

The Jurisprudential Construction of the Human Right to the Free Development of Personality in Mexico

La construcción jurisprudencial del derecho humano al libre desarrollo de la personalidad en México

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Abstract: This article critically explores the jurisprudential construction of the human right to the free development of personality within the Mexican constitutional framework, emphasizing the interpretive role of the federal judiciary after the 2011 constitutional human rights reform. Grounded in the principle of progressivity and the broader mandate of harmonizing domestic law with international human rights standards, this article examines how the free development of personality has been shaped by judicial reasoning on diverse legal themes. Drawing on qualitative, jurisprudential-analytical methodology, it researches a selection of landmark rulings issued by the Mexican Supreme Court and federal courts. These decisions are grouped into nine main categories in which the right to free development of personality has been recognized or expanded: gender identity, recreational drug use, marriage equality, no-fault divorce, same sex concubinage, reproductive autonomy, children's rights, bodily autonomy, and private autonomy in contractual relationships. Through doctrinal analysis and comparative reference, particularly to the German Constitutional Court's *Elves* and *Cannabis* decisions—this article shows the evolution of constitutional logic in Mexican case law.

Keywords: free development of personality; human dignity; constitutional jurisprudence.

Resumen: Este artículo examina críticamente la construcción jurisprudencial del derecho humano al libre desarrollo de la personalidad en el marco constitucional mexicano, con énfasis en el papel interpretativo del Poder Judicial

Federal tras la reforma constitucional en materia de derechos humanos de 2011. Con base en el principio de progresividad y el mandato más amplio de armonizar el derecho interno con los estándares internacionales de derechos humanos, el estudio examina cómo este derecho ha sido moldeado a través de la argumentación judicial en distintos temas legales. A partir de una metodología cualitativa de análisis jurisprudencial, el trabajo estudia una selección de sentencias relevantes emitidas por la Suprema Corte de Justicia de la Nación y por tribunales federales. Estas decisiones se agrupan en nueve áreas sustantivas en las que el derecho al libre desarrollo de la personalidad ha sido reconocido o ampliado: identidad de género, uso recreativo de drogas, matrimonio igualitario, divorcio sin causa, concubinato entre personas del mismo sexo, autonomía reproductiva, derechos de la niñez, autonomía corporal y autonomía privada en relaciones contractuales. Mediante análisis doctrinal y referencias comparadas —en particular, a las sentencias *Elfes* y *Cannabis* del Tribunal Constitucional Alemán— el artículo muestra la evolución de la lógica constitucional en la jurisprudencia mexicana.

Palabras clave: libre desarrollo de la personalidad; dignidad humana; jurisprudencia constitucional.

Summary: I. *Introduction*. II. *Human Rights and the Principle of Progressivity*. III. *Construction of the Human Right to the Free Development of Personality in Mexican Jurisprudence*. IV. *Critical Reflections of the Right to Free Development of Personality in México*. V. *Conclusions*. VI. *References*.

I. Introduction

This article examines the jurisprudential construction of the human right to the free development of personality, particularly considering its evolution after Mexico carried out its constitutional reform on human rights on June 10, 2011. Based on the principles of universality, interdependency, indivisibility and progressivity, its constitutional mandate is to harmonize domestic law with international human rights standards. This study explores how this right has been progressively shaped by the interpretive practices of the Mexican Supreme Court of Justice of the Nation (hereinafter, SCJN) and federal judiciary.

This article adopts a qualitative, jurisprudential-analytical methodology to examine a selection of landmark judicial decisions that have constructed, interpreted, or expanded this right across nine main areas: gender identity, recreational drug use, same-sex marriage, no-fault divorce, same-sex concubinage, reproductive autonomy, children's rights, bodily autonomy, and contractual freedom.¹

¹ GIOVANNI ALEXANDER SALGADO CIPRIANO, *Cuaderno de Jurisprudencia núm. 16: Libre desarrollo de la personalidad* (Suprema Corte de Justicia de la Nación, Centro de Estudios Constitucionales ed., 2022), https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2023-01/CUADERNO%20NUM%2016%20DH_LIBRE%20DESARROLLO_FINAL%20DIGITAL.pdf.

These rulings include noteworthy *amparos*,² *acciones de inconstitucionalidad*,³ and *contradicciones de tesis*.⁴ The final section provides a doctrinal and hermeneutical critique of the current construction of the right to the free development of personality.

The cases chosen for this article illustrate both the doctrinal architecture and the normative flexibility of the right as they emphasize its transformation into a defining standard for adjudicating claims of personal autonomy.

The article is based on four analytical hypotheses:

- Human rights are the standards for human dignity and equality under both international law and domestic law.
- As public-subjective rights, no one puts into doubt their content, enforceability, or effectiveness. They constitute an expression of the rule of law (they must be obeyed by everyone).
- There is broad consensus concerning the content (rights and obligations) of these human rights.

² *Mexican juicio de amparo is a constitutional remedy for protecting fundamental rights. It allows individuals to challenge different acts of authority, legislative acts and competence conflicts that allegedly violate rights enshrined in the Mexican Constitution or international human rights treaties that Mexico is a part of. Amparo is governed by Articles 103 and 107 of the Mexican Constitution and by the Ley de Amparo. See Articles 103-107, Constitución Política de los Estados Unidos Mexicanos [C.P.E.U.M], as amended, Diario Oficial de la Federación, 5 de febrero de 1917 (Mex.) and Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, Diario Oficial de la Federación, 2 de abril de 2013 (Mex.). The amparo en revisión is an annulment phase within the Mexican amparo proceeding. It allows a higher federal court, typically a Collegiate Circuit Court or, in exceptional cases, the Supreme Court, to review the decision issued by a district court in an indirect amparo. This stage examines questions of constitutional interpretation, legality, and procedural correctness, and plays a central role in shaping binding jurisprudence (jurisprudencia obligatoria) within Mexico's decentralized system of constitutional review. See Articles 107(IX), Constitución Política de los Estados Unidos Mexicanos [C.P.E.U.M], as amended, Diario Oficial de la Federación, 5 de febrero de 1917 (Mex.) and Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, arts. 80–92, Diario Oficial de la Federación, 2 de abril de 2013 (Mex.).*

³ *Acción de inconstitucionalidad is a constitutional review in Mexican law. It allows designated public actors such as the federal Attorney General, legislative minorities, autonomous constitutional bodies, and the human rights commission to challenge the constitutionality of general provisions before the Supreme Court. The acción de inconstitucionalidad aims to annul unconstitutional laws always with general erga omnes effects. See Article 105(I), Constitución Política de los Estados Unidos Mexicanos [C.P.E.U.M], as amended, Diario Oficial de la Federación, 5 de febrero de 1917 (Mex.) and Ley Reglamentaria de las Fracciones I y II del Artículo 105 de la Constitución Política de los Estados Unidos Mexicanos, Diario Oficial de la Federación, 23 de mayo de 1997 (Mex.).*

⁴ *The contradicción de tesis (Contradiction of Precedents) is a constitutional procedure through which the Supreme Court of Justice of the Nation (Suprema Corte de Justicia de la Nación, SCJN) resolves conflicting legal interpretations (tesis) issued by different federal courts. When federal courts of the same or different circuits adopt contradictory positions on the same legal issue, the Supreme Court or the circuit collegiate and regional court plenaries are empowered to unify the conflicting legal interpretations by determining the appropriate legal interpretation, thereby creating a binding precedent (jurisprudencia). See Ley de Amparo [Amparo Law], arts. 197-203 (Mex.), DOF 4 de marzo de 2013 (Mex.).*

- In the Mexican legal system, there is both a concentrated and diffuse constitutional review, and it is the responsibility of federal and local courts to adjudicate matters involving these rights.

Building on domestic jurisprudence and comparative sources, especially the German Constitutional Court’s *Elfes* and *Cannabis* ruling, our analysis positions Mexican jurisprudence within a broader transnational context. While the SCJN has employed the right to the free development of personality to improve individual freedoms, we identify areas of doctrinal overreach, conceptual ambiguity, and insufficient links to other constitutional rights like privacy, equality, and legal certainty.

Rather than offering an exhaustive survey of all relevant case law, this article provides a selective account of doctrinally significant rulings to map the evolution of this right and to assess the methodological and normative coherence of its current jurisprudential structure. In doing so, we seek to contribute to constitutional theory and human rights scholarship by examining how abstract rights are operationalized within an evolving legal system. However, the expanding use of human rights language in Mexico has also led to a proliferation of human rights discourse, which has created considerable conceptual “noise.”⁵ This overabundance of interpretations often complicates a systematic legal analysis.

This article makes use of *Cuaderno de Jurisprudencia núm. 16: Libre desarrollo de la personalidad*, published by the *Centro de Estudios Constitucionales de la Suprema Corte de Justicia de la Nación*⁶ as a valuable reference for identifying and organizing important judicial precedents concerning the right to the free development of personality in Mexico. It also draws on Juan Antonio García Amado’s analysis in *Consumo lúdico de marihuana y libre desarrollo de la personalidad*, particularly his discussion on the right to free development of personality as a “catch all” right or residual right.⁷

II. Human Rights and the Principle of Progressivity

According to contemporary human rights doctrine, two core values support the notion of human rights: human dignity and equality.⁸ The former is commonly

⁵ See ELIZABETH LUNA TRAILL, ALEJANDRA VIGUERAS ÁVILA & GLORIA ESTELA BÁEZ PINAL, *Diccionario básico de lingüística* 1251 (Universidad Nacional Autónoma de México ed., 2005) (defining “ruido” [noise] as a “defective sound that may cause the loss of information. It occurs in the encoding of the message due, among other things, to the following causes: an imperfect knowledge of the code by one of the members of the communicative process; any error in the code itself; or some defect in the transmission of the sound wave through the air”).

