

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.

**RIGHT TO INCLUSIVE EDUCATION FOR AN INDIGENOUS GIRL WITH A DISABILITY
(DERECHO A LA EDUCACIÓN INCLUSIVA PARA UNA NIÑA INDÍGENA CON
DISCAPACIDAD)**

CASE: *Amparo en Revisión 272/2019*

REPORTING JUDGE: José Fernando Franco González Salas

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

DATE: October 23, 2019

KEY WORDS: right to education, right to equality, persons with disabilities, non-discrimination, inclusive education, indigenous communities, international treaties, human rights.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 272/2019*, Second Chamber, José Fernando Franco González Salas, J., decision of October 23, 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-emplematicas/sentencia/2020-12/AR%20272-2019.pdf>

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SUMMARY OF AMPARO EN REVISIÓN 272/2019

BACKGROUND: CGG is a minor, indigenous Mazahua, who was born with a disability. Her parents enrolled her in preschool. However, one month before the school year ended, they stopped taking her to the school because of a lack of appropriate teachers, infrastructure, adequate methods and materials and a school organization that would encourage her to reach her full potential. At the beginning of the school year 2016-2017, the parents of the minor requested an appointment in a primary school of the State of Mexico to ask that special steps be taken to ensure the best learning environment for CGG, but the school authorities told them they did not have the resources to implement those requests and therefore CGG was denied access to the primary school. Given this situation, the father and the child filed an *amparo indirecto* proceeding, arguing discrimination and the violation of the right to education. The federal district judge of the State of Mexico that heard the case and followed the procedural process, decided to dismiss the *amparo* proceedings with respect to some acts and grant the *amparo* to the minor with respect to other acts. CGG and her parents filed an appeal (*recurso de revision*), heard by a federal collegiate court, which ordered the case be sent to Mexico's Supreme Court of Justice (this Court), because the constitutionality problem of article 41 of the General Education Law still exists.

ISSUE PRESENTED TO THE COURT: Whether a serious violation of CGG's human rights has occurred by not permitting her to enroll in the primary school because of her disability.

HOLDING: The *amparo* was granted essentially for the following reasons. It was determined that the denial of the primary school constitutes an act violating human rights by preventing CGG from exercising her right to an education. In addition, it was evidenced that the competent authority has not allocated sufficient budget resources to comply with its conventional and constitutional obligations in relation to inclusive education. To carry out the decision, a detailed list was given of the possible measures the competent authorities may take to guarantee CGG her right to an education without discrimination, with all the support and reasonable adjustments

necessary. Those measures primarily seek to ensure that the minor can receive an inclusive education in any school in her state, through access to all the benefits and through the elimination of any barrier she may face. With this decision, the educational authorities, at the federal and local level, must guarantee an inclusive education and they will be obligated to adapt to the conditions of the persons with disabilities.

VOTE: The Second Chamber decided this matter by the unanimous vote of four judges Yasmín Esquivel Mossa, Alberto Pérez Dayán, José Fernando Franco González Salas Salas (reserved the right to draft a vote with reservations) and President Javier Laynez Potisek.

The votes may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=253436>

EXTRACT OF AMPARO EN REVISIÓN 272/2019

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of October 23, 2019, issues the following decision.

BACKGROUND

p.7 CGG is a minor, indigenous Mazahua, who was born with a disability and lives in the community Barrio San Joaquín Lamillas, in the municipality San José del Rincón, located in the State of Mexico.

p.8 In the year 2012, the minor states that help arrived to that community from the National Institute of Medical Sciences and Nutrition "Salvador Zubiran" [Instituto Nacional de Ciencias Médicas y Nutrición "Salvador Zubirán"], and due to the vulnerable situation of CGG, who was then two years old, that Institute offered to provide her weekly therapy.

In the year 2014, at four years old, the girl began to audit classes at the Full Service Center Number 97 Attechixi [Centro de Atención Múltiple Número 97 Attechixi] (CAM), which provides services of early intervention, preschool, primary school, secondary school and special work training.

