

## **"Abortion does not *force you to abort* but in Mexico, they want to force us to kill"**

**By Frida Espinosa<sup>1</sup>**

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### **Current position of the Supreme Court**

In September 2021, several relevant events took place in Mexico, beginning with the Supreme Court of Justice of the Nation (SCJN) which resolved three actions of unconstitutionality that we will analyze below.

On September 7th, the unconstitutionality action 148/2017<sup>2</sup> was resolved in the Coahuila region. The court unanimously held that it is unconstitutional to penalize women who have abortions for any reason and that abortion in cases of rape should be allowed up to 5 months of gestation, a stage where even the sex of the fetus can be known because its genitals have already formed.

According to a request for citizen information to the Executive Secretariat of the National Public Security System at the beginning of that year, it was shown that at the national level 116 people were prosecuted for the crime of abortion, of which 111 were men and 5 were women. They were not penalized for having an abortion but for having forced others to undergo an abortion, or for illegally performing an abortion or inducing it with violence. The reality of criminalization in our country is that it protects the woman herself since the law, by penalizing such conduct, discourages women from practicing abortion. But the truth is that to date no woman for various mitigating circumstances has been criminalized for undergoing abortion. At the same time, we can infer that if these 116 people had not been penalized for their crimes, they would continue to practice illegal abortions.

Through the record request, it is demonstrated that the Supreme Court of Justice's resolution does not respond to the reality of the Mexican people but to a strong ideological impulse that tries to undermine the human right to life in its most fragile stage.

In this decision, the Supreme Court understood that unborn children deserve protection that increases over time, as the pregnancy progresses. However, the court specified that this protection

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<sup>1</sup> Student at the Universidad Anáhuac México North Campus of the Bachelor of Science in Family. Currently studying the Diploma in Political Leadership and Public Administration Synergy; spokesperson for the national campaign that supports pregnant women in vulnerable situations La Vida Por Adelante, co-founder of the non-profit organization Youth and Life, "JUVI.AC" and the "LIFE" apostolate

<sup>2</sup> Unconstitutionality Action 148/2017. Supreme Court of Mexico. Full text of the sentence: [https://www.scjn.gob.mx/sites/default/files/proyectos\\_resolucion\\_scjn/documento/2021-08/AI%20148.2017.pdf](https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2021-08/AI%20148.2017.pdf)

cannot ignore the rights of women and pregnant persons to reproductive freedom. Therefore, the Plenary established that the absolute criminalization of abortion is unconstitutional<sup>3</sup>.

The Supreme Court's position does not seem to comply with the logic of the syllogism of ideas. In other words, if the Court at least recognizes the fetus as worthy of protection that increases as the gestational period increases, the criminal degree of abortion should at least increase in relation to the gestational period. On the contrary, the Supreme Court removes all legal protections for the life of the person in gestation. At the same time, the ideology-based language is explicit and outside all scientific spectrum when it calls the fetus "*product of gestation*", thus removing all notion of humanity.

Finally, since it was a majority decision that exceeded eight votes, all the judges of Mexico, both federal and local, must follow the Court's analysis. This means that from now on, when resolving future cases, judges must consider that the federal penal regulations that criminalize abortion in an absolute manner are unconstitutional, as are the penal provisions that do not permit abortion in the period closely following embryonic implantation, or the rules that only provide for the possibility of abortion as an acquittal excuse since in these cases the conduct is classified as a crime, even if court imposes no penalty.

The Supreme Court decided the next case on September 9th, on the unconstitutionality action 106/2018 and its accumulated 107/2018<sup>4</sup>. In a Full Court session, the normative portion of article 4 Bis A, section I, of the Political Constitution of the State of Sinaloa, established: "*from the moment an individual is conceived, he/she enters under the protection of the corresponding Law, until his/her death*". The Plenary considered that the States lack the competence to define the origin of human life, the concept of "*person*" and the entitlement of human rights since this corresponds exclusively to the General Constitution.<sup>5</sup>