⁶ See GIOVANNI ALEXANDER SALGADO CIPRIANO, *supra* note 1.

⁷ Juan Antonio García Amado, *Consumo lúdico de marihuana y libre desarrollo de la personalidad*, ALMACÉN DE DERECHO (May 20, 2019), <https://almacenederecho.org/consumo-ludico-de-marihuana-y-libre-desarrollo-de-la-personalidad>.

⁸ COUNCIL OF EUROPE, *What Are Human Rights?*, in COMPASS: MANUAL FOR HUMAN RIGHTS ED-

understood as “the quality or state of being worthy, honored, or esteemed”⁹ while the latter refers to “the quality or state of being equal.”¹⁰ Within this framework, the normative foundation of human rights is rooted in a shared commitment to dignity and respect, situated within a context of equality.

Undoubtedly, there are various theoretical perspectives concerning the nature of human rights. Among these are the historical, positivist, natural law, and sociological approaches. Each provides a distinct angle through which the evolution and function of human rights may be interpreted. However, for the purposes of this study and in line with our methodological approach, we adhere to the assumption of the legal existence of human rights, as recognized and articulated in positive legal provisions and authoritative international interpretations. Consequently, our analysis engages with human rights as juridically constructed entities, rather than as abstract philosophical or moral claims.

In its Preamble, the Universal Declaration of Human Rights (UDHR) outlines the foundational principles of the modern concept of human rights. It affirms that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”¹¹ It further states:

[...] the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.¹²

These principles: inherent dignity, equal rights and inalienable rights, establish the moral and legal basis for the protection and promotion of human rights at the international level. Additionally, Article 1 of the UDHR proclaims a core normative principle: “All human beings are born free and equal in dignity and rights.”¹³ This provision captures the essence of the human rights framework: the universality and indivisibility of rights grounded in the inherent dignity of every person.

The Inter-American Court of Human Rights has played an important role in the ongoing development of the doctrine of “implied rights”. According to this, the rights explicitly enumerated in the Convention do not comprise a closed catalogue; rather, they are susceptible to judicial expansion through in-

UCATION WITH YOUNG PEOPLE, <https://www.coe.int/en/web/compass/what-are-human-rights->

⁹ Merriam-Webster Dictionary, *Dignity*, <https://www.merriam-webster.com/dictionary/dignity>

¹⁰ Merriam-Webster Dictionary, *Equality*, <https://www.merriam-webster.com/dictionary/equality>

¹¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, (December 10, 1948). Preamble, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹² *Id.*

¹³ G.A. *supra* note 11, Art. 1.

terpretation. The Court has operationalized this approach by deriving implicit rights from the textual, structural, and normative content of existing provisions, claiming that such rights are not discretionary or supplementary, but essential extensions necessary for the full realization of those expressly guaranteed.¹⁴

In relation to the principle of progressivity, Grégor Puppincq offers a critical perspective on the expansive trajectory of human rights. He writes that this “progress of human rights” is destined to increase indefinitely through the logical development of pre-existing rights.¹⁵ He adds that the progress of human rights is commonly seen as the result of the combined advancement of science and morality, translated into law through the mechanisms of universal principles. These principles, such as equality and liberty, are so powerful that no tangible reality seems capable of resisting them. Consequently, the logic of rights progressively extends over the full range of human experience. Human rights are thus compelled, by their own internal logic, to be updated, to expand, and to eliminate any obstacle to the ideal of the free human being. Although this mechanism yields rational decisions, it may lack prudence, insofar as such decisions are often conceived at the level of abstract principles. As a result, the public may perceive these developments as excessive or ideological—particularly when the obstacles being dismantled are foundational structures of society.¹⁶

In Puppincq’s critique, the ideas of “increase indefinitely” or “rights progressively extend” point at a central tension in the doctrine of progressive realization: while grounded in rational legal development and internal doctrinal coherence, the expansion of human rights may provoke public resistance when it confronts deeply entrenched cultural or institutional social traditions. This tension between legal rationality and social acceptance reveals the need for a more balanced approach, one that upholds the dynamic potential of human rights without exceeding the prudential limits of legal interpretation, and its transformation into ideology.

The arguments show that to proceed with conceptual precision, it is important to define the principle of progressivity, particularly in its application in the field of human rights. Within this context, progressivity refers to States’ obligation to advance the fulfillment of rights gradually and continuously, in accordance with their available resources and in response to evolving social, economic, and cultural conditions. The term “progressivity” derives from the adjective “progressive,” defined as “advancing or increasing gradually,”¹⁷ and implies a normative commitment to non-regression and constant improvement in the recognition, protection, and realization of fundamental rights.

¹⁴ Gonzalo Candia-Falcón, *El Estado de Derecho y la Corte Interamericana de Derechos Humanos*, 24 *DÍKAION* 225, 244 (2015). <https://doi.org/10.5294/DIKA.2015.24.2.2>

¹⁵ Grégor Puppincq, *ECHR Human Rights and Progressivism*, EUR. CTR. FOR L. & JUST. (Apr. 28, 2023). <https://eclj.org/philosophy/echr/droits-de-lhomme-et-progressisme>

¹⁶ *Id.*

¹⁷ Real Academia Española, “Progresivo”. <https://dle.rae.es/progresivo>

In the same way, one of the definitions given by the Merriam-Webster Dictionary is that progressivity is characterized by continuous improvement or advancement.¹⁸

The Pan-Hispanic Dictionary of Legal Spanish (*Diccionario Panhispánico del Español Jurídico*) identifies three primary meanings of the *principio de progresividad* (principle of progressivity):

- 1) The principle that should guide the tax system, entailing more-than-proportional taxation of taxable and assessable bases of any basic tax in the tax system, such that, taken together, the tax structure produces a progressive outcome.
- 2) In the field of human rights, the principle according to which no regression in the level of guarantees may be afforded, except where such regression is duly justified.
- 3) The principle by which State parties commit to adopting measures, both domestically and through international cooperation, particularly of an economic and technical nature, to gradually ensure the full enjoyment of rights derived from economic, social, educational, scientific, and cultural rights.¹⁹

For the purposes of this article, the second and third meanings are directly relevant as they relate to the logic of public-subjective rights and align with international human rights law, particularly as reflected in Article 26 of the American Convention on Human Rights and Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

From a doctrinal and jurisprudential perspective, in *Jurisprudencia* 1a./J. 85/2017 (10a.), concerning the scope of the principle of progressivity in human rights, the First Chamber of the SCJN offers up a detailed constitutional interpretation of the principle of progressivity.²⁰

This binding court precedent contains four key dimensions of the principle as it applies within the Mexican constitutional order:

- 1) The principle of progressivity is enshrined in Article 1 of the Mexican Constitution and reiterated in various international human rights treaties ratified by Mexico.²¹

¹⁸ Merriam-Webster Dictionary, “progressive”. <https://www.merriam-webster.com/dictionary/progressive>

¹⁹ Real Academia Española & Consejo General del Poder Judicial, “Principio de progresividad”. <https://dej.rae.es/lema/principio-de-progresividad>

²⁰ PRINCIPIO DE PROGRESIVIDAD EN MATERIA DE DERECHOS HUMANOS. CONTENIDO Y ALCANCES DEL MANDATO PREVISTO EN EL ARTÍCULO 10. DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, Suprema Corte de Justicia de la Nación (Primera Sala) [S.C.J.N.] [Supreme Court], Gaceta del Semanario Judicial de la Federación, Décima Época, tomo IV, Oct. 2017, *Jurisprudencia* 1a./J. 85/2017, at 1396 (Mex.). <https://sjf2.scjn.gob.mx/detalle/tesis/2015305>

²¹ American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 (entered into

- 2) It orders that the scope and level of protection of human rights be expanded to the greatest extent possible, considering both legal frameworks and factual circumstances.
- 3) The principle imposes both positive and negative obligations on all public authorities (whether legislative, administrative, or judicial). Positive obligations require lawmakers (whether acting formally or materially) to adopt legal provisions that increase rights protections and require adjudicators and administrators to interpret and apply those rules in ways that enhance such protections. Negative obligations prohibit lawmakers from adopting measures that reduce, restrict, or eliminate previously established rights protections, and similarly prohibit adjudicators from adopting regressive interpretations that undermine existing standards.
- 4) Accordingly, the level of protection recognized at any given time must be treated as a non-regressible minimum, imposing an immediate obligation on the State to respect that baseline, while simultaneously demanding that rights be progressively expanded over time.

This jurisprudential construction points out that progressivity is not merely an aspirational principle, but a binding constitutional and international mandate. It imposes concrete legal obligations on all branches and all levels of government to respect, protect, and promote human rights, ensuring the active development of rights while considering evolving standards of dignity, equality, and justice alongside the prevention of regression.

