

This overview contains the cover page, the summary 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 OF PERSONS WITH DISABILITIES TO PLAY SPORTS, TO INCLUSION AND TO  
REASONABLE ACCOMMODATION  
(DERECHO DE LAS PERSONAS CON DISCAPACIDAD A PRACTICAR UN DEPORTE, A  
LA INCLUSIÓN Y A LOS AJUSTES RAZONABLES)**

**CASE:** *Amparo en Revisión 162/2021*

**REPORTING JUDGE:** Ana Margarita Ríos Farjat

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

**DATE OF THE DECISION:** November 17, 2021

**KEY WORDS:** Rights of persons with disabilities, right to sports, accessibility, universal design, reasonable accommodation, adapted sports, equality and non-discrimination, social inclusion, social model of disability.

**CITATION OF THE DECISION:** Supreme Court of Justice of the Nation, *Amparo en Revisión 162/2021*, First Chamber, Ana Margarita Ríos Farjat, J.Decision of November 17, 2021, 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/2022-06/AR%20162-2021.pdf>

**CITATION SUGGESTED FOR THIS DOCUMENT:** Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo en Revisión 162/2021*, Mexico.

## SUMMARY OF THE *AMPARO EN REVISIÓN* 162/2021

**BACKGROUND:** The mother and father (the parents) of a child with Down syndrome filed an *amparo* lawsuit against the refusal of the Hidalguense Institute of Sports (the Institute) to reinstate him in ordinary swimming lessons, on the grounds that the child has difficulty following the instructions of the coach and keeping pace with the other students, and therefore he should train in adapted sports. The district judge who heard the case denied the *amparo* on the grounds that adapted sports constitutes a reasonable accommodation and allows the child to practice this discipline and use the same facilities as other people without disabilities. Dissatisfied with this decision, the parents filed a *recurso de revisión*, which was heard by Mexico's Supreme Court of Justice (this Court), in exercise of its authority to assert jurisdiction.

**ISSUE PRESENTED TO THE COURT:** To determine the scope of the rights of persons with disabilities to play sports, to inclusion and to reasonable accommodation.

**HOLDING:** It was decided to grant the *amparo* for the following reasons. The reinstatement of the child in the ordinary swimming group, which was the requested adjustment, is appropriate and necessary to achieve the objective pursued: social inclusion through sports. This right, provided for both nationally and internationally, recognizes the freedom to practice his chosen sports (in any form) on equal terms with other people. The refusal by the Institute results in a form of discrimination, as ordinary sports is the only way to achieve substantive equality, and the adapted sports program is only optional and complementary to the ordinary program. Thus, the Director of the Institute must discuss with the child and his parents how it will make the requested reasonable accommodation as well as the implementation of other adjustments and additional support measures necessary for the reinstatement of the child in ordinary swimming classes under equal conditions with his peers, making sure to guarantee the physical and mental integrity of the child as well as the physical integrity of other athletes and coaches.

**VOTE:** The First Chamber decided this case unanimously with 5 votes of the Justices Ana Margarita Ríos Farjat, Norma Lucía Piña Hernández (reserved the right to write a concurring

opinion), Juan Luis González Alcántara Carrancá, Jorge Mario Pardo Rebolledo, and Alfredo Gutiérrez Ortíz Mena.

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=282389>

## EXTRACT OF THE *AMPARO EN REVISIÓN* 162/2021

p.1 Mexico City. The First Chamber of Mexico's Supreme Court of Justice (this Court), in session of November 17, 2021, issues the following decision.

### BACKGROUND

p.1-2 In 2016 the mother and father (the parents) enrolled their child, who is diagnosed with trisomy 21 (Down syndrome), at the High-Performance Aquatic Complex (CAAR) of the Hidalguense Institute of Sports (the Institute), in "Special Olympics".

p.2 In May 2018, after complying with the requirements requested by the administration, the parents enrolled him in an "ordinary" swimming group at CAAR. Both the instructor and the coordinator of CAAR stated that the "performance" of the child did not represent any problem for his learning.

The following July, the coordinating office of CAAR changed, and from the 16th day of that month the child was assigned a new coach. As a result of the change, the coach coordinator informed the child's father that the instructor had problems teaching his son, because she did not have the necessary training to teach people with disabilities.

Furthermore, he told him that the child could not be part of both groups mentioned: "Special Olympics", in which he initially enrolled, and "ordinary" classes. In addition, if other children with Down syndrome noticed that his child participated in the latter group, they would want to join it and, not being able to say no, it would increase the workload considerably.

After several verbal complaints and expressions of dissatisfaction by the child's parents, the Institute's Director opened a space for the child to attend classes in another group: "adapted" sports, which had a different schedule, was made up of boys and girls older than him and with a more advanced "swimming level".

p.3 The child began to attend this group and his parents noticed that the instructor did not pay attention to him or give him support and left him in the same lane as the swimmers with greater skill, who "ran over" him when they passed.