The irony of this case was the same Supreme Court ministers' disregard of several articles of the National Constitution, including article 1: "*In the United States of Mexico, all persons shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party (...)*"<sup>6</sup>. The ministers were right about something, and that is that entities cannot define who is a person. The State only may recognize human persons and make them beneficiaries of all the rights that the law confers from the beginning of their conception. Moreover, article 73 empowers local congresses to legislate on health issues, whereby the federal pact and the autonomy that the States themselves possess, the resolutions or suggestions of the Supreme Court of Justice of the Nation on abortion issues shouldn't be so relevant. Lastly, we

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<sup>3</sup> Cfr. PRESS RELEASE OF THE JUDGMENT:

<https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6579>

<sup>4</sup> See full text of the sentence:

[https://www.scjn.gob.mx/sites/default/files/proyectos\\_resolucion\\_scjn/documento/2021-08/AI%20106-2018%20y%20acumulada%20107-2018.pdf](https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2021-08/AI%20106-2018%20y%20acumulada%20107-2018.pdf)

<sup>5</sup> Cfr. Press release of the sentence. Full text available at:

<https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6581>

<sup>6</sup> Political Constitution of the Mexican States. Full text of the standard available at:

<https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

cannot fail to mention that the ministers ignored the international treaties that Mexico has ratified and that defend without hesitation the right to life<sup>7</sup>.

The last case that was discussed is the unconstitutionality action 54/2018<sup>8</sup> of article 10 bis of the General Health Law<sup>9</sup>, which deals with the conscientious objections of medical personnel. The decision recognized conscientious objection as a constitutional right and declared its constitutionality as long as its interpretation is consistent with the rest of the General Health Law. And then three points that seem to be the most relevant in the entire decision were established:

*A) "Conscientious objection is a right of medical and nursing personnel who, from their individual jurisdiction, can refuse to perform any of the health procedures that are part of the health services provided by the Mexican State, when they consider them opposed to their religious, ideological, ethical and conscientious convictions<sup>10</sup>."*

It is valuable that as a general principle this opportunity has served to endorse once again the existence of this human right that stems from both the fundamental freedom of expression and freedom of belief.

*B) "Conscientious objection may not be invoked by medical and nursing staff when its exercise puts the life of the patient at risk or when it is a medical emergency<sup>11</sup>."*

*C) "When a medical or nursing professional exercises their right to conscientious objection, they are obliged to act in accordance with the provisions of the General Health Law and must give all the necessary information and guidance to the health services patient, which includes, at least, that through a dignified, decorous treatment and without any discrimination, this personnel should inform the patient of all medical options available and refer the patient immediately and without further delay or formality, to a hierarchical superior or to non-objecting medical or nursing staff<sup>12</sup>."*

In states where abortion is decriminalized, the public sector is required to offer abortion services. In other words, if a doctor conscientiously objects to abortion, he/she must have a contact list of

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<sup>7</sup> The Universal Declaration of Human Rights (Article 3); Convention on the Rights of the Child (Article 6); African Charter of Human Rights (Article 4); International Covenant on Economic, Social and Cultural Rights (Article 10.3), International Covenant on Civil and Political Human Rights (Article 6); American Convention on Human Rights (Article 4).

<sup>8</sup> Full text of the judgment available at:

[https://www.scjn.gob.mx/sites/default/files/proyectos\\_resolucion\\_scjn/documento/2021-08/AI%2054-2018%20-%20PROYECTO.pdf](https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2021-08/AI%2054-2018%20-%20PROYECTO.pdf)

Text of the lawsuit available at:

[https://www.cndh.org.mx/sites/default/files/doc/Acciones/Acc\\_Inc\\_2018\\_54.pdf](https://www.cndh.org.mx/sites/default/files/doc/Acciones/Acc_Inc_2018_54.pdf)

<sup>9</sup> "Article 10 Bis. - The medical and nursing staff that are part of the National Health System may exercise conscientious objection and excuse themselves from participating in the provision of services established by this Law. When the life of the patient is put at risk or in the case of a medical emergency, conscientious objection may not be invoked, otherwise the cause of professional responsibility will be incurred. The exercise of conscientious objection will not lead to any type of employment discrimination".