Thus, the principle of progressivity of human rights can be expressed as follows:

Lexicographic	Jurisprudential
In terms of human rights, no regression in the level of guarantees is permitted, except when duly justified.	It is prohibited to issue legislative acts that limit, restrict, eliminate, or ignore the scope and protection already recognized for human rights.

force July 18, 1978) (published in *Diario Oficial de la Federación* [DOF], May 7, 1981); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), Nov. 17, 1988, O.A.S.T.S. No. 69 (entered into force Nov. 16, 1999) (published in DOF, Sept. 1, 1998); Protocol to the American Convention on Human Rights to Abolish the Death Penalty, June 8, 1990, 29 I.L.M. 1447 (entered into force Aug. 28, 1991) (published in DOF, Sept. 1, 1998); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (published in DOF, Jan. 25, 1991); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (published in DOF, May 20, 1991); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) (published in DOF, May 12, 1981); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

Human rights standards must not be interpreted regressively or recessively.	Judicial and administrative authorities are prohibited from adopting regressive interpretations, that is, interpretations that diminish or negate previously established levels of protection.
States are committed to adopting measures to progressively achieve the full effectiveness of rights derived from economic, social, educational, scientific and cultural norms.	Legislators have the obligation to expand the legal recognition and protection of human rights; implementers (judges, administrators) have the duty to interpret legal provisions in ways that enhance and broaden the scope of such rights.

It can be clearly stated that, for both legislators and law enforcers, the principle of progressivity in human rights entails the following duties and behaviors: *a)* to increase the scope of protection afforded to human rights; *b)* to prevent any regression in the guarantees, particularly those related to the procedural mechanisms for enforcing such rights; *c)* to refrain from issuing or applying legal provisions that limit, restrict, or eliminate recognized human rights and their corresponding protections; *d)* to actively promote the full realization and implementation of human rights; *e)* to interpret legal provisions in a manner that broadens the scope and application of human rights; and *f)* to prohibit interpretations that result in a regression or weakening of established human rights standards.

III. Construction of the Human Right to the Free Development of Personality in Mexican Jurisprudence

As previously established, the principle of progressivity serves as a normative benchmark for incorporating new human rights into the framework of Western constitutionalism. In the Mexican context, this principle underlies several rulings in which federal judicial bodies have contributed to the doctrinal construction of the human right to the free development of personality. This section analyzes a selection of such decisions, informed, in part, by the work of Flores Mendoza and Márquez Gómez, who have proposed a regulatory framework for the legal use of cannabis in Mexico.²²

²² See IMER BENJAMÍN FLORES MENDOZA & DANIEL MÁRQUEZ GÓMEZ, *TERCERA LLAMADA, TERCERA... HACIA UN MODELO DE REGULACIÓN DE LOS DIVERSOS USOS DEL CANNABIS EN MÉXICO* (Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, 2020).

Collí Ek and Pérez Inclán have likewise examined the emergence of this right in Mexican Supreme Court jurisprudence, identifying four areas of growth: sexual and gender identity, civil status, recreational activities, and external appearance, following the 2011 constitutional human-rights reform. Their article offers a descriptive summary of how the Court has incorporated the notion of personal autonomy into these different fields of litigation.²³

The federal judicial decisions discussed below include these same substantive domains and are not only thematically significant but also reveal a shared normative architecture grounded in Mexico's constitutional and international commitments. According to Salgado Cipriano, the contours of the right to the free development of personality have historically been shaped through judicial interpretation, beginning with the *Elfes* case before the German Constitutional Court. As he notes:

Since its inception in the *Elfes* case before the German Constitutional Court, the outline of the right to the free development of personality has been defined primarily through case law. In Mexico, this fundamental right stems from the right to human dignity, as established in Article 1 of the Constitution and in international human rights treaties.²⁴

This suggests that the construction of the right to the free development of personality in Mexico rests on two principal normative pillars: *a*) the right to human dignity, and *b*) the international human rights treaties to which Mexico is bound. These foundations reflect both domestic and transnational commitments, reinforcing the judiciary's mandate to interpret rights expansively and progressively.

1. *The Elfes Case and Article 2(1) of the German Basic Law*

The central issue in the *Elfes* case²⁵ concerns the interpretation of Article 2(1) of the Basic Law for the Federal Republic of Germany, which provides: "Every person shall have the right to free development of their personality insofar as they do not violate the rights of others or offend against the constitutional order or the moral law."²⁶

²³ Víctor Manuel Collí Ek & Freddy Martín Pérez Inclán, *El derecho al libre desarrollo de la personalidad en la doctrina jurisprudencial de la Corte mexicana*, 45 CUEST. CONST. 451, 467 (2021). <https://doi.org/10.22201/ijj.24484881e.2021.45.16671>

²⁴ GIOVANNI ALEXANDER SALGADO CIPRIANO, *supra* note 1.

²⁵ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 1 BvR 253/56, paras. 1-36, (Jan. 16, 1957), https://www.bverfg.de/e/rs19570116_1bvr025356en.html (holding that the general freedom of action under Article 2(1) of the Basic Law protects the free development of personality, subject to limitations by the rights of others, constitutional order, and moral law).

²⁶ *Grundgesetz für die Bundesrepublik Deutschland Basic Law*, Art. 2 (1), translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html (Ger.). The German version states: *Art 2 (1)*

In 1953, Wilhelm Elfes, a supporter of the idea of a “United Germany,” applied to renew his passport at the *Mönchengladbach* passport office. His application was denied on June 6, 1953, pursuant to § 7(1)(a) of the *Passport Act* [*Gesetz über das Paßwesen*] of March 4, 1952. No justification was provided for the denial.²⁷

Elfes challenged the denial through a series of administrative proceedings, all of which failed: first before the Düsseldorf Land Administrative Court [*Landesverwaltungsgericht*], then on appeal to the Münster Higher Administrative Court [*Oberverwaltungsgericht*], and finally before the Federal Administrative Court [*Bundesverwaltungsgericht*].²⁸

The case was ultimately brought before the Federal Constitutional Court [*Bundesverfassungsgericht*], First Senate, composed of Justices Wintrich (President), Scheffler, Heiland, Heck, Scholtissek, Stein, Wessel, Ritterspach, and Lehmann, following a hearing held on October 30, 1956. In the Reasons section of its decision issued on January 16, 1957, the Court gave several key doctrinal arguments concerning Article 2(1) of the Basic Law.

- a) The Court first rejected a narrow reading of Article 2(1) that would limit its protection to the core of one’s personality as moral-intellectual beings. It reasoned that if the right only covered that essential core of one’s personality, it would be illogical to subject it to limitations based on the rights of others, moral law, or constitutional order. On the contrary, it is precisely because Article 2(1) allows for such limitations that the provision must protect the general freedom of action in a broader sense.²⁹ The Court further emphasized that, beyond this general clause, the Basic Law also contains specific fundamental rights tailored to protect individual freedom in domains that have historically been vulnerable to public interference.³⁰
- b) Building on that premise, the Court held that the phrase “constitutional order” [*verfassungsmäßige Ordnung*], which limits the scope of the right under Article 2(1), must be understood as referring to the general legal order, which must conform not only to the formal requirements of valid legislation, but also to the substantive principles of the Constitution.³¹ The Court aligned its interpretation with the Münster Higher Administrative Court,

Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletzt und nicht gegen die verfassungsmäßige Ordnung oder das Sittengesetz verstößt.

²⁷ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 1 BvR 253/56, 2, Jan. 16, 1957, translated in *Judgment of the First Senate of 16 January 1957*, at 2, https://www.bverfg.de/e/rs19570116_1bvr025356en.html.

²⁸ *Id.*

²⁹ *Id.* at 14 (holding that Article 2(1) protects the general freedom of action, not merely a narrow core of personality).

³⁰ *Id.* at 16 (noting that other provisions of the Basic Law protect specific vulnerable areas of freedom, such as religion, expression, and assembly).

³¹ *Id.* at 17 (interpreting “constitutional order” to require both formal and substantive constitutional consistency).

which had defined *constitutional order* as a legal regime “in accordance with the Constitution and in keeping with its limits.” Consequently, the Court concluded that an individual’s general freedom of action may be legitimately restricted by any legal provision that is both formally enacted and substantively consistent with constitutional standards.³²

- c) The Court then addressed scholarly concerns that such a reading might render the right under Article 2(1) meaningless by allowing another statute to override it. The Court rejected this view, stressing that mere formal legality is insufficient: a statute must also comply with the fundamental values of the Basic Law.³³ These include human dignity, the rule of law, and the social state principle, all of which are embedded in the Basic Law’s value system.³⁴ Most critically, the Court affirmed that human dignity, as enshrined in Article 1(1), is the supreme constitutional value. Any law that infringes on human dignity, or that restricts intellectual, political, or economic freedom to the extent that the core of those rights is compromised, violates Articles 1(3), 2(1), and 19(2) of the Basic Law. The Court thus recognized that the Constitution guarantees a sphere of inviolable personal autonomy, beyond the reach of public authority. Laws that intrude upon this domain can never form part of the *constitutional order* and must be declared void.³⁵

Towards the end of the decision, the Court addressed the behavior of the passport authority. While the constitutional complaint was dismissed, the Court made it clear in its concluding remarks that this outcome did not amount to endorsing the administrative procedure. The Court underlined that the rule-of-law principle [*Rechtsstaatsprinzip*] obliges State authorities to provide reasons for any interference with individual rights that might arise.³⁶ Failure to do so would deprive citizens of the opportunity to defend themselves effectively. The Court refrained from annulling the administrative decision solely because the grounds for the denial were subsequently disclosed during court proceedings, and the complainant could contest them. Ultimately, the decision was found to be justified.³⁷

The *Elfes* decision remains an important ruling in the constitutional jurisprudence of the Federal Republic of Germany, as it recognizes Article 2(1) as

³² *Id.* (citing the Münster Higher Administrative Court’s definition of the constitutional order as “in accordance with the Constitution and in keeping with its limits”).

