particular to vulnerable groups.

It is from the above conclusions that we must analyze whether the Institute should have provided the medications requested by JEGG, or if, on the contrary, it was valid to deny them without violating the right to health.

II. Complete and comprehensive health care

a) Administrative procedure of referral and counter-referral of patients

- p.21-22 There is no legal basis that allows us to conclude that the services that the Institute must provide to outpatients are different from those it must provide to hospitalized patients. On this point, the Institute notes in its first claim that the district judge incorrectly understood that the act that is challenged was not duly grounded in law and fact, even though she justified her response based on articles 54 to 56 of the National Health Institutions Law.
- p.22 However, a reading of the legal grounds she provides does not show any legal distinction between a hospitalized patient and an outpatient in relation to the medical care that should be provided to them.
- p.23 Therefore, given that as a result of the interpretation of the Institute a group of persons were excluded from a fundamental service for adequate health care, it was not sufficient to refer to generic legal provisions, since to validly make such distinction the authority would have to evidence that express legal grounds existed or should have stated a valid reason for denying the supply of medications to a specific group of patients, in this case, outpatients. However, the Institute did not indicate anything in this respect and this Court finds that there is no connection between a person being hospitalized or not and their need to receive medications for their proper treatment. With this in mind, we conclude that this grievance stated by the Institute is groundless, because its interpretation of the applicable rule violates the right to health in relation to Mr. JEGG's right to equality and non-discrimination.
- p.24 It is true that, as the Institute indicates, the constitutional and conventional obligations in relation to health do not require that each authority provides any service to any patient.

For that reason, the legislative and executive authorities have the power to organize the provision of this service in order to make it more efficient, specialize it and offer it to the greatest number of people, in order to comply with their health obligations. In other words, in principle in the Constitution and in the international treaties there are no obstacles or impediments for the lawmaker, exercising its configurative freedom, to determine that the National Health Institutes will not be competent to supply medications and that, on the contrary, another authority will be authorized to do so.

p.24-25 However, in the distribution of competency that the lawmaker establishes, it is necessary to ensure that the right of persons to access to the medications they need is not excessively obstructed, and that regardless of what authority supplies them, it be guaranteed that the person will receive the complete treatment. Otherwise, the right to be provided comprehensive health services would not be guaranteed.

p.25 In this regard and related to this specific case, it is not acceptable for a health institution to admit a patient, provide him initial medical care and not ensure that he will receive the complete treatment, especially if the need for medications is the result of its own diagnosis through the services it provides. In this case the clinical case file shows that Mr. JEGG was admitted on January 31, 2011 and he was attended through an external consultation. In it they diagnosed him with certain mental disorders and it was determined that the medications he should use were paroxetine, oxcarbazepine and haloperidol.

In other words, the Institute at no time determined that the patient was not a candidate for the services it provides, whether because he belongs to another social security system, because his illness was not one specialized in by that Institute, or for any other reason. On the contrary, he was admitted as a patient and he was provided the service of external consultation. As a result, the Institute itself determined that he needed a series of medications to improve his functionality and recover his physical and mental wellbeing. However, the Institute failed to give him comprehensive care because: a) it denied him the medications that it itself prescribed, and b) in substitution it did not give him adequate

guidance for the authority that it considered was competent to give the prescribed medications.

- p.26 The Institute argues that in accordance with the second paragraph of section I of article 54 as well as 55 of the Law of the National Health Institutes, “it has referred patients to other levels of care”, and that it considers that this is what was done “upon informing the Complainant that it was considered advisable that he affiliate with the Health Social Protection System of the Federal District”, which in its judgment is the authority competent to provide them.
- p.26-27 Those articles establish, first of all, that the Institute must provide health care services relative to the diagnosis and treatment of highly complex diseases, as well as emergencies. In addition, once the third-level problem is diagnosed, resolved or controlled, the patients can be referred to other levels of care, in accordance with the referral and counter-referral system. However, this Court considers that the response of the authority is not admissible, for the following reasons.
- p.27 The Official Mexican Standard NOM-025-SSA2-2014, for providing the health services in comprehensive hospital medical-psychiatric care units, establishes operating and organizational criteria for the activities of the establishments that provide those services.
- p.27-28 In terms of that Official Standard, the Institute itself issued the “Procedures Manual of the Assistant Office of External Consultation” which regulates, among other things, the “Procedure for the referral and/or counter-referral of External Consultation patients” (Number 5 of the Manual), for the purpose of informing the medical and paramedical personnel of the indications, treatments and forms that must be covered for the process of referral and/or counter-referral of external consultation patients.
- p.28 This manual defines referral-counter-referral as the “medical administrative procedure among operative units of three levels of care to facilitate the sending-reception-return of patients, in order to provide timely, comprehensive and quality care”.

