



**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

**PROHIBITION ON CORPORAL PUNISHMENT AND THE CHILD'S PERSPECTIVE  
(PROHIBICIÓN DE CASTIGOS CORPORALES Y PERSPECTIVA DE INFANCIA)**

**CASE:** *Amparo Directo en Revisión 8577/2019*

**REPORTING JUDGE:** Norma Lucía Piña Hernández

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

**DATE OF THE DECISION:** June 3, 2020

**KEY WORDS:** right of children and adolescents to be heard, visitation rights, children's right to protection, guarantees of legality and legal certainty, prohibition on corporal punishment, best interest of the child, care and custody.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo Directo en Revisión 8577/2019*, First Chamber, Norma Lucía Piña Hernández, J., decision of June 3, 2020, Mexico.

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

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emplematicas/sentencia/2021-10/ADR%208577-2019.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo Directo en Revisión 8577/2019*, Mexico.

## SUMMARY OF THE *AMPARO DIRECTO EN REVISIÓN* 8577/2019

**BACKGROUND:** A father, in representation of his son, sued for the change and custody of the child from his mother. This was the result of the misbehavior of the child and because the mother had hit him with a cable. On March 13, 2019, a civil judge of Salamanca, Guanajuato, considered the suit valid. The mother filed a *recurso de apelación*. Subsequently, on June 17, 2019, a chamber of the Supreme Court of Justice of Guanajuato modified the decision, declaring that the involvement of the paternal grandmother in the life of the child should be limited. Therefore, on August 8, 2019, the father, in representation of his son, filed an *amparo* proceeding which was decided on October 23, 2019 by a collegiate court, determining, among other things, that the care and custody of the child would be maintained by the mother, after considering that the acts she engaged in did not fall under the definition of corporal punishment. On November 11, 2019, the father filed a *recurso de revisión*, which was remitted to Mexico's Supreme Court of Justice (this Court).

**ISSUE PRESENTED TO THE COURT:** Whether the acts of the mother harmed the rights of the child to have his personal integrity protected, particularly from corporal punishment; and whether in light of the principle of the best interest of the child, the rights of the child were respected in the process, specifically, the right to be heard.

**HOLDING:** It was decided to grant the *amparo* for essentially the following reasons. After analyzing the parameter of regularity applicable for acts that involve violence toward children and adolescents, it was determined that the act engaged in fell under the definition of corporal punishment; nevertheless, it was said that this does not imply, automatically, the loss of the care and custody, since the determination that most favors the child must be analyzed in each specific case. It was also specified that the child was not allowed to participate in the proceeding, and therefore his right to be heard and express his opinion was violated. In view of this, it was decided to reverse the decision, in order for the chamber to issue a new decision that considers the act of violence as corporal punishment; decides on the care and custody taking into account the

best interest of the child, as well as his opinion; determines the visitation rights and, if appropriate, the child support; and communicates the corresponding decision to the child clearly and assertively.

**VOTE:** The First Chamber decided this matter by a majority of four votes of judges Norma Lucía Piña Hernández, Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena and Juan Luis González Alcántara Carrancá (reserved the right to issue a concurrent opinion). Judge Ana Margarita Ríos Farjat voted against (reserved the right to issue a dissenting opinion).

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=266181>

## EXTRACT OF THE *AMPARO DIRECTO EN REVISIÓN* 8577/2019

- p. 1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 3, 2020, issues the following decision.

### BACKGROUND

- p. 5 V.A.V.R. (the father), representing his son, in an ordinary oral proceeding sued Y.A.P. (the mother), for the change of custody seeking that the following be declared: i) the loss of visitation rights between the mother and her son; ii) the judicial declaration that to that date he had complied with his child support obligations toward his son since he was incorporated into his home and therefore, the declarations in various proceedings be ceased; and iii) the payment of expenses and costs.

He argued that the child was misbehaving in school and in his family relations; he stated that on one occasion when his paternal grandmother went to pick him up at the house of his mother, the child said his back and his right hand hurt and upon checking him it was seen that he had a u-shaped blow and that, when he was questioned, he stated that his mother had hit him with a cable. Given this situation he decided not to return him to his mother, who had custody.

- p. 6 The lawsuit was filed before a family court in Salamanca, Guanajuato, which at the request of the father declared a provisional measure of custody in his favor, as well as a protection measure against the mother, so she could not approach the place where her son was located.