³³ *Id.* at 28 (responding to critiques that Article 2(1) could be nullified by legislation).

³⁴ *Id.* (discussing the role of unwritten constitutional principles such as the rule of law and social state).

³⁵ *Id.* (holding that laws infringing on the core rights of personal freedom and dignity must be invalidated).

³⁶ *Id.* at 36 (noting that individuals must be informed of the reasons for State interference to ensure their right to legal recourse).

³⁷ *Id.* (upholding the administrative action only because the reasons were later disclosed and subjected to judicial review).

a guarantor of general freedom of action. Grounded in human dignity and bounded only by the constitutional order, the rights of others, and moral law, the Federal Constitutional Court laid the foundation for a jurisprudential construction of the right to the free development of personality as a normative framework applicable to various spheres of individual autonomy. An important point is that in the German case, the right to free development of personality has an explicit constitutional basis, which is important because its Federal Constitutional Court only interpreted the constitution while in the Mexican case, tribunals had to create a “new right”.

Germany’s interpretive model has resonated beyond Germany, even influencing Mexican constitutional interpretation where the principle of progressivity and the right to dignity similarly underpin the recognition and expansion of human rights. Below we examine how Mexican federal courts have developed that right through jurisdictional decisions.

2. Mexican Constitutional Jurisprudence on the Free Development of Personality

A. Amparo Directo 6/2008: Gender Identity and the Free Development of Personality

In *Amparo Directo 6/2008*, decided on January 6, 2009, and linked to the *Facultad de atracción*] 3/2008-PS,³⁸ the Mexico’s SCJN addressed a matter concerning the rectification of a birth certificate. The case involved an individual assigned male at birth and who, over time, developed feminine physical characteristics, medically diagnosed as *female pseudohermaphroditism*. The *amparo* was adjudicated by the SCJN plenary, which framed the issue in terms of sex reassignment and the right to gender identity.

In its reasoning, the Court identified several fundamental rights at stake, including those of human dignity, equality and non-discrimination, the right to privacy, the right to private life and to one’s own image, the free development of personality (subject of our analysis), and the right to health.³⁹

This *amparo* ruling cites key international human rights instruments, including the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The Court emphasizes several foundational principles regarding the right to the free development of personality:

³⁸ Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo 6/2008*, relacionado con la Facultad de Atracción 3/2008-PS, Pleno, Jan. 6, 2009 (Mex.), <https://desc.scjn.gob.mx/sites/default/files/2021-09/MÉX10-Sentencia.pdf>. In Mexican constitutional law, the *facultad de atracción* refers to the Supreme Court’s (SCJN) discretionary authority to assume jurisdiction over a case of interest, even if it would not ordinarily be heard by this Court (like the certiorari). In this context, *Facultad de atracción 3/2008-PS*” is a technical procedural reference.

³⁹ See *Id.* at 75.

- 1) The *psyche* is identified as the locus where the free development of legal personality resides, as it reflects the personal decisions through which an individual exercises autonomy and dignity.⁴⁰
- 2) Every individual, regardless of their identity, possesses the right to freely and autonomously choose their life plan, including the means by which they pursue the goals and objectives they deem personally significant. The free development of personality is therefore conceptualized as the realization of that life plan, understood as an expression of personal autonomy.⁴¹
- 3) This right entails State recognition of each person's natural capacity to be as they choose to be, free from coercion, unjustified restrictions, or interference by others. It affirms that each human being has the sovereign authority to determine the meaning and direction of their existence, according to their own values, ideas, expectations, and preferences.⁴²
- 4) The right to the free development of personality encompasses, among other aspects, the freedom to marry or not, to have children or not, including the number and timing, to determine personal appearance, to choose a profession or occupation, and, importantly, to exercise free sexual choice. These factors constitute essential aspects of how a person chooses to project themselves and to live and thus must be subject only to individual and autonomous decision.⁴³
- 5) Consequently, the ruling affirms that the fundamental right to the free development of personality necessarily includes the rights to sexual identity and gender identity, since it is precisely through these that the individual defines and expresses themselves, both personally and socially.⁴⁴

Accordingly, *Amparo Directo* 6/2008, the human right to the free development of personality is based not only on the principle of human dignity, but also on the minimum sphere of individual liberty necessary to pursue personal goals. It upholds the importance constitutional, and human rights have in respecting individual identity as part of the broader framework of legal personhood and autonomy. This case served as a first step in Mexican constitutional jurisprudence, linking gender identity to a broader framework of personal autonomy and human rights protections.

⁴⁰ *Id.* at 54.

⁴¹ *Id.* at 85.

⁴² *Id.* at 86.

⁴³ *Id.* at 86.

⁴⁴ *Id.* at 97.

B. Amparos en Revisión 237/2014, 1115/2017, 623/2017, 547/2018, and 57/2019: Constitutional Criteria on the Recreational Use of Marijuana and the Right to Free Development of Personality

Mexican Supreme Court of Justice has developed a line of constitutional jurisprudence addressing the recreational use of marijuana and the right to free development of personality. This body of case law is built primarily on *amparos en revisión* 237/2014, 1115/2017, 623/2017 and 547/2018,⁴⁵ which challenged several provisions in Mexico's General Health Law that had been characterized as a "system of administrative prohibitions." In contrast, *Amparo en Revisión* 57/2019⁴⁶ dealt with a legislative omission. Under this regulatory framework, the administrative system acted as a legal barrier to engaging in activities relevant to personal marijuana consumption, such as planting, cultivation, harvesting, preparation, conditioning, possession, and transportation.⁴⁷

For purposes of analysis, special attention will be given to *Amparo en Revisión* 1115/2017, in which the petitioner had previously requested authorization from the Federal Commission for Protection Against Sanitary Risks (COFEPRIS) to perform various activities associated with habitual personal consumption of *Cannabis sativa* (including its seeds, resin, and psychoactive component THC), exclusively for recreational purposes. Such actions included planting, cultivating, harvesting, preparing, possessing, transporting, and consuming cannabis for personal use, while explicitly excluding any commercial activity. The request was denied based on Articles 235, 237, 245, 247, and 248 of the General Health Law (LGS).

The petitioner alleged that COFEPRIS's refusal to authorize the request constituted unjustified constraints on several fundamental rights including: the right to personal identity, the right to self-image, the right to the free development of personality, the right to personal autonomy and liberty. All these rights

⁴⁵ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 237/2014, Primera Sala, Nov. 4, 2015 (Mex.), <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-01/AR%20237-2014%20v.%20p.%C3%BAblica%20PDF.pdf>; *Amparo en Revisión* 1115/2017, Primera Sala, Mar. 14, 2018 (Mex.), https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-03/AR-1115-17-180316.pdf; *Amparo en Revisión* 623/2017, Jun. 13, 2018 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/1/2017/2/2_218619_4160_firmado.pdf; *Amparo en Revisión* 547/2018, Oct. 31, 2018 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/1/2018/2/2_238462_4213_firmado.pdf

⁴⁶ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 57/2019, Primera Sala, Aug. 14, 2019 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/2/2019/2/2_249483_4263_firmado.pdf

⁴⁷ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 1115/2017, Primera Sala, Mar. 14, 2018 (Mex.), (resolving the constitutionality of prohibitions on the personal use of cannabis under the right to free development of personality, *I.- Marco regulatorio sobre el control de estupefácientes y psicotrópicos en la Ley General de Salud*) https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-03/AR-1115-17-180316.pdf

were invoked in connection with the principle of human dignity and the right to health.

The First Chamber of the SCJN granted the *amparo* and ordered COFE-PRIS to authorize the requested acts, declaring that the provisions of the LGS were unconstitutional insofar as they categorically prohibited personal, recreational use of cannabis use. It relied on both domestic and comparative constitutional jurisprudence, including the abovementioned *Amparo Directo* 6/2008, in which the SCJN recognized the right to the free development of personality as deriving from the principle of human dignity. In his reasoning, the reporting minister also drew on the German Federal Constitutional Court's *Elfes* decision, which established that certain "life spaces" not explicitly covered by specific fundamental rights nonetheless fall under the broader umbrella of personal autonomy.

On the doctrinal side, theorists such as Aharon Barak,⁴⁸ Carlos Bernal Pulido,⁴⁹ Carlos Santiago Nino,⁵⁰ Ernesto Garzón Valdés,⁵¹ Robert Alexy,⁵² Luis María Díez-Picazo,⁵³ and Eduard J. Eberle⁵⁴ were cited.

The court's main legal reasoning was as follows:

- 1) The Mexican Constitution grants broad protection to people's autonomy, by guaranteeing the enjoyment of certain goods that are indispensable for the choice and fulfillment of the life plans that individuals propose.
- 2) Fundamental rights serve the purpose of "reinforcing" these goods against State measures or third-party actions that may affect personal autonomy. Thus, the rights included in this protected sphere are linked to the satisfaction of those basic goods that are needed to fulfill any life plan.
- 3) The most generic good required to guarantee people's autonomy is precisely the freedom to carry out any act that does not harm third parties.
- 4) Fundamental rights, in this view, operate as safeguards for the basic goods essential to autonomy, offering protection against State interference or third-party constraints.