- p.29 Based on the above provisions and according to the specific procedure that should be followed in terms of the administrative procedures for referrals of its external consultation patients, we consider that the Institute, upon suggesting to Mr. JEGG that he affiliate with the Federal District Health Social Protection System, did not make a “referral”, and therefore its grievance is groundless.
- p.31 In addition, it is important to emphasize that contrary to what the appellant authority alleges, the referral system does not make it impossible to supply medications to the complainant, since as we indicated, article 54 cited above establishes that the referral and counter-referral is a power of the Institute. In other words, the Institute based its act of authority on a restrictive interpretation of the standard, and with that denied Mr. JEGG the right to health.

b) Condition of vulnerability of the persons with mental illnesses

- p.33 The national and international provisions emphasize that it is not sufficient that a person has a deficiency to be considered a person with a disability; rather such condition is derived from the “social barriers” a person faces, which often translate into impediments or obstacles to enjoy a job, safe housing, good health services and membership in communities, among others.

In that regard, the mental deficiencies (usually known as mental illnesses) do not always lead to a condition of disability, since not all persons that have them experience significant social barriers. However, from the scientific evidence it is seen that the great majority of persons who live with one or more mental deficiencies face, on the one hand the symptoms and obstacles derived from the deficiency itself and, on the other hand, the stereotypes and prejudices toward mental illnesses and the social obstacles that prevent them from enjoying their rights under equal conditions.

- p.34 Based on this condition Mr. JEGG enjoys a particular legal framework of protection as a result of his condition of special vulnerability and de facto inequality in society and the legal order.
- p.34-35 In this regard, the authorities have specific obligations toward persons with disabilities, in order to guarantee their rights. For example, it should be prioritized that their actions do not reinforce stereotypes toward persons with psycho-social disabilities; the law and public policies must seek to reduce or eradicate direct and indirect discrimination against them, and the authorities that provide them services must provide the reasonable adjustments they need to have access to goods and services on an equal playing field with those that do not have a disability.
- p.36-37 Finally, it is important to indicate that given the stigmas associated with mental health and disability in general, many persons that meet the conditions to be considered persons with psycho-social disability, are not recognized as such. However, the failure of a person to - assign himself to the group of persons with a disability, should not be an obstacle for the enjoyment of the rights contained in the treaties and legislation regarding persons with disabilities.
- p.37 In relation to what has been argued to this point, this Court holds that it is essential that the authorities that provide services in relation to mental health and that therefore often work with people with disability, take into account the broad framework of rights those persons hold and, above all, that their protection is through the social model of disability.
- p.38 In this regard, the right to health has a particular relevance in the case of persons with disabilities because it has direct implications for their condition of disability, whether for their current deficiency or the prevention of the appearance of new deficiencies.

This in no way implies that we are considering that the disability is an illness that must be “cured”. On the contrary, this Court considers it important to emphasize the particular importance of guaranteeing the health services that people need as a result of their

disability. In the case of persons with psycho-social disability, the relevance should be emphasized of the supply of the medications they need to treat their mental deficiencies.

This Court concludes that the right to health and specifically the right to the supply of medications to treat the mental deficiency of persons with psycho-social disability needs reinforced protection, since when having a direct incidence in their condition of disability, the lack of medications can have disproportional repercussions with respect to other persons, in the enjoyment and exercise of other rights and in their quality of life.

p.39 It should be clarified that this Court is not unaware that many persons with psycho-social disability choose not to make use of medications. This is in no way incompatible with the conclusion stated, since asserting that there is a right to receive medications does imply that persons with psycho-social disability are obligated to receive them, nor much less that they can be supplied to them without their consent.

p.40 Nevertheless, it is important to this Court to show the possible repercussions of the fact that the Institute has not taken the precautions necessary to ensure that Mr. JEGG receives the medications immediately, under the pretext that “it was not a competent authority” and without guaranteeing that such medications were in fact provided in its absence.

It is also important to specify that to accept the argument of the Institute that it can only supply medications to hospitalized patients would imply validating a policy that predictably would have a negative and indirect impact on a vulnerable group of the population such as persons with mental deficiencies.

p.42 From what has been indicated here, this Court considers that the fact that the Institute has not supplied the medications or otherwise procured that he will receive them, and that it did not take into account Mr. JEGG’s condition of disability, violated the right to the comprehensive provision of the right to health and exposed him to greater vulnerability

that could result in subsequent violations of his rights and in a detriment to his quality of life.

DECISION

p.44 In the matter under review, the appealed decision is affirmed. The justice of the Union protects JEGG against the acts and responsible authorities specified in the seventh paragraph of this final enforceable decision, and in the terms specified by the district judge.