Given this situation, the boy's parents spoke with a teacher who trained people with disabilities at the same Institute, who told them that to train their son, he should be in the group of children with disabilities and give up the "Special Olympics".

In October 2018, the parents filed a complaint with the Human Rights Commission of the State of Hidalgo (the Commission) for alleged acts of discrimination against the child for preventing him from continuing to train in the group he was in and segregating him to participate, as the only option, in the "Special Olympics". They stated that there was no culture of inclusion at CAAR.

In August 2019, the Commission determined that the violation of human rights was not proven. It considered that it would be illegal to put his physical integrity and that of other children at risk to guarantee his inclusion, since it was clear from the testimonies of three coaches that the child did not follow instructions due to his health condition.

p.4 The parents submitted a letter to the Director of the Institute requesting that their son be included in the "ordinary" swimming group where he originally participated, since during the time he belonged to it there was never any incident, and the monthly fees were always paid punctually.

The Institute responded to the request for reinstatement stating essentially: "*with the firm intention of not violating the human and legal rights of your child ADRR and honoring the times of the proceedings to which you have resorted, so that they can give us the pertinent recommendations for his care, we cannot respond to your letter submitted on the date indicated, as soon as we have these resolutions we will respond to your request in a timely manner*".

In the absence of a response to their petition, the parents filed an *amparo indirecto* lawsuit. The district judge who heard the case issued a decision granting the *amparo* to the effect that the Institute give a consistent response to the request made.

p.4-5 In compliance, the Director of the Institute indicated that: i) The child has not been denied access to CAAR; and ii) According to the level of adaptation and "swimming", the discipline that corresponds to him and that is available to the child is that of "adapted" sports. This

is because during the period from May to July of two thousand eighteen, in which he attended classes it was observed that it is difficult for him to follow the instructions of the coach and keep pace with the students of the "conventional" sports, which puts at risk his physical integrity and that of the other athletes.

p.5.7 Dissatisfied with the response, the parents, on behalf of their son, filed an *amparo indirecto* lawsuit. The district judge that heard the case issued a decision in which he denied the *amparo*.

p.9.12 Dissatisfied with the *amparo* decision, the parents, on behalf of their son, filed a *recurso de revisión*.

They stated the following as their grievances:

i) The decision under appeal precludes a progressive interpretation of the right to sports, the right to education and the right to equality and non-discrimination by refusing to provide reasonable accommodation and preventing them from being obtained through the right to petition.

ii) The response to a petition that fails to effectively protect a fundamental right cannot be regarded as well founded and reasoned. The contested decision is contrary to the pro person principle, because it failed to note the specific obligations arising from groups belonging to a suspect classification such as childhood and disability.

iii) The *amparo* judge made a regressive interpretation of the right to equality of children with disabilities, since he issued his decision in light of the medical model: he used terms such as "individual deficiency"; he made a generalized treatment of "disabilities" and not a specific analysis of the disability of the minor; he did not notice the intersectional discrimination in the case; and he failed to collect *ex officio* the evidence necessary to demonstrate the appropriateness of the discriminatory measure.

iv) The decision under appeal is unduly grounded and reasoned since the judge based his decision on a simple internal regulation of the Institute and failed to base his decision on

the appropriate and necessary normative instruments to satisfy the human right to inclusive sports of children with disabilities.

p.12 The parents asked this Court to exercise its authority to assert jurisdiction to hear the *amparo en revisión*, which was exercised on March 24, 2021.

### **STUDY OF THE MERITS**

p.17 According to the grievances summarized, the question that must be elucidated in this appeal is whether "adapted sports" is a reasonable accommodation to guarantee the right of the child to inclusion and sports on an equal basis with other children without disabilities.

p.17-18 This Court considers that the answer to that legal question is negative, because "adapted sports" responds to the State's obligation in terms of accessibility, not to the providing of reasonable accommodation. In that regard, the appellants' grievances, described above, are well founded.

p.75 Indeed, part of the third grievance is well founded, for two reasons.

The first reason is that, when referring to the intellectual disability (Down syndrome) of the child, the district judge used expressions ("suffers" and "disabilities") that imply that he is the one who has a medical problem and not the responsible authority that, as will be explained in the following paragraphs, imposed social barriers that limited the full exercise of his rights to sports and physical recreation on equal terms with others, without taking into account his individual needs and without satisfying them through the requested adjustment or others complementary to it.

p.76 The second reason is that the judge reproduced the same stereotypes of the responsible Institute based on a paternalistic or protectionist perspective: the child, as a person with a disability, because he requires greater attention and care than children without disabilities, represents a danger to them and to himself, so he should not practice in the "conventional" sports group.