For the school year 2015-2016, her parents registered her in the Federalized Indigenous Preschool "Jose Vasconcelos" [Preescolar Indígena Federalizado "José Vasconcelos"], located on the Free Municipal Highway of San José del Rincón, Barrio San Joaquín Lamillas, Toluca, State of Mexico.

One month before the school year ended, her parents stopped taking her to the school, because of the lack of appropriate teachers, infrastructure, adequate methods and materials and a school organization that would encourage her to reach her full potential.

p.8,9 At the beginning of the school year 2016-2017, they said that they requested an appointment in the Federalized Indigenous Primary School "Adolfo López Mateos" (the indigenous primary), so they could take special steps to ensure the best learning environment for CGG; however, they indicate, none of those requests were granted, due

to a lack of resources according to the school authorities. Given this situation, the parents stopped taking their daughter to the school.

p.9, 1-2 Under these circumstances, the father and CGG filed an *amparo indirecto* proceeding on May 9, 2017, against the Senate of the Congress of the Union, the Deputies Chamber of the Congress of the Union, the Ministry of Public Education, the Assistant Secretary of Basic Education of the Ministry of Public Education (the Assistant Secretary), the Legislature of the State of Mexico and the Director General of Comprehensive Educational Services of the State of Mexico [Servicios Educativos Integrados al Estado de México] (Director General of SEIEM), for various acts.

p.5 At the conclusion of the proceedings, the district court issued its decision on May 31, 2018, dismissing the *amparo* with respect to some acts and granting the *amparo* to the minor with respect to others.

p.6,24 The complainant, the Director General of SEIEM, and the Under Secretary filed the corresponding appeals (*recursos de revision*), which were heard by the Second Collegiate Court in Administrative Matters of the Second Circuit (the collegiate court).

p.6 In its session of March 25, 2019, the collegiate court ordered the case be sent to this Court, since the constitutionality problem of article 41 of the General Education Law [Ley General de Educación] (LGE) still exists.

STUDY OF THE MERITS

p.67 First it should be kept in mind that the human right to an education has strong support in International Human Rights Law which positions it as a global goal.

The Mexican State is party to at least nine of the numerous international Instruments in the area.

p.68 As international treaties signed by the Mexican State, all persons in the country enjoy the human rights recognized in those international Instruments in accordance with article 1 of the General Constitution, and therefore the matter at hand will be studied based on this mandate.

The conventions require the Mexican State to adopt all the measures necessary to protect, respect and facilitate the exercise of the right to education of everyone in its territory, without discrimination. Therefore, it can be inferred that equal opportunity in education is a global principle covered by most of the human rights treaties.

p.69 The right to an education, as a fundamental legal right, is especially important because not only is it a human right in itself, it is also essential for the exercise of other rights.

Thus, education can be understood as one of the most elemental and necessary activities of human society. In that regard, it can be argued that the establishment of public centers of learning figure among the highest functions of the State and that education is perhaps the most important function of the state and local governments.

p.70 Therefore, it is of great importance, especially in the case of persons with disabilities, that the Mexican State respect, protect, fulfill and promote the right to inclusive education.

This right, generally speaking, can be understood as the possibility for all children and adolescents, regardless of their conditions or differences, to learn together. The paradigm of inclusive education arises as a response to the limitations of traditional education, qualified as utilitarian and segregating, as well as the resulting insufficiencies of special education and of policies integrating students with specific needs in the regular educational system.

p.71 Even more important, this right implies a change in the educational paradigm, so that the respective systems cease to consider persons with disabilities as problems they have to solve, and instead act positively toward the diversity of students, considering the individual differences as opportunities to enrich learning for everyone.

p.72 In this regard, inclusive education not only demands equality, but equity in the treatment and access for all children and adolescents. In effect, equality refers to treating all students as equal. Equity in education means, in contrast, a state obligation to ensure that personal or social circumstances, such as gender, ethnic origin or economic situation, as happens

in this case, are not obstacles that impede access to education, and that all persons reach at least a minimum level of skills and abilities.