The mother pointed out that this resulted from the fact that when she went to pick her son up at the kindergarten, he had behaved inappropriately and violently, which had been notified by the director of the school, asking for help in taking the child to psychological therapy.

- p. 6-7 The mother pointed out that when talking to her son outside the school, he had a tantrum, because he had had a conflict with two girls resulting in blows, so she had separated them, her son bit her and would have torn her blouse with his teeth, and he began to insult her

loudly, and when she arrived at home where she had custody, again he had started to insult her, so she tried to talk to the child to calm him down but was unsuccessful. When reprimanding his behavior, between pulls she grabbed the cell phone charger throwing a blow at his buttocks and, because the child pulled it, it hit him on the left side of his back. Afterwards, she spoke to him calmly and the boy apologized and said he was going to behave, and that's why she did not understand such behavior because they had always been very close.

- p. 7 She said that if they separated the child from her it would cause irreversible harm to him, since the father spent long periods in the United States of America for work; that the child's behavioral problems were caused by the divorce, which she informed the paternal grandmother of on several occasions; that this behavior was due to the fact that the maternal figure had been displaced and devalued by the grandmother in question, since she was the one who lived with him and took charge of his care, since the father went out partying on the days he was supposed to spend with his son.
- p. 11 The judge issued a decision on March 13, 2019 and declared that the lawsuit for the change of care and custody was valid. The mother filed a *recurso de apelación* against the decision, which was heard by a civil chamber of the Supreme Court of Justice of the State of Guanajuato.
- p. 12 On June 27, 2019, the chamber issued a decision in which it decided to modify the sentence to the effect that measures should be taken to limit the interference of the paternal grandmother in the life and development of the child, and therefore the father must exercise custody at a domicile other than the one inhabited by the paternal grandmother.
- p. 12-13 The father requested the *amparo* and protection of the federal justice system against that decision, which was decided by a collegiate court in civil matters in the State of Guanajuato instructing the chamber to: i) invalidate the challenged decision; (ii) issue another decision determining that the care and final custody of the child would be held by his mother, and

iii) establishing the visitation schedule between the child and his father, as well as the child support previously paid by the father.

p.3 Dissatisfied with the *amparo* ruling, the father, in his own right and on behalf of his son, filed a *recurso de revisión* on November 11, 2019. The collegiate court ordered the records of the *amparo* trial be sent to this Court, which on January 29, 2020 admitted the *amparo directo en revisión* for processing and sent it to Judge Norma Lucía Piña Hernández.

### STUDY OF THE MERITS

p. 35-36 The dispute involves discerning as genuine issues of constitutionality: 1) The content and scope of the right of children and adolescents to be protected in their personal integrity, particularly against corporal punishment; and 2) The right of children to be heard in the judicial proceedings in which their care and custody is decided, when it is noted that, quite possibly because they are in the early stage of their early childhood, they were not directly heard. This is in the light of the principle of the best interest of the child.

#### I. Guiding principle of the best interest of the child

p. 38,39 The best interest of the child is a principle of constitutional rank, implicit in the regulation of the rights of children and adolescents provided for in article 4 of the Constitution. This principle must be interpreted in light of the international *corpus juris* for the protection of children.

p. 43 This Court has recognized in various precedents the importance of the principle of the best interest of the child in the interpretation and application of the rules related to children's rights.

p. 44 In this regard, it has been argued that the best interest of the child implies, inter alia, taking into account aspects relating to guaranteeing and protecting their development and the full exercise of their rights, as guiding criteria for the drafting of standards and application in all areas relating to the life of the child, in accordance with the provisions of the Federal Constitution and the Convention on the Rights of the Child (the Convention).

- p. 45-46 Following this logic, judges must take into account that the best interest of the child requires a reinforced legal protection, and that the only way to provide them with such protection involves taking into account all their rights and the role they play in the dispute submitted to their consideration in order to guarantee the child's integral well-being; and as a consequence, the child is protected comprehensively, achieving his holistic development.
- p. 46 To be able to comply with that obligation, first it is necessary to have in mind the rights that the Federal Constitution and International Treaties recognize in their favor, and then those rights must be interpreted and applied appropriately, which means in the manner that most favors the priorities of the children, always taking into account their personal condition, in order to safeguard their healthy development in all the aspects possible.