⁴⁸ AHARON BARAK, PROPORTIONALITY. CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS 19 (Doron Kalir trans., Cambridge U. Press, 2012).

⁴⁹ CENTRO DE ESTUDIOS POLÍTICOS Y CONSTITUCIONALES-CEPC, EL PRINCIPIO DE PROPORCIONALIDAD Y LOS DERECHOS FUNDAMENTALES 45 (Centro de Estudios Políticos y Constitucionales-CEPC, 2007).

⁵⁰ *Ética y Derechos Humanos. Un ensayo de fundamentación* 223 (Astrea, 1989).

⁵¹ ERNESTO GARZÓN VALDÉS, *Algo más acerca del "coto vedado"*, 6 DOXA. CUADERNOS DE FILOSOFÍA DEL DERECHO 209, 2013 (1989). <https://doi.org/10.14198/DOXA1989.6.12>

⁵² CENTRO DE ESTUDIOS POLÍTICOS Y CONSTITUCIONALES-CEPC, TEORÍA DE LOS DERECHOS FUNDAMENTALES 197-201 (Carlos Bernal Pulido trans., Centro de Estudios Políticos y Constitucionales-CEPC, 2007).

⁵³ LUIS MARÍA DíEZ-PICAZO, SISTEMA DE DERECHOS FUNDAMENTALES 70 (Thomson Reuters Civitas ed., 2005).

⁵⁴ EDWARD J. H. EBERLE, *Human Dignity, Privacy, and Personality in German and American Constitutional Law*, 4 UTAH L. REV. 979 (1997).

- 5) Among these basic goods, the most general one is the freedom to engage in any behavior that does not harm others, a principle that underpins liberal constitutionalism.
- 6) The Constitution and international human rights instruments recognize a catalogue of “freedom rights”, which not only grant individuals permission to carry out valuable personal acts (such as expressing opinions, moving freely, forming associations, or choosing a profession), but also impose negative obligations on the State and third parties to refrain from unjustified interference.
- 7) The right to the free development of personality represents a categorical rejection of State paternalism, affirming that, if the rights of others are not infringed, each person is the best judge of their own interests. It is, in this sense, a constitutional proclamation of personal sovereignty.
- 8) This right is explicitly grounded in human dignity, as provided for in Article 1 of the Mexican Constitution, and is reinforced by the international human rights treaties to which Mexico is a party.
- 9) The broad, undefined freedom safeguarded that is the right to free development of personality complements more specific freedoms (e.g., freedom of conscience or expression) by protecting a “personal sphere” not covered by these traditional rights. In contemporary contexts, this function becomes especially important considering the emerging threats to individual freedom.
- 10) The right to free development of personality has both external and internal dimensions. Externally, it guarantees the individual generic freedom of action to undertake any act deemed necessary for their self-realization. Internally, it protects a private sphere against external incursions that impair an individual’s ability to make autonomous decisions.

In contrast, in *Amparo en Revisión 57/2019*,⁵⁵ the claim centered on a legislative omission, and not on the recreational use of marijuana. The complainant alleged that the competent authorities’ failure to comply with the Fourth Transitory Article of the Reform Decree—which required standardizing the regulatory framework governing the therapeutic use of THC—constituted a legislative omission that violated multiple rights and principles. This omission infringed upon the rights to legal certainty and the principle of legality.

The complainant argued that the regulatory omission violated his right to health, since this omission prevented him from accessing therapeutic means from cannabis and its derivatives.

From a teleological and systematic interpretation of the Reform Decree, the Court states that the legislative intent was to legalize the medicinal use of cannabis and to establish the legal foundation for research, production, com-

⁵⁵ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión 57/2019*, Primera Sala, Aug. 14, 2019 (Mex.).

mercialization, exportation, and importation of cannabis and its derivatives. It argued that the Decree required the Ministry of Health to align existing norms with the new regulatory framework, ensuring that pre-reform rules would not undermine or contradict the new ones. Moreover, the Ministry of Health failed to comply with its obligation to homogenize the regulations and standards on the therapeutic use of THC, even though the fourth transitory article of the Decree expressly obliges it to do so within a given period.

C. Acción de Inconstitucionalidad 28/2015: Same-Sex Marriage and the Right to Free Development of Personality

In its decision in *Acción de Inconstitucionalidad 28/2015* the Plenary of the SCJN formulated a constitutional interpretation affirming the right of same-sex couples to marry. This right, the Court held, is grounded in the principle of human dignity and, more specifically, in the right to the free development of personality.⁵⁶

The Court emphasized that this right includes the freedom to marry or not, to procreate or not, to determine one's personal appearance, and to exercise one's sexual autonomy.⁵⁷ It clarified that this sphere of self-determination is protected as part of a broader understanding of liberty and is not contingent on explicit textual recognition.

Although the Constitution does not expressly mention a right to marry, the Court found that the decision to do so is an act of personal self-determination and thus protected under the right to the free development of personality.⁵⁸ This interpretation embraces a substantive, rather than merely formal, concept of liberty.

The Court further affirmed that the choice to unite one's life with another, to plan a family, and to decide whether to have children, all form part of the intimate core of autonomy protected by the right to free development of personality.⁵⁹ In doing so, it endorsed earlier rulings like the aforesaid *Amparo Directo 6/2008*, extending constitutional protection to the personal and relational dimensions of human dignity.

This doctrinal framework has been consistently applied in subsequent jurisprudence, including *Amparos en Revisión 183/2017*⁶⁰ and

⁵⁶ Suprema Corte de Justicia de la Nación [SCJN] [Sup. Ct.], *Acción de Inconstitucionalidad 28/2015*, Pleno (Mex.), https://www.cndh.org.mx/sites/default/files/doc/Acciones/Acc_Inc_2015_28_Demanda.pdf (holding that refusing marriage to same-sex couples violates the right to dignity and free development of personality under Article 1 of the Constitution).

⁵⁷ *Id.* 47.

⁵⁸ *Id.* 50.

⁵⁹ *Id.* 52.

⁶⁰ See Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión 183/2017*, Primera Sala, Nov. 7, 2018 (Mex.), <https://www.scjn.gob.mx/sites/default/files/listas/documentos/dos/2018-11/ADR-183-2017-181113.pdf>

1364/2017,⁶¹ and *Acciones de Inconstitucionalidad* 22/2016⁶² and 113/2018.⁶³ It has also informed decisions involving marital property regimes, such as *Amparo en Revisión* 7290/2018.⁶⁴ These decisions collectively underline a constitutional commitment to safeguarding individual autonomy, equality, and dignity in all matters related to personal identity and family life.

D. *Contradiction de Tesis* 73/2014: Divorce and Free Development of Personality

In *Contradicción de Tesis* 73/2014,⁶⁵ the SCJN analyzed the constitutional validity of requiring a specific cause to dissolve marriage without mutual consent. Framing its reasoning within the context of the right to the free development of personality, the Court stressed that this right is rooted in human dignity and that individuals have the autonomy to determine their own life plans, including the choice of marital status.⁶⁶ Drawing on the work of Luis María Díez-Picazo, particularly *Sistema de derechos fundamentales* and Carlos Nino, particularly *Ética y derechos humanos. Un ensayo de fundamentación*, the Court highlighted that: 1) whether as a fundamental right or as an informing principle of the legal order, comparative law has understood that the free development of personality grants each individual the possibility of determining their own life plan, without the State being able to interfere in these decisions, except to safeguard similar rights of other people; 2) the free development of personality constitutes the legal expression of the liberal principle of ‘personal autonomy’; 3) since the free individual choice of life plans is valuable in itself, the State is prohibited from interfering in these choices; and 4) the State must limit itself to designing institutions that enable the individual pursuit of these life plans and the satisfaction

⁶¹ See Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 183/2017, Primera Sala, (Min. Alfredo Gutiérrez Ortiz Mena, speaker), asunto sobre edad mínima para contraer matrimonio, Asunto ID 228903, Nov. 7, 2018 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=228903>

⁶² See Suprema Corte de Justicia de la Nación [SCJN], *Acción de Inconstitucionalidad* 22/2016, Pleno, Nov. 6, 2017 (Mex.), https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AI%2022-2016_0.pdf

⁶³ Suprema Corte de Justicia de la Nación [SCJN], *Acción de Inconstitucionalidad* 113/2018, Primera Sala, sent. Sept. 19, 2018 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/3/2018/19/3_248590_5075_firmado.pdf

⁶⁴ Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo en Revisión* 7290/2018, Primera Sala, res. Jan. 8, 2020 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=246168>

⁶⁵ *Contradicción de Tesis* is a constitutional mechanism in Mexican law that allows the Supreme Court to resolve conflicting legal interpretations issued by different collegiate circuit courts. When such contradictions are identified, the Court issues a binding precedent (*jurisprudencia por contradicción*) that homogenizes the interpretations of the contested legal issue across the federal judiciary.