<sup>10</sup> Mexican Constitutional Court. Unconstitutionality Action 54/2018. Paragraph 427. Full text available at: [https://www.scjn.gob.mx/sites/default/files/proyectos\\_resolucion\\_scjn/documento/2021-08/AI%2054-2018%20-%20PROYECTO.pdf](https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2021-08/AI%2054-2018%20-%20PROYECTO.pdf)

<sup>11</sup> Idem. Paragraph 428.

<sup>12</sup> Idem. Paragraph 429.

doctors who are not objectors so that he/she may refer the woman who wants an abortion. This is a clear violation of the human right of conscientious objection. Through this requirement, the objecting doctor is made an accomplice in carrying out a procedure that violates his principles. If the objecting doctor opposes the procedure or proposes another option that is not the abortion, he/she may be sued and could even lose his/her job.

As demonstrated by these three cases, the Supreme Court of Justice of the Nation, by force of 'crookedly interpreting' the constitutional precepts, has ended up imposing an ideological agenda that ignores the most fundamental rights of individuals such as life and liberty.

### **Social context**

In México in 1923, the first National Pro-Life Committee was formed to confront the ideological imposition of abortion law in our country. Since then, the movement has managed to stop all legislative or judicial initiatives that sought to recognize abortion. They resisted for 84 years until the 2007 ruling 2007 in Mexico City. Even after the decriminalization of 2007, it could not be passed in another state until 2019 with Oaxaca, then Veracruz, and Hidalgo.

Just a few days after the SCJN resolutions, there were modifications of Local Constitutions and agreements to carry out initiatives to decriminalize abortion in the Local and Federal Congresses. Some of the organizations that have been behind all this are: GIRE, Catholics for the Right to Decide, the Maria Stopes Foundation, and the Planned Parenthood Federation.

Despite this unfortunate scenario, on October 3, 2021, more than half a million people joined a pro-life multinational march that took place in Mexico City. More than 70 local marches were held in the other states, demonstrating the reality that the surveys already said, 2 out of 3 Mexicans are pro-life<sup>13</sup>. We are the majority who do not believe that abortion is what women deserve, that death does not solve any social problem and that we do not need to invest money in imperialist public policies that harm our Mexicans.

It is often repeated that with decriminalized abortion no one forces another to have an abortion, however in Argentina in the city of San Juan, two nurses were sanctioned for refusing to perform an abortion<sup>14</sup>. Today in Mexico they want to restrict medical personnel's constitutional right to conscientiously object to performing an abortion. They want to violate the federal pact and the autonomy of the States to impose abortion, in addition to forcing citizens to pay for it, in many situations. As the abortion prosecution data demonstrates, women are forced to abort, and a

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<sup>13</sup> Through the research company DATA ROOM *ByStrategos*, an unprecedented national survey was carried out regarding life and family issues, moving away from the media noise generated in social networks. The objective of the study was to know the opinion of Mexicans on issues related to abortion. For the exclusive purposes of social research. This study is unique in its kind, due to the breadth of the national scale and, above all, the methodological solidity that supports it. For the design of the questionnaire, the calculation of the sample, the follow-up, audit and analysis of results, an interdisciplinary team was formed to guarantee the objectivity of the study and avoid ideological or political bias.

<sup>14</sup> Newspaper note available at:

[https://www.clarin.com/sociedad/san-juan-sancionaron-enfermeras-negarse-asistir-aborto-polemica\\_0\\_NDQkULwaB.html](https://www.clarin.com/sociedad/san-juan-sancionaron-enfermeras-negarse-asistir-aborto-polemica_0_NDQkULwaB.html)

human being is forced to die. Faced with this reality we must not remain indifferent. It is necessary to resist, act, propose and above all be clear that the most important fight is to make abortion unthinkable, regardless of what the law says. We must achieve a society in which no woman feels compelled to perform an abortion due to her social context, where unexpected pregnancy is prevented with adequate sex education, where there is a culture of adoption and family, and where all human life is protected without distinction.

A few years ago, the pro-life *light blue wave* movement (“la ola celeste”) was born, today it is more alive than ever.