## **II. The protection of children from corporal punishment**

- p. 46-47 Children and adolescents have reinforced protection in function of their holistic development. That is why the protection of their psychological-physical integrity is a vital importance not only for them and the family but also for society as a whole.
- p. 47 In the *Amparos Directos en Revisión* 4698/2014 and 3799/2014, the First Chamber of this Court has spoken on the regulatory framework for protection of the child, taking up certain aspects, including those explained below.
- p. 48 According to the mentioned *Amparo Directo en Revisión* 4698/2014, mistreatment in the nuclear family can take various forms: physical or psychological mistreatment, carelessness, neglect, verbal mistreatment or a combination thereof.

### **a) In relation to the international *corpus juris* on corporal punishment of children in the private sphere**

- p. 48-54 According to the Convention, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules of 1985), and general comments No. 8 and 13 of the United Nations Committee on the Rights of the Child (Committee), any physical abuse, however minor, which is intended to cause a certain degree of pain or

discomfort, as well as any punishment intended to belittle, humiliate, denigrate, threaten, frighten or ridicule children and adolescents is incompatible with the dignity and respect they deserve.

- p. 54 The Inter-American Human Rights System has also commented on corporal punishment as a method of discipline, in interpretation of article 19 (rights of the child) of the American Convention on Human Rights (ACHR) in relation to article 5 (personal integrity) thereof.
- p. 54-55 In this regard, in its Resolution of January 27, 2009, the Inter-American Court of Human Rights (IACHR) rejected a request for an Advisory Opinion on the "use of corporal punishment as a method of discipline against children and adolescents. However, it issued some relevant considerations, from which it is seen that the incompatibility of these practices with the ACHR is declared.
- p. 58-59 This Court is aware of the problem regarding corporal punishment of children, particularly in Mexico, which has often been normalized and accepted both in the family and in the education and rehabilitation of children, and which has had direct consequences in the form of assimilating the violence experienced in this country.
- p. 59 This Court therefore agrees there is a pressing need to eradicate corporal punishment as a method of disciplining children, which implies, in addition to its prohibition, not justifying as reasonable, minor or moderate methods certain types of conduct or corrective measures that may constitute forms of physical or psychological aggression imposed on children and adolescents, including in the public, private and family spheres.

#### **b) Assessment of this case**

In light of the facts of this case, this Court considers that the so-called corrective measures used by the mother against her child cannot be assessed as minor or justified measures, and therefore this Court does not share the assessment of the collegiate court that such acts do not fall within the definition of corporal punishment, in light of international standards.



p. 59-60 The collegiate court merely noted an extract from the Committee's General Comments 8 and 13, relating to physical actions and interventions to protect children and "positive disciplinary" methods, concluding that the act under analysis was not corporal punishment involving a deliberate causing of harm or pain to the child as a means of control, and that it did not cause any psychological or other harm. Therefore, the court considered that conduct to be corrective, and that it was not a recurring event nor had compromised the physical integrity of the child.

However, the collegiate court failed to assess from the same source that the Committee itself, in its General Comments 8 and 13, defined corporal or physical punishment as "any punishment in which physical force is used and is intended to cause a certain degree of pain or discomfort, even if it is minor". Furthermore, these practices cannot be justified as reasonable or moderate, as they are contrary to the human dignity and integrity of the child, and the Convention therefore does not allow any justification for discipline that is violent, cruel or degrading.

p. 60-61 This Court considers that the conduct of the mother toward her son, having caused a blow with the cable of a cell phone, which left a mark on his back, did represent a form of violence against the child corresponding to corporal punishment, which cannot be justified even in the context of the case.

p. 61 Without prejudice to the above, this does not automatically imply imposing adverse consequences on the mother with repercussions that may be unfavorable to the child, but it is necessary to take into account other elements to be assessed in order to establish a decision based on the best interest of the child in each specific case.

### **III. Visitation of the older child with his separated parents**

This Court has recognized that, although parents have the right and duty to educate their children, such education must be provided within a framework of respect for the dignity and rights of the child, so the education of children cannot be used as an argument to promote violent, cruel or degrading discipline.

p. 62 The education or upbringing of a child does not authorize parents to violate or mistreat their children, because even in the best interest of the child, that violence could lead to children being separated from their parents. In view of the foregoing, it can validly be concluded that the best interest of the child does authorize the restriction of visitation between a child and his or her parent, when he or she is subjected to violence by that parent.