On this point it is important to mention that inclusive education refers not only to children with disabilities but also to other conditions that result in exclusion from the schools, such as: migrants, indigenous peoples, linguistic or religious minorities, victims of poverty, homelessness, children that work, carriers of HIV and victims of violence, among others.

In particular, there is a problem of exclusion, geographic segregation, desertion, rejection, illiteracy, distraction and accessibility regarding students with disabilities in general, but especially those that live in highly marginalized zones, in rural areas or who speak indigenous languages.

p.73 The Ministry of Public Education [Secretaría de Educación Pública] (SEP) indicates that inclusive education implies that the school system must adapt to the needs of all students and simultaneously recognize their different capacities, rhythms and styles of learning without any distinction, and recognize that persons with disabilities, just like indigenous peoples and communities, afro-descendent populations and migrants, constitute groups in situations of social disadvantage who face processes of social exclusion.

It should be mentioned that the disability focus has not yet been included in the norms or national policies with a transversal focus on the different needs that students face. One example of this is that there are indigenous people that have disabilities.

p.74 Therefore, to speak of an inclusive educational system covers all those groups that have been excluded or are in a position of historical and structural disadvantage. Although there is no specific reference to indigenous persons with disabilities, we can state that this condition, in interrelation with others, leads to what is called “accumulation of disadvantages”; this can accentuate segregation and discrimination in social interrelations. The condition of indigenous women with disabilities can be an indication of a triple discrimination to which we could add age or gender preferences, as in this case.

The right to inclusive education is expressly recognized in article 24, paragraph 1, of the Convention on the Rights of Persons with Disabilities (the Convention).

- p.75 Among its fundamental characteristics, inclusive education recognizes the capacity of each person to learn and that great expectations should be placed on all students, including those with disabilities. Inclusive education offers flexible study plans and methods of teaching and learning adapted to different capacities, needs and styles of learning.
- p.76 To apply article 24, 2nd paragraph, Part a), of the Convention, it should be prohibited for persons with disabilities to remain excluded from the general system of education through, among other things, legislative or regulatory provisions that limit their inclusion because of their deficiency or the degree of such deficiency.

According to article 2, number 1, of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties are required to adopt measures up to the maximum of their available resources with respect to economic, social and cultural rights, to achieve, progressively, the full exercise of those rights. Progressive achievement, as part of the right to inclusive education, means that the States parties have the specific and permanent obligation to proceed as rapidly and effectively as possible to achieve the full application of that right.

- p.51 Thus, in the same article of the ICESCR obligations of content –immediate– are established and of results –mediate or of progressive compliance. The first state that the rights should be exercised “without discrimination” and that the State “adopt measures”, within a reasonably brief period, that are deliberate, concrete and oriented as clearly as possible to the satisfaction of the conventional obligations.
- p.51 In this regard, an immediate obligation is imposed on the Mexican State to ensure an inclusive education, and a progressive obligation consisting of achieving the full use of the maximum resources available.
- p.59 The right to education must be understood as a minimum, since the principle of progressivity recognized in article 1 of the Federal Constitution requires all the authorities

of the country, in the scope of their respective competencies, to gradually develop the content and scope of the human rights recognized constitutionally and in the international treaties the country is party to, and adopting regressive measures is prohibited.

This progressive development of human rights can be carried out not only through specifically constitutional legislative measures, but also through secondary legislation, administrative acts and even by judicial authorities, since the constitutional norm imposes this obligation on all the authorities of the State, in the scope of their competencies.

In that regard, in order to comply with the right to inclusive education established in article 3 of the Constitution, it must be guaranteed that the public educational institutions provide materials designed with criteria of accessibility, universal design and inclusion, as a form of guaranteeing the availability of the educational service.