Part of the first, second and fourth grievances are partially well founded.

The arguments are supported by three main reasons. The first is that the case record does not show that the responsible Institute had discussed with the child or with his parents the adjustment they requested, consisting of reincorporating him in the "ordinary" swimming classes.

p.77 The agreement between the responsible Institute and the child or his parents prior to the refusal of the requested adjustment dealt with a formal question: the requested schedule.

However, the administrative authority did not talk with the parents or with the child himself about the substantive aspect: determining how to return him to "ordinary" classes, implementing, if necessary, other additional measures or a support system. Had it engaged in such a dialogue, the public entity would have eliminated the social obstacles –based on stereotypes– that it imposed by excluding the child from the "conventional" sports that he practiced and that prevented him from continuing to exercise his rights to both sports and physical recreation on equal terms with boys and girls without disabilities.

p.79 In this regard, it should be kept in mind that, as interpreted by the Committee on the Rights of Persons with Disabilities (the Committee) and the precedential doctrine of this Court, the duty to provide reasonable accommodation arises from the moment when the guarantor of the rights is aware that the person with disabilities needs them to overcome limitations on the exercise of their fundamental rights and freedoms.

The second reason why the grievances are well founded is that the district judge failed to observe that the responsible Institute denied the requested adjustment without stating objective grounds (but instead based the denial on a regulation that contemplates requirements for the use and conservation of the facilities, as well as the rights and obligations of the users) and without explaining why the request was unreasonable; that is, without expressing the reasons it is not relevant (unnecessary and inappropriate) or effective. The district judge also failed to assess whether the requested measure imposed a disproportionate or undue burden on the guarantor of the rights.

The above are requirements that the response to the request for reasonable accommodation must satisfy in accordance with articles 2 of the Convention on the Rights



of Persons with Disabilities (the Convention) and 2, section XIV of the General Law for the Inclusion of Persons with Disabilities (LGIPD), even if such information had not been requested by the parents in the petition, as erroneously required by the federal judge.

p.80 In fact, the denial of the adjustment on the grounds that the child does not follow instructions or follow the rhythm of his peers in "conventional sport" is justified on the basis of a protectionist or paternalistic vision, since it considers that the problem (not following instructions and risk factor) lies with the child and not with the social barriers and prejudices imposed by coaches or sports clubs (the teaching strategies and the organization of activities in separate environments, because the law provides for special sports); it also reproduces the stereotype that people with disabilities require greater care or attention to the detriment of the care and attention of the rest of the athletes; for this reason, the physical integrity of the latter are at risk or in danger.

Similarly, this Court notes that the arguments expressed by the responsible authority in its answer to the complaint are insufficient to deny a reasonable accommodation, where it indicates that when the child practiced in the "conventional" sports schedule, the "risk" he represents both for his physical and emotional integrity and for the physical integrity of the rest of his classmates was noted because, among other things, "he has done his physiological needs" in the pool.

The foregoing is so given that there is no reasonable correlation between the fact that the child has done "his physiological needs" in the pool and the consequence of associating him as a "risk" and, therefore, limiting his swimming practice only to the "adapted" sports. On the contrary, this consideration is based on an openly discriminatory criterion, since it incorrectly relates the event that occurred with the child's disability, without any objective support.

p.81 In addition, this determination is based on considering that, given this fact, the child represents an alleged risk for other children without disabilities, but not for those who do have a disability; since he is denied practicing in the conventional sports, but he is allowed to practice in the adapted sports.

The inconsistency or lack of significant correlation is accentuated if it is taken into account that athletes of "ordinary" sports and "adapted" sports practice swimming at CAAR on Wednesdays and Fridays from 3:00 p.m. to 4:00 p.m., in the same pool, but in separate lanes; that is, the responsible Institute intends to deal with the "danger" to all athletes that the child could do his physiological needs in the pool by changing his lane (to the one corresponding to "adapted" sports), despite the fact that children with or without disabilities are in contact with the same water.

These facts are indicative that the only objective pursued by the "adapted" sports is to segregate and isolate persons with disabilities in a practice contrary to the principle of equality and non-discrimination.

p.81-82 In this regard, it is reiterated that the problem does not lie in the particular conditions of the child, but in the social barriers and prejudices that persist (both in coaches and in sports clubs). Therefore, it is an issue that must be solved based on awareness and cultural change that allows the creation of inclusive spaces that guarantee the right to equality and non-discrimination of children with disabilities.

p.82 In this respect, the provisions of article 8 of the Convention are applicable, regarding the responsibility of States parties to take immediate, effective and relevant measures to sensitize society, even at the family level, to raise awareness with respect to persons with disabilities and to promote respect for the rights and dignity of those persons, as well as to combat stereotypes, prejudices and harmful practices towards persons with disabilities, including those based on gender or age, in all areas of life.