However, as the best interest of the child also dictates that children have the right to be cared for and educated by their parents, and to maintain family relations, such measure should only be taken in cases that really merit that separation.

p. 63 The Committee is of the view that prosecution and other official interventions (e.g. separation of the child or the perpetrator) should take place only when it is considered necessary to protect the child or adolescent from material harm and when it is in the interest of the child or adolescent concerned, for which their opinion must be taken into account in accordance with their age and maturity.

Thus, in the *Amparo Directo en Revisión* 3799/2014, the First Chamber of this Court determined that, although visitation between children and their father who does not exercise custody represents a right for the father who does not exercise custody, it also entails a duty, and thus the visitation arrangements, rather than satisfying a right of the father, are established for the benefit of the child. Therefore, visitation between the non-custodial parent and his or her children should only be restricted or suspended when the best interest of the child requires it.

p. 63-64 Likewise, in the *Amparo Directo en Revisión* 4698/2014 decided by the First Chamber of this Court, it analyzed whether a normative portion on the loss of parental authority due to mistreatment was in accordance with the best interest of the child, upon establishing that in order for this cause to operate, the mistreatments must meet the requirement that they "may compromise" the health, safety and morality of the child or adolescent; that is, it was required that with the aforementioned behaviors, there was at least the risk that these legal interests of the child or adolescent could be affected.

p. 64 In this regard, this Court determined the unconstitutionality of this normative portion, since such assumptions would be authorizing or justifying the use of violence against children, however minor it may be, and in this regard it cannot be maintained that the legislative measure of the loss of parental authority, thus configured, is suitable to guarantee and reinforce the right of children and adolescents to be protected in their personal integrity (physical and psychological) and in their human dignity, against all forms of violence from those who exercise parental authority over them.

Notwithstanding the above, this Court stressed that, regarding its application, the provision also should not be understood to mean that any form of mistreatment of children or adolescents, unfailingly and automatically, in all cases, should result in the penalty of the loss of parental authority with respect to the person having that responsibility.

p. 64-65 In this regard, this Court has held that parental authority is, first and foremost, a function in benefit of children and adolescents and not merely a right of the parents over them; and therefore, the civil sanction consisting of its loss should not be seen or applied as a punishment for those who failed to fulfil any of the duties inherent in that function, but rather, in the specific case in question, such extraordinary sanction should be the most appropriate measure for the protection of the rights of the child or adolescent, according to their best interest; this means that in the specific case in question, that consequence should be the most beneficial.

p. 65 In this regard, this decision held that it is up to the judges to exercise their powers of prudent discretion, to examine the circumstances of each case, and to establish whether the mistreatment inflicted on the child or adolescent justifies the need to separate them from the person exercising parental authority over them, since it is the most beneficial for the child, or if, within the framework of the other rights of the child or adolescent, the deprivation of parental authority is not the most appropriate for the best interest of the child and it is feasible to establish some other measure in order to remedy the harm caused and prevent the child from being re-exposed to an act of violence, without official intervention by the child's family.

p. 66 In General Comment 13, the Committee noted that "the frequency", "the seriousness of the harm" and "the intention to cause harm" are not elements that are required to be able to consider that acts of violence against the child or adolescent have occurred, but they can be taken into account as factors to establish what the most effective intervention strategy should be, in order to provide proportional responses that take into account the best interest of the child.

Therefore, in the *Amparo Directo en Revisión* 4698/2014, the First Chamber of this Court ruled on the assessment of the judge given the proven mistreatments to the child or adolescent and the weighing with respect to the best interest of the child in their care.

p. 68 On this basis, the above considerations on parental authority are most certainly applicable in the case of the decision on the exercise of the care and custody.

p. 68-69 In this regard, in light of the standards on visitation of the child or adolescent with their separated parents, in the case of an incident of corporal mistreatment, this Court reiterates that an automatic conclusion should not be reached on the prevailing of one of the parents in the custody of the child; but rather, in the exercise of its jurisdiction, it is up to the judge to evaluate all the evidence, circumstances, context and elements of the case, guaranteeing the exercise of the rights of the child, in order to make a decision based on the child's best interest in that specific case. That being the case, such decision involves an assessment of legality which, in terms of this case, escapes the ruling of this Court.

p. 69 In this regard, this Court points out the relevance in these processes of the right of the child to be heard, which is explained and analyzed below.