⁶⁶ Suprema Corte de Justicia de la Nación [SCJN], *Contradicción de Tesis* 73/2014, Primera Sala, res. Feb. 25, 2015 (Mex.), <https://www.sitios.scjn.gob.mx/cec/sites/default/files/page/files/2020-09/CT%2073%202014%20V.%20P%20C3%20BAblica%20Inconstitucionalidad%20Divorcio%20Necesario.pdf>

of the ideals of virtue that each individual chooses, while preventing interference from others in the pursuit of these life plans.⁶⁷

The Court further noted that, under the Mexican constitutional framework, the free development of personality is a fundamental right that derives from the broader right to human dignity. Accordingly, any legislative measure that restricts this right must undergo a proportionality test, which in Mexican constitutional jurisprudence is comprised of three stages: (i) suitability [*idoneidad*], (ii) necessity [*necesidad*], and (iii) proportionality in the strict sense [*proporcionalidad en sentido estricto*].⁶⁸ This test determines whether the restriction is constitutionally justified.

The Court emphasized the dual nature of this fundamental right. Before judicial review, it is presumed to have a *prima facie* scope, meaning it enjoys full constitutional protection. Once the proportionality analysis has been completed, the Court either confirms the full scope of the right or narrows it down if the legislative restriction proves to be justified. If the law fails the proportionality test, the *prima facie* content of the right becomes its definitive content.⁶⁹

The reasoning in *Contradicción de Tesis 73/2014* links divorce directly to the right to the free development of personality, the SCJN affirmed that personal autonomy, not institutional preservation, is the normative essence of marital regulation. The judgment not only elevated individual self-determination as a constitutional standard but also refined the use of the proportionality analysis as a methodological tool to evaluate legislative limits on fundamental rights. In doing so, the Court shifted the focus of family law from paternalistic norms to the adjudication of autonomy-based rights, setting a precedent for future cases involving intimate personal decisions.

The doctrine established in *Contradicción de Tesis 73/2014* can also be seen in subsequent rulings on similar issues, including *Amparos en Revisión 5339/2015*,⁷⁰ *5198/2016*,⁷¹ and *7262/2016*.⁷²

⁶⁷ Suprema Corte de Justicia de la Nación [SCJN], *Contradicción de Tesis 73/2014*, at 26-27, Primera Sala, res. Feb. 25, 2015 (Mex.), <https://www.sitios.scjn.gob.mx/cec/sites/default/files/page/files/2020-09/CT%2073%202014%20V.%20P%C3%BAblica%20Inconstitucionalidad%20Divorcio%20Necesario.pdf> (citing Luis María Díez-Picazo, *Sistema de derechos fundamentales* (2d. ed. 2003), and Carlos S. Nino, *Ética y derechos humanos: un ensayo de fundamentación* (1984)). (Translated by authors).

⁶⁸ *Id.* at 28-29.

⁶⁹ *Id.*

⁷⁰ See Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo en Revisión 5339/2015*, Primera Sala (Min. Alfredo Gutiérrez Ortiz Mena, speaker), sent. Apr. 4, 2016 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/1/2015/10/2_187891_3174_firmado.pdf

⁷¹ See Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo en Revisión 5198/2016*, Primera Sala (Min. Norma Lucía Piña Hernández, speaker), sent. Mar. 29, 2017 (Mex.), https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2017-03/ADR-5198-2016-170323.pdf

⁷² Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo en Revisión 7262/2016*, Primera Sala (Min. Arturo Zaldívar Lelo de Larrea, speaker), sent. Aug. 23, 2017 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=208693>

*E. Amparo en Revisión 1127/2015: Same-Sex
Concubinage and Free Development of Personality*

In *Amparo en Revisión 1127/2015*,⁷³ decided on February 17, 2016, the First Chamber of the SCJN addressed the constitutionality of limiting the legal definition of *concubinato* (concubinage: cohabitation or common-law union; “cohabitation of persons not legally married”)⁷⁴ to relationships between a man and a woman. This case resulted in the issuance of a non-binding court precedent [*tesis aislada*], identified as Tesis 1a. CCXXIII/2016 (10a.).⁷⁵

In the precedent, the Court held that defining concubinage exclusively as a heterosexual relationship is unconstitutional, as it violates the right to the free development of personality and constitutes a form of double discrimination (multiple discrimination or intersectionality). First, it excludes same-sex couples from legal recognition and protection under family law solely based on their sexual orientation. Second, it reinforces a restrictive and exclusionary understanding of personal and family life that undermines the constitutional guarantee of equality and non-discrimination.⁷⁶

The Court’s reasoning builds upon the broader constitutional doctrine that recognizes the legitimacy of diverse family structures and affirms that sexual orientation cannot serve as a valid basis for restricting access to legal institutions such as marriage or concubinage. By declaring the heterosexual limitation of *concubinato* unconstitutional, the Court further aligned family law with the principles of human dignity, personal autonomy, and substantive equality.

*F. Acciones de Inconstitucionalidad 16/2016 and 148/2017:
Reproductive Autonomy and Free Development of Personality*

The SCJN has developed jurisprudence protecting the reproductive rights of women and gestating persons under the constitutional principle of the free development of personality. In *Acción de Inconstitucionalidad 148/2017*,⁷⁷ The *Procuraduría General de la República* (actual *Fiscalía General de la República* or Attorney

⁷³ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión 1127/2015*, Primera Sala (Min. Jorge Mario Pardo Rebollado, speaker), sent. Febrero 17, 2016 (Mex.), https://www2.scjn.gob.mx/juridica/engroses/1/2015/2/2_187600_3149_firmado.pdf

⁷⁴ Merriam-Webster Dictionary, “concubinage”. <https://www.merriam-webster.com/dictionary/concubinage>

⁷⁵ CONCUBINATO. ES INCONSTITUCIONAL QUE PARA SU CONFIGURACIÓN SE EXIJA QUE SEA ENTRE UN HOMBRE Y UNA MUJER, Suprema Corte de Justicia de la Nación [S.C.J.N.] [Supreme Court], Gaceta del Semanario Judicial de la Federación, Tenth Epoch, Primera Sala, Tesis 1a. CCXXIII/2016 (10a.), (Mex.); A *non-binding court precedent* [*tesis aislada*] is a non-binding interpretative criterion issued by one of the Court’s chambers that may contribute to persuasive legal reasoning but does not have *jurisprudential* force unless repeated in multiple consistent decisions.

⁷⁶ *Id.*

⁷⁷ Suprema Corte de Justicia de la Nación [SCJN], *Acción de Inconstitucionalidad 148/2017*,

General's Office) challenged several provisions of the Criminal Code of the State of Coahuila de Zaragoza, particularly Articles 195 and 196, which criminalized abortion at any stage of pregnancy. The challenge argued that these provisions violated constitutional rights, especially the rights to personal autonomy, equality, reproductive freedom, and the free development of personality. The Court argued that reproductive autonomy is a direct expression of personal dignity and self-determination.

The Court stated that, in the specific case of women and the exercise of their dignity in deciding whether to become mothers includes an additional dimension: the freedom to establish their life plan. The indefinite freedom protected by the right to the free development of personality complements other specific freedoms as its function is to safeguard the personal sphere that is not protected by the more traditional and concrete freedoms. Therefore, this right is especially important in the face of the new threats to individual freedom that are surfacing today.⁷⁸

Furthermore, the Court recognized that this right protects both freedom of action and a sphere of privacy that is essential for exercising personal autonomy. It held that autonomy and the free development of personality provide coverage for the freedom of action that allows individuals to carry out any activity that they consider necessary for the development of their personality. Regarding the issue at hand, the pronouncement is that a woman's decision to become a mother or not is protected under the scope of this right, since she is the only one who, due to her intrinsic dignity, can decide the course her life will take, in such a way that the existence of a minimum margin of intimate decision to interrupt or continue her pregnancy must be recognized.⁷⁹

The Plenary of the SCJN concluded that the absolute criminalization of abortion disproportionately impacts the rights of women and gestating persons, violating their dignity and autonomy, and emphasized that criminal law must be used as a last resort [*ultima ratio*].⁸⁰

On the other hand, in *Acción de Inconstitucionalidad* 16/2016,⁸¹ the SCJN extended these principles to the domain of assisted reproduction, including surrogacy agreements. The SCJN reviewed a constitutional challenge [*acción de inconstitucionalidad*] filed by the National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] against Articles 380 Bis (third paragraph) and 380 Bis 3 (fourth to sixth paragraphs) of the Civil Code of the State of Tabasco. These provisions regulated the donation of germ cells and surrogacy agree-

Pleno, sent. Sep. 7, 2021 (Mex.), https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2021-08/AI%20148.2017.pdf

⁷⁸ *Id.* 65 (Translated by authors).

⁷⁹ *Id.* 66 (Translated by authors).

⁸⁰ *Id.* 248-250.

⁸¹ Suprema Corte de Justicia de la Nación [SCJN], *Acción de Inconstitucionalidad* 16/2016, Pleno (Min. Norma Lucía Piña Hernández, speaker), sent. Jun. 7, 2021 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=194229>

ments. The CNDH argued that the lack of a regulatory economic clause in the surrogacy contract, along with the way in which the donation of germ cells was handled, could violate constitutional rights —particularly human dignity, equality, the “best interests of the child”, and the free development of personality—.