- p.60 This is so because the ninth paragraph of article 3 of the Constitution expressly establishes that “The State will guarantee that the didactic materials, the educational infrastructure, its maintenance and the conditions of the environment, are appropriate and contribute to the purposes of the education”. From there, it follows that in our constitutional system, the minimum configuration of the right to education implies the delivery of didactic material appropriate for the students.
- p.77 The Mexican State, in order to comply with its conventional and constitutional obligations regarding inclusive education, issued the National Program for the Development and Inclusion of Persons with Disabilities 2014-2018 (National Program).
- p.77-78 The National Program specifies that guaranteeing the right of persons with disabilities to education represents its incorporation at all levels of the National Educational System [Sistema Educativo Nacional] (SEN), implementing the elements and reasonable adjustments established by the Convention, according to their type and degree of disability.
- p.78 It also specifies that actions have been established that guarantee equality of conditions and the development of the intellectual potential of persons with disabilities, and of their skills and abilities, which together allows for their social inclusion, such as training of

directors, teachers, students and parents; the adjustment of educational infrastructure; the providing of administrative, didactic or technological support, among others.

- p.79 The National Program also establishes that programs or actions that strengthen educational inclusion of persons with disabilities should be promoted, specifying lines of action to promote and disseminate the right to education of persons with disabilities, prohibiting any discrimination in the SEN, and incorporating in the training of the administrative and teaching staff the knowledge of Mexican sign language, braille writing system and information technologies and communication for persons with disabilities.
- p.80 The National Program specified the governmental agencies responsible for carrying out each objective.
- p.81 The SEP is one of those responsible for carrying out the strategies and lines of actions of the objective relative to strengthening the participation of persons with disabilities in inclusive education.
- p.46 Thus, contrary to the determination of the district judge, the SEP does have the power to ensure that the regulations on inclusive education are complied with.
- p.47 This is established in article 38, section I, subsection a), of the Organic Law of the Federal Public Administration, in article 14 of the LGE and in article 12, sections I and II, of the General Law for the Inclusion of Persons with Disabilities.
- p.81 However, the documents in the court record do not show that the responsible authorities have offered any evidence that the implementation of such programs, and their operation, follow up and evaluation have been reflected in specific actions taken in the indigenous primary school that the minor attends.
- p.56 In addition, the responsible authorities did not demonstrate what part of the resources allocated to the Programs for the development and inclusion of persons with disabilities, specifically in the area of education, would have been allocated to the State of Mexico, which in turn could demonstrate that resources were provided to comply with the inclusive education obligations in the indigenous primary school the minor attends.

p.63 The obligation to make reasonable adjustments in accordance with articles 2 and 5 of the Convention can be divided into two parts: (I) a positive legal obligation to provide reasonable adjustments that constitute a modification or adaptation that is necessary and adequate, when it is required in a particular case to guarantee the enjoyment or exercise of the rights of a person with a disability; and (II) that the adjustments required do not impose a disproportionate or undue burden on the guarantor of the rights.

The reasonability of an adjustment refers to its relevance, appropriateness and effectiveness for the person with a disability. Therefore, an adjustment is reasonable if it achieves the objective (or objectives) for which it is made and if it is designed to satisfy the requirements of the person with a disability.

p.61-62 In that regard, the reasonable adjustments are an intrinsic part of the obligation, of immediate compliance, of non-discrimination in the context of the disability. Some examples of reasonable adjustments are ensuring that the information and existing facilities are accessible for a person with a disability; modifying the equipment; reorganizing the activities; changing the scheduling of the tasks; adapting the teaching material and the teaching strategies of the study plans; adapting the medical procedures; or permitting access to support personnel without imposing disproportionate or undue burdens.

p.64 Finally, the justification of the denial of a reasonable adjustment must be grounded in objective criteria, and must be analyzed and communicated in a timely manner to the person with the disability that requests the adjustment.

p.54 Thus, when the contracting State, arguing a lack of resources, fails to fulfill a right, or does not ensure its essential levels, it must not only prove this situation, but also prove that it has made all the efforts possible to use the resources that are at its disposal, having in mind that in the use of its discretion for the development of public policies, and for the decisions regarding the distribution or redistribution of resources, vulnerable groups must be taken into account, as well as situations of risk, with the understanding that it is prohibited from making decisions that are arbitrary or discriminatory.