#### **IV. The right of children to be heard**

This Court notes that although several expert opinions were provided, which reflected the child's behaviors and vision of his family situation, it also appears that, during the various instances of the trial, his opinion was not heard or taken directly by the judges of those ordinary instances, particularly with regard to the determinations of his care and custody.

p. 70 This Court has ruled in various cases on the right of children to participate in judicial proceedings that affect their legal sphere, with the aim of contributing to the better exercise of the right of children and adolescents to express an opinion in such matters, establishing their content and legal nature, as well as a series of practical guidelines that the judges must follow in order to hear them.

p. 74 It should be borne in mind that children have the right to participate in judicial proceedings that may affect their legal sphere, starting from the following stages: 1) to be informed of their right to be heard directly or through a representative, if they so wish; 2) to express their opinion freely in a manner appropriate to their age and development, and 3) that their opinions be taken into account according to their age and maturity. Thus, the guarantee of protection of that right is an essential procedural formality that must be broadly protected by the court as a guiding principle, and in the event that it cannot guarantee it, this must be duly justified by the judicial authority.

Notwithstanding the foregoing, as established in the *Amparo en Revisión* 6927/2018, decided by the First Chamber of this Court, although the exercise of the right of the child or adolescent to participate in the judicial proceedings that concern them must be the general rule, there may be exceptions, since there may be cases in which the best interest of the child is better protected by avoiding their involvement in the respective controversy, hence their participation must always be subject to an assessment by the judge, which takes into account the particular condition and situation of the child, to decide, in a well-founded and reasoned manner, that the exercise of that procedural right will not take place.

p. 76 The opinion of the children and adolescents in judicial proceedings, on the one hand, implies for them the exercise of their right of access to justice; and, on the other, it is a relevant element for the decision to be made by the judge regarding their rights. But the above must always take into account the child's age and degree of maturity, because the key is that the child, according to these factors, has the aptitude to form his own judgment, which is understood as being able to form his own opinion of the things that surround him

and the contexts closest to him, which allows him, where appropriate, to make decisions regarding himself, or express his ideas and his feelings in relation to the situations linked to his existence, in short, that he has a basic understanding of what he speaks about.

And it is for the above reason that this Court has also established in its criteria that the involvement of children and adolescents in the proceedings cannot be determined in function of a fixed rule based only on chronological age, since maturity is also relevant, which is specific and different in each child.

- p. 77-78 In this regard, this Court concludes that, in order to achieve justice with a perspective of the child, it is up to the judicial authorities to provide the best way to interact with the child or adolescent and to find their free opinion, according to their age, maturity and way of perceiving the world. Therefore, this right can be implemented not only through formal mechanisms in which adults participate, such as testimonials or written statements, but also through pedagogical and didactic methodologies that provide adequate conditions for the child or adolescent and can achieve their objective. To this end, those who exercise parental responsibility must also listen to the opinion of the child or adolescent free of conditions. Finally, the way of communicating the decision to the child or adolescent must be transmitted in a clear and assertive way, reflecting that their opinion was taken into account.
- p. 79 This Court takes into account that at the time of the facts and at the time of the initial claim, the child was just over 3 years old, which means he was in early childhood. Through the process he is now over 7 years old. These age cycles should not be an obstacle to guaranteeing the right of the child to participate and to have his or her opinion taken into account, since relevance should be given to the fact that the materialization of the decision to be taken on custody will take place with the execution of the respective judgment at a stage in which his or her age cannot be considered inadequate for him to be heard directly in the process.
- p. 79-80 Thus, although in this case the court carried out a study of the evidentiary material presented in the court record, this Court considers that in order to make that decision, the

child's opinion must be added to the elements of evidence weighed, even if this implies replacing the procedure in the second instance, so that the appeals chamber, before issuing its decision, carries out a procedure, adhering to the guidelines that this Court has issued for this purpose, in which it listens to the child.

### **DECISION**

p. 80-81 The *amparo* judgment under appeal is reversed. The collegiate court shall refer the documents to the civil chamber in order to: (i) Guarantee the right of the child to be heard; (ii) Issue a new decision classifying the act of violence attributed to the mother as corporal punishment of the child; (iii) With full jurisdiction, decide on the care and custody of the child, taking into account the best interest of the child, as well as his opinion; (iv) Decide on the regime of regular and direct visitation that the child will have with the responsible parent who will not exercise custody, as well as, where appropriate, on the corresponding child support, and; (v) Communicate the decision to the child in a clear and assertive manner.