The Court defined assisted reproduction techniques as “all treatments or procedures that include the manipulation of oocytes, sperm, or human embryos to bring about a pregnancy.”⁸² It underscored that assisted reproduction techniques are now a reality and must be understood along with all the fundamental rights involved, such as, but not limited to, the right to freedom and self-determination; to the free development of personality; to personal and family privacy; to form a family; to life; to health; to liberty; to personal safety and integrity; to decide the number and interval of children; to equality and non-discrimination; to employment and social security; to education; to information; to modify discriminatory customs against women; and to enjoy scientific progress, among others.⁸³

This framework has also been applied in *Amparo en Revisión* 553/2018,⁸⁴ where the main legal issue was whether same-sex couples have a constitutional right to access assisted reproductive technologies, including surrogacy, and whether the absence of a biological link or specific legal regulation can justify denying the legal recognition of parenthood in such contexts. The Court reaffirmed the centrality of dignity, autonomy, and privacy in matters of reproductive choice and access to assisted reproductive technologies. The Court also emphasized the importance of the will to procreate [*voluntad procreacional*] as a valid basis for establishing filiation in assisted reproductive methods cases.

G. Amparo en Revisión 800/2017: Autonomy and Free Development of Personality in the Case of Children and Adolescents

The SCJN has affirmed that the right to the free development of personality fully extends to children and adolescents. In *Amparo en Revisión* 800/2017,⁸⁵ the expulsion of a minor from a private school after repeated behavioral incidents was challenged by the minor’s guardian, alleging that the school’s decision violated the child’s constitutional rights, particularly the right to education, the free development of personality and the principle of the best interest of the child.

⁸² *Id.* 74.

⁸³ *Id.* 128 (Translated by authors).

⁸⁴ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 553/2018, Primera Sala (Jorge Mario Pardo Rebolledo, speaker), sent. Nov. 21, 2018 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=218174>

⁸⁵ Suprema Corte de Justicia de la Nación [SCJN], *Amparo en Revisión* 800/2017, Primera Sala (Arturo Zaldívar Lelo de Larrea, speaker), sent. May 31, 2017 (Mex.), <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2022-01/AR800-2017.pdf>

The First Chamber of the SCJN explicitly recognized that minors are entitled to this right as a dimension of their human dignity and autonomy.

According to the SCJN, minors do have and should have the right to the free development of their personality, being that, as has been specified, such development of their being and their capacities as a person should not be understood as an isolated element. It is an integral and interdependent component of the right to education, upbringing and instruction that both the State and parents or other caregivers must provide to minors, within their respective competencies, so that children and adolescents can develop their skills and talents to lead a full and satisfactory life in society.⁸⁶

This interpretation situates the free development of personality within a system of interdependent fundamental rights, notably the rights to education and care. The Court emphasized that even in the case of misconduct, the school was still obligated to apply corrective measures in a way that was pedagogically appropriate and in line with the Constitution. The Court criticized the expulsion as a punitive and exclusionary measure, lacking a comprehensive assessment of the child's needs and failing to respect their dignity and developmental rights.

In doing so, the Court sided its reasoning with international human rights standards, particularly those enshrined in the Convention on the Rights of the Child, hence reinforcing the principle that children are rights-holders and not merely passive recipients of adult protection.

H. Amparo en Revisión 4865/2018: Tattoos and the Free Development of Personality

In *Amparo en Revisión 4865/2018*,⁸⁷ the First Chamber of the SCJN analyzed the issue of whether tattoos in the workplace —specifically a swastika— was protected under the rights to equality and non-discrimination, freedom of expression, and the free development of personality. This case involves a labor dispute in which a private company terminated an employee after repeatedly showing a swastika tattoo on his arm at work. The employer argued that the symbol offended his co-workers, particularly the Jewish ones, thus creating a hostile work environment.

The case raised complex questions regarding the boundaries of personal autonomy, symbolic expression, and the potential social implications of controversial imagery. Regarding the free development of personality, the Court emphasized that this right fundamentally implies that individuals have the right to

⁸⁶ *Id.* at 111 (translated by authors).

⁸⁷ Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo en Revisión 4865/2018*, Primera Sala (Norma Lucía Piña Hernández, speaker), Oct. 30, 2019 (Mex.), <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/ADR%204865-2018.pdf>

freely and autonomously choose their life plan and how to reach the goals and objectives that are important to them. According to the principle of the autonomy of will, individuals can structure their personal, *de facto*, and legal relationships freely and however they deem appropriate for their interests.⁸⁸

The Court interpreted the principle of the autonomy of will [*principio de autonomía de la voluntad*] as the foundational element of the right to self-determination, which allows individuals to freely decide how to live their lives in all dimensions—personal, social, and legal—.

The Court stated that the right to the free development of personality entails the right of every person to be as they wish, without unjustified coercion or control by the State or other persons; the right to decide their goals and objectives in accordance with their values, ideas, expectations, tastes, etc.; in short, the right to choose their life plan and how they want to achieve it. Therefore, the freedom to choose their personal appearance, is one aspect that shapes the way they wish to project themselves to others.⁸⁹

The Court concluded that the act of tattooing one's body, particularly as an aspect of personal identity and expression, constitutes a legitimate exercise of both the right to the free development of personality and the right to freedom of expression. As noted in paragraph 80: it is possible to admit that having a tattoo is a form of exercising the rights to the free development of personality and the right to freedom of expression.⁹⁰ There is a clear instrumental connection between them, insofar as the self-determination protected by the former to decide about one's own body and its appearance is complemented by the exercise of the latter in terms of its purpose of expressing individuality.⁹¹

Nonetheless, after applying the proportionality test, the First Chamber of the SCJN established a limitation to the right of free development, concluding that the swastika is a hate symbol with historical and cultural associations⁹² and that hate speech—defined as expressions that incite hostility or violence against specific groups—is excluded from constitutional protection under freedom of expression. Hence, its restriction is justified, particularly in environments where it may offend others or promote discrimination.⁹³ The display of such a symbol is not protected under the rights invoked, especially in a labor context where employers must protect the dignity and equality of all workers. Hate speech, even in a symbolic form (like a tattoo), falls outside the boundaries of constitutional protection.⁹⁴

⁸⁸ *Id.* 62 & 63.

⁸⁹ *Id.* 66.

⁹⁰ *Id.* 80.

⁹¹ *Id.* 84.

⁹² *Id.* 129-130.

⁹³ *Id.* 115-118.

⁹⁴ *Id.* 90-91.

I. *Amparo Directo* 9/2021: Contractual Autonomy, Constitutional Limits and Free Development of Personality

In *Amparo Directo* 9/2021,⁹⁵ the First Chamber of the SCJN addressed the constitutional limits of the autonomy of will [*autonomía de la voluntad*]⁹⁶ in contractual relationships.

A divorced couple had included restrictive clauses in their divorce settlement agreement, granting the wife a usufruct over a property provided she remained unmarried, refrained from receiving male visitors, and lived only with her children. The ex-husband later filed a civil suit to revoke the donation, alleging those conditions were violated. The case ultimately reached the SCJN's First Chamber through an *amparo directo*.

The Court had to determine whether contractual clauses restricting a woman's autonomy (e.g., not remarrying or receiving male visitors) were constitutionally valid. Specifically, it examined whether such conditions, even when agreed upon between private parties, violated human rights including free development of personality, privacy and autonomy and equality and freedom from gender-based discrimination.

The ruling reiterated that even in the realm of civil law, where individuals exercise freedom of contract, such autonomy must remain consistent with the axiological content of the Mexican constitutional order and the human rights framework recognized in both domestic and international law.⁹⁷

In other words, the Court noted that freedom of contract is not absolute. While civil law assumes formal equality between contracting parties, this presumption must give way in the presence of power asymmetries or the vulnerability of certain individuals. In such contexts, the principle of the autonomy of will becomes more susceptible to constitutional limitations.⁹⁸ Thus, the Court clarified that: "It is invalid for individuals, upon entering into a contract or agreement, to stipulate or agree on the absolute restriction or inhibition of the exercise of a human right."⁹⁹

The Court concluded that:

⁹⁵ Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo* 9/2021, Primera Sala (Opinion by Justice Juan Luis González Alcántara Carrancá), judgment of Sept. 29, 2021 (Mex.), <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=283663>

⁹⁶ *Autonomía de la voluntad* (autonomy of will) is a foundational principle in civil law systems, referring to the legal freedom of individuals to structure their private legal relationships. Under modern constitutional standards, this autonomy is increasingly subject to limitations where human rights or conditions of structural inequality are implicated.

⁹⁷ Suprema Corte de Justicia de la Nación [SCJN], *Amparo Directo* 9/2021, Primera Sala, (Opinion by Justice Juan Luis González Alcántara Carrancá), judgment of Sept. 29, 2021 (Mex.), 46.

⁹⁸ *Id.* 51.

⁹⁹ *Id.* 53 (translated by authors).

[...]under the pretext of exercising the autonomy of will, the fundamental right to the free development of personality, privacy, free self-determination, and even the right to lead a life free of violence were violated; and, furthermore, the party was placed at an obvious disadvantage in relation to the other contracting party of the agreement, the interested third party.¹⁰⁰

This decision contributes significantly to the constitutionalization of private law in Mexico, establishing that private agreements may be declared invalid if they result in the unjustified restriction of human rights, especially where one party is subject to structural vulnerability or coercive disadvantage. This ruling aligns civil contractual principles with the broader obligations arising from constitutional rights and the international human rights treaties to which Mexico is party.