In this case, the competent authorities have not allocated a budget that is sufficient to comply with their conventional and constitutional obligations in relation to inclusive education. Therefore, such authorities had to justify that this is not the case and that they have done everything possible to maximize the use of the resources they have to satisfy the inclusive education of the complainant.

- p.82 Since the responsible authorities did not prove they have satisfied the objectives of the National Program in the indigenous primary, in benefit of CGG, it is considered that the obligations of the Mexican State in matters of inclusive education, originating from both national and international sources, have not been complied with.

DECISION

- p.82 Since the challenged acts studied in this final decision were in violation of the fundamental rights of CGG, it is appropriate to grant to the child the protection of the Federal Justice for the following effects:

The Director General of SEIEM shall order and oversee compliance with the following:

1. That CGG is not obligated to receive a basic education in the CAM.
2. That the child is formally registered in the indigenous primary school.
3. That as a result of the formal enrollment of CGG in the indigenous primary school, she be granted access to all the benefits of the different programs that provide support to the other students of such school like free text books.
- p.83 4. Regarding the initial assessment of the minor in order to identify the various barriers she may face, as well as the support and adjustments necessary to eliminate them, the following is ordered:
 - a) An “Individual Plan of reasonable adjustments” be drafted.
 - b) The referenced individualized planning must be reviewed at least every 6 months.
 - c) In the following school years, the mentioned plan must be carried out.
- p.84 5. During the time that CGG is in the primary school the following is ordered:

- a) That the parents of the minor and the teachers of the indigenous primary school be given information and orientation in matters of inclusive education.
- b) That orientation be given to the teachers of the primary school on specific tools and methodologies for working with children with disabilities.

Since in this matter, the relief requested by CGG is that she be granted access to inclusive education, for which the joint effort of various authorities is required in order to achieve her maximum inclusion in a regular school and in compliance with the *pro personae* principle, contact should be made with the National Council for the Development and Inclusion of Persons with Disabilities and the State Consulting Council for the Protection, Integration and Development of Persons with Disabilities to comply with the purposes of orientation and training.

6. Basic conditions for effectively achieving the inclusion of CGG in the primary school.

The SEP shall:

p.85 Incorporate in the primary school the satisfactory conditions of accessibility; in other words, improve the conditions in the infrastructure of the school, to make it accessible for the conditions of CGG's disability, for which, without limitation, within 1 month from the notification of this decision, the following shall be carried out:

- a) Resolve the problem of lack of water in the school bathrooms;
- b) Cover the access to the cistern of such educational institution;
- c) Resolve the problem of gate access to the school open during class hours;
- d) Eliminate the risk that the minor could fall in the space between the court and the bathrooms of the school; and,

Before the beginning of the next school year:

- e) Design a plan of action that evaluates the physical barriers of the school, propose the necessary reasonable adjustments such as ramps, accessible bathroom,

among others, and make the relevant changes so that all the spaces of the school (recreational, educational, etc.) are accessible. For this purpose, a timeline with deadlines for carrying out each reasonable adjustment must be generated.

This is with the understanding that the carrying out of the reasonable adjustments will not involve additional costs for CGG.

- p.85-86 7. To enforce the right to inclusive education, the SEP is required to carry out the following action before the next school year begins:
- p.86 a) Incorporate into the National System of education, updating, training and professional continuing education for basic education teachers, the teachers of indigenous primary school and the personnel that may be assigned so they may intervene directly in the educational integration of CGG.

Within 180 business days from the notification of this resolution, the following measure must be taken:

- b) Establish in the primary school the minor attends a mechanism for requesting the reasonable adjustments to education that each student with a disability requires for an inclusive education.