



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.

FREE HIGH SCHOOL
(EDUCACIÓN MEDIA SUPERIOR GRATUITA)

CASE: *Amparo en Revisión 539/2016*

REPORTING JUDGE: Margarita Beatriz Luna Ramos

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

DATE OF THE DECISION: March 15, 2017

KEY WORDS: right to free education, high school education, rights of children and adolescents, payment of enrollment fees, institutional autonomy.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revisión 539/2016*, Second Chamber, Margarita Beatriz Luna Ramos, J., decision of March 15, 2017, 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/AR%20539-2016.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en Revisión 539/2016*, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 539/2016

BACKGROUND: On June 2, 2015, a high school student (the affected party) filed an *amparo indirecto* lawsuit against article 34, section I, of the General Regulation on the Procedures for Admission and Continuation of Students of the Autonomous University of Nuevo León (the regulation) and the refusal to reenroll her free of charge in the third semester of high school of that university. A district judge in Nuevo León granted the *amparo*. The university authorities filed a *recurso de revisión* against that decision on December 31, 2015. Subsequently, a collegiate court in Nuevo León remitted the case file to this Court to resolve the appeal.

ISSUE PRESENTED TO THE COURT: Whether article 34, section I, of the Regulation is unconstitutional for violating the right to access to a free education at the high school level.

HOLDING: The *amparo* was denied essentially for the following reasons. On February 9, 2012, high school was incorporated into the mandatory and free educational system for which the State is responsible, for gradual and expanding implementation for the school year 2021-2022. Until that time, the university is authorized to request reenrollment fees at the high school level, in order to have the infrastructure that guarantees access to education. Therefore, article 34 of the Regulation does not violate the right to education, since it is subject to the transitory period of the reform.

VOTE:

The Second Chamber decided this matter unanimously with five votes of the judges Margarita Beatriz Luna Ramos, Alberto Perez Dayán, Javier Laynez Potisek, José Fernando Franco Salas and Eduardo Medina Mora I.

The votes cast may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=198596>

EXTRACT OF THE *AMPARO EN REVISIÓN* 539/2016

p. 1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in meeting of March 15, 2017, issues the following decision.

BACKGROUND

- p. 15 On May 29, 2015, a high school student (the affected party) learned that the Autonomous University of Nuevo Leon [Universidad Autónoma de Nuevo León] (the university) and the director of the Industrial School and Technical High School Álvaro Obregón of the Monterrey Unit I (the high school) of that same University required her to pay to be reenrolled in the third semester of the high school program.
- p. 1,15 On June 2, 2015, represented by her father, she filed an *amparo indirecto* lawsuit against the refusal to reenroll her free of charge in the third semester of the Technical High School Degree in Tourism.
- p. 2 She also challenged article 34, section I, of the General Regulation on the Procedures for Admission and Continuance of Students of the Autonomous University of Nuevo León (the regulation), as well as the denial to provide the human right to a free high school education, as a result of requiring a monetary payment for her reenrollment and to receive the educational services.
- p. 3-9 A district judge of Nuevo León issued a decision on December 14, 2015, in which he determined to grant the *amparo*, considering that the charge the norm contemplates constitutes an obstacle that impinges on the content of the right to education since it limits accessibility to it. The authorities of the University challenged the determination filing a *recurso de revisión* on December 31, 2015.
- p. 9-10 A collegiate court in administrative matters of Nuevo León concluded that the *recurso de revisión* is of original competence of this Court, since it involves interpreting article 3 of the Federal Constitution. Following its remittance, it was admitted by this Court on May 25, 2016 and turned over to Judge Margarita Beatriz Luna Ramos.

STUDY OF THE MERITS

- p. 18 The University argues that just because it receives income through federal and state allocations does not mean it has sufficient budget; in addition to the fact that it is not shown that the Autonomous University of Nuevo León has been endowed with a budget for imparting high school free of charge.
- p. 19 This argument is well-founded, as will be explained below.
- p. 20 In the Statement of Purpose of the reform of article 3 of the Constitution of February 9, 2012, the constitutional reformer sought to incorporate high school as part of the mandatory educational system offered by the State; therefore, it would assume the responsibility for imparting high school free of charge, ensuring a place for those who have concluded the basic education.
- p. 20-21 In that regard, it was established in the transitory provisions that this obligation would become mandatory gradually from the school year 2012-2013 until achieving total coverage in its various modes throughout the country no later than the school year 2021-2022.
- p. 21 It must be indicated that the Second Chamber of this Court, when deciding the *Amparo en Revisión* 406/2016 held that the establishment of fees to attend a language class at the higher level by the autonomous universities is constitutional, as long as it is carried out in use of its power of self-government, which is contained in the institutional guarantee of autonomy established in section VII of article 3 of the Constitutional. That autonomy gives it capacity, among other things, to adopt final decisions inside the university body independently from any external body.

In addition, the Constitution establishes autonomy as an institutional guarantee for public universities because to guarantee the exercise of the fundamental right to receive an education, a system must be established that is isolated from the influence of interests unrelated to the purposes of education, research and cultural dissemination.

- p. 22 It should be kept in mind that the University not only provides higher level educational services but also high school level services and that it is the constitutionality of the charge to attend that this level that is analyzed in this decision.
- p. 22 When the obligation of the State to offer high school education free of charge was incorporated into the educational system, the autonomous universities that offer that educational level were constitutionally constrained to provide it, being de-centralized bodies of the federal public administration and of the state administrations. This was to be done in a gradual and expanding manner until achieving total coverage no later than the 2021-2022 school year, with the budgetary concurrence of the Federal Government and the state in the terms established in the instruments of the National System and the State Systems of Democratic Planning of Development.
- p. 23 In the case of the University, since it provides high school education, it is obligated to adjust its budget so that at the appropriate time it has the infrastructure through which it can offer high school as part of the mandatory educational system provided by the State. This does not violate its autonomy, since the transition period will permit it to take the relevant steps to ensure, for the school year 2021-2022, it can provide access to a high school education free of charge.

This means that, until that period has expired, the University is authorized to request fees for reenrollment at the high school level.

- p. 23 In that regard, article 34 of the Regulation does not violate the human right to education since, at this date its content is subject to the transitory period established in the constitutional reform of February 9, 2012, which expires in the school year 2021-2022.

DECISION

- p. 24 Given the result of this study, the decision under review is reversed and the constitutional protection against article 34, section I of the Regulation is denied.