The third reason why the grievances under analysis are well founded is that this Court considers that it is feasible to make the adjustment requested by the parents.

p.83 This is so because both national legislation (including Regulation 13, section V of the General Regulations for the Administration, Use and Conservation of Sports, Administrative and Common Use Facilities, of the Institute on which the responsible authority based the challenged response) and international law recognize the right of a child to practice the sports (general, adapted or a combination of both or any other) of his

choice, on equal terms with the others, without limiting him or forcing him to exercise it through "adapted" sports which, as argued by the appellants here, if the child did choose to practice, would be optional or complementary to the general or social sports.

The requested adjustment is also relevant or effective because the incorporation into "ordinary" swimming classes is adequate and necessary to achieve the objective pursued: social inclusion through sports, since its practice will produce individual and physical benefits, but above all social and psychological benefits; fundamentally, the person will learn from an early age to interact with others, which will certainly generate a feeling of belonging in the sports community made up of people with and without disabilities.

p.84 In addition, this Court observes that the modification in the system of separation between persons with and without disabilities, with the purpose of guaranteeing the right to sports of the child's choice in an inclusive environment, does not impose a disproportionate or undue burden on the responsible Institute because in addition to the fact that it did not invoke this circumstance to deny the adjustment, articles 164 and 165 of the Law of Physical Culture, Sport and Recreation for the State of Hidalgo provide that the coaches of any sports institution, whether public –as in this case– or private must have the training, preparation, professionalization and updating in the assistance of people with some type of disability.

Therefore, the denial of the adjustment requested by the appellants here, which this Court considered reasonable, becomes a form of discrimination contrary to articles 2, penultimate paragraph of the Convention, 1 of the Federal Constitution and 2, section II of the LGIPD, contrary to the conclusion of the district judge.

p.85 In another aspect, part of the first grievance is well founded.

This is confirmed by virtue of the fact that adapted sports is a measure that the responsible Institute directed to all persons with disabilities (not only to the child) to ensure that they can practice swimming at CAAR, but this measure is insufficient for the child to exercise his right to sports on equal terms with athletes without disabilities and achieve his social

inclusion in the sports community, because in that program he must practice in a lane separate from the rest of the children without disabilities.

Such exclusion makes it difficult or impossible for him to develop skills of social coexistence and create bonds with any person (with or without disabilities), so that from childhood he identifies with his peers, has the possibility of choosing the group or groups to which he wishes to belong and begins to exercise the same degree of control over his life as others, which will allow him to live independently.

p.85-86 Thus, again, in order to satisfy the rights indicated, the district judge should have observed that the responsible authority has the obligation to provide the child –in a manner complementary to the satisfaction of its obligation in terms of accessibility, whether or not it has complied with this– with the reasonable accommodation requested, and if appropriate, any additional kind of support, in order to achieve individual justice by guaranteeing non-discrimination or equality, taking into account the dignity, autonomy and choices of the individual, as determined by the Committee.

p.86 For these reasons, it is legally wrong for the *amparo* judge to have determined that incorporation into the "adapted" sports program is a reasonable accommodation, since it allows the child to participate in sports activities in the same facilities (changing rooms and swimming pool) used by children without disabilities.

This is also the case because the universal design that could exist in the dressing rooms and pool at CAAR does not imply social inclusion or the enjoyment of the right to sports on equal terms with children without disabilities and, in any case, with such legal reasoning the judge is only replicating the indirect discrimination by the responsible authority, by giving the child the appearance of the possibility of practicing the sport of his choice (swimming) in the same facilities as the rest of his peers, but in the end the inequality and discrimination is the same: he will not be able to obtain the social and psychological benefits of training and interacting directly with athletes without disabilities, since they are separated or grouped by lanes.

## DECISION

p.87.88 Given the validity of the grievances examined, it is necessary to overturn the decision under appeal and grant the *amparo* so that the Director of the Institute: i) Cancels the official letter of December 17, 2019; ii) Talks with the child and his parents about: a) The conditions under which the requested reasonable accommodation will be made, in order to ensure that the physical and mental integrity of the child, as well as the physical integrity of the rest of the persons, will be guaranteed, with trainers instructed in the assistance of persons with intellectual disabilities; b) The implementation of other reasonable accommodations and support measures that are necessary, including, but not limited to, adapting teaching strategies (explanation of instructions in plain and clear language), reorganizing activities, using additional learning materials, allowing the nanny or caregiver to enter the pool to, in support of the instructor, give instructions to the child and, where appropriate, assign an additional coach to assist him in his learning and; iii) Issue another official letter ordering the re-enrollment of the child in "ordinary" swimming classes on an equal basis with his peers, as well as the implementation of other complementary reasonable accommodations and additional support measures.