J. Doctrinal Synthesis of the Right to Free Development of Personality in Mexico

This part of the analysis presents a systematized overview of the leading jurisprudence issued by the SCJN when interpreting the right to the free development of personality as a fundamental constitutional guarantee in Mexican law. Since its foundational declaration in *Amparo Directo 6/2008*, this right has evolved into a main doctrinal argument used to adjudicate a wide array of personal autonomy claims, including those involving gender identity, marriage equality, reproductive and sexual freedom, recreational drug use, contractual autonomy, children's rights, and divorce. By means of dignity-based reasoning and proportionality analysis, the SCJN has progressively established that this right protects not only freedom from unjustified state interference, but also the residual domain of personal sovereignty that ensures individuals can define and pursue their own life plans. The decisions compiled here illustrate both the doctrinal coherence and contextual adaptability of this right, as well as the Court's evolving effort to reconcile constitutional interpretation with human rights standards and liberal democratic principles.

IV. Critical Reflections of the Right to Free Development of Personality in México

The Mexican SCJN jurisprudential construction of the right to free development of personality represents both a bold affirmation of constitutional progressivity and a complex doctrinal evolution marked by moments of innovation, overreach, and conceptual uncertainty. SCJN jurisprudence reflects a distinct temporal and thematic evolution. One foundational moment is in *Amparo Directo*

¹⁰⁰ *Id.* 55.

6/2008, which marks the Court's first robust engagement with the right in the context of gender identity.

Following the reasoning in Germany's *Elfs* case, the Court entered what may be termed an "expansionist phase" between 2014 and 2016, in which the right to free development of personality was deployed to address broader lifestyle and family-related issues, such as recreational cannabis use as an extension of expressive and bodily autonomy. Similarly, the Court invoked the same principles to support no-fault divorce, holding that State institutions must not obstruct the development of autonomous life plans. This doctrine was extended to marriage equality, and shortly thereafter to concubinage, consolidating a view of personal and sexual autonomy as dimensions of constitutional identity.

These decisions uphold the operation of the principle of progressivity not merely as a non-regression clause, but as a catalyst for doctrinal innovation. The Court's willingness to recognize new rights within the constitutional framework represents jurisprudence that is both dynamic and transformative. However, this rapid expansion also exposes latent and real lure of judicial activism.

From 2017 onward, SCJN jurisprudence gave increased attention to relational and structural dimensions of autonomy, extending the doctrine to children, asserting that minors are rights-holders capable of developing their personalities, though within a framework of coordinated support. This marks a shift from abstract individualism to a model of interdependent autonomy.

The decision on tattoos pushed the boundaries even further by recognizing personal appearance as a dimension of constitutional identity. The Court explicitly framed bodily expression as a protected form of expressive autonomy, while acknowledging the potential for social stigma. These cases illustrate the adaptive capacity of the right, as well as concerns about its scope and internal limits, as in the use of symbols to justify violence.

Indeed, as this article observes, such expansions are exposed to conceptual overextension. Without clearly delimited doctrinal thresholds, the right risks subsuming any and all forms of self-expression or personal choice while weakening its analytical rigor and justiciability and being transformed into a "catch all" or residual right.

At the apex of this doctrinal trajectory is *Amparo Directo 9/2021*, which signals a maturation of the right by incorporating it into the domain of private law. The SCJN held that contractual clauses undermining dignity or reinforcing inequalities of power violate the right to personality development. This move constitutionalizes civil relationships and demonstrates a more sophisticated deployment of the principle of progressivity, putting it not only at the service of expansion but also of critique and correction within entrenched legal structures.

Yet, even at this moment of doctrinal maturity, concerns remain. The elasticity of the right continues to challenge its coherence, particularly where it overlaps with other constitutional guarantees and rights such as privacy, health, and legal certainty. These intersecting domains often provide more precise nor-

mative guidance, and their underutilization represents a missed opportunity to ground doctrine more firmly within existing constitutional frameworks.

While one may sympathize with the notion that adults should be permitted to engage in acts intimately connected to personal autonomy, the judicial construction of the *right to the free development of personality* merits several important considerations:

A) The analytical difference with the *Elfes* decision of the German Federal Constitutional Court, particularly its interpretation of Article 2, paragraph 1 of the German Basic Law. While the German decision was backed by the Constitution, the Mexican decision is just a creative determination issued by Mexican Courts, via interpretation, without any constitutional or legal support.

In addition, compared to other German precedents, the Mexican decision leads to a different result. Mexico's Supreme Court jurisprudence on the recreational use of cannabis disregards the German decision *BVerfGE 90, 145* (often referred to as the *Cannabis case*), that established:

Article 2, paragraph 1 of the Basic Law protects every form of human activity regardless of the importance of the activity for personal development (cf. *BVerfGE 80, 137 [152]*). However, only a core area of private life is absolutely protected and thus exempt from the influence of public authority (cf. *BVerfGE 6, 32 [41]*; *54, 143 [146]*; *80, 137 [153]*). Drug use, in particular intoxication, cannot be considered such due to its diverse social effects and interactions. (...) Restrictions on general freedom of action based on such legal provisions do not violate Article 2 paragraph 1 of the Basic Law (cf. *BVerfGE 34, 369 [378 f.]*; *55, 144 [148]*). Therefore, there is no "right to intoxication" that would be exempt from these restrictions.¹⁰¹

This omission is doctrinally significant. While the Mexican Court framed the recreational use of cannabis as an expression of individual autonomy safe-

¹⁰¹ Bundesverfassungsgericht [BVerfG] [Fed. Const. Ct.], *Cannabis Case*, *BVerfGE 90, 145 (171-72)*, <https://www.servat.unibe.ch/dfr/bv090145.html> (Ger.), establishing: *1. Die Strafvorschriften des Betäubungsmittelgesetzes, die den unerlaubten Umgang mit Cannabisprodukten mit Strafe bedrohen, sind im strafbewehrten Verbot am Maßstab des Art. 2 Abs. 1, in der angedrohten Freiheitsentziehung an Art. 2 Abs. 2 Satz 2 GG zu messen.*

120 Art. 2 Abs. 1 GG schützt jede Form menschlichen Handelns ohne Rücksicht darauf, welches Gewicht der Betätigung für die Persönlichkeitsentfaltung zukommt (vgl. BVerfGE 80, 137 [152]). Absolut geschützt und damit der Einwirkung der öffentlichen Gewalt entzogen ist allerdings nur ein Kernbereich privater Lebensgestaltung (vgl. BVerfGE 6, 32 [41]; 54, 143 [146]; 80, 137 [153]). Dazu kann der Umgang mit Drogen, insbesondere auch das Sichberauschen, aufgrund seiner vielfältigen sozialen Aus- und Wechselwirkungen nicht gerechnet werden. Im übrigen ist die allgemeine Handlungsfreiheit nur in den Schranken des 2. Halbsatzes des Art. 2 Abs. 1 GG gewährleistet und steht damit insbesondere unter dem Vorbehalt der verfassungsmäßigen Ordnung (vgl. BVerfGE 80, 137 [153]). BVerfGE 90, 145 (171) BVerfGE 90, 145 (172) Darunter sind alle Rechtsnormen zu verstehen, die formell und materiell mit der Verfassung in Einklang stehen (BVerfGE 6, 32 ff.; st. Rspr.). Beschränkungen der allgemeinen Handlungsfreiheit aufgrund solcher Rechtsvorschriften verletzen Art. 2 Abs. 1 GG nicht (vgl. BVerfGE 34, 369 [378 f.]; 55, 144 [148]). Ein „Recht auf Rausch“, das diesen Beschränkungen entzogen wäre, gibt es mithin nicht.

guarded by the right to the free development of personality; the German Court arrived at a more restrictive conclusion for the same behavior.

The omission is surprising, considering that in *BVerfGE 90, 145*, the Court held that legal restrictions on cannabis use do not violate Article 2, paragraph 1 of the Basic Law. The Court pointed out that there is no “right to intoxication”, which leads to another question: What kind of right are Mexican judges protecting?

B) Interpretive excess. Jurisprudence is “the course of court decisions as distinguished from legislation and doctrine,”¹⁰² yet jurisprudence must be based on a legal provision. As prescribed by Article 14, last paragraph, of the Federal Constitution, the final judgment in civil trials must be in strict adherence to the law or its legal interpretation, and in its absence, it shall be based on the general principles of law. In the case of the human right to free development of personality, the Mexican Court acted without reference to a legal provision. There is no “text of the law”, nor was there an argument based on general principles of law.

Besides, as Ana I. Marrades Puig¹⁰³ rightly observes, the concept of free development of personality lacks a clear and precise legal definition. Because “personality” itself incorporates extralegal dimensions —psychological, philosophical, and ethical—, this constitutional category tends to become vague and potentially over-inclusive. As Marrades Puig notes, this conceptual elasticity makes it possible for the right to be invoked in virtually any context, creating the risk of judicial overreach and doctrinal vagueness.

A more grounded hermeneutic approach may be found in the jurisprudence of the Colombian Constitutional Court. In ruling C-221/94, which decriminalized the personal use of drugs, the Court provided a solid concept of personal autonomy and bodily sovereignty by stating that “Everyone is free to decide whether or not to recover their health.” In this sense, “If I am the owner of my life, *a fortiori* I am free to take care of my health —or not— since its deterioration leads to the death that I am lawfully entitled to inflict upon myself.”¹⁰⁴

From this perspective, a more coherent foundation for the recognition of the right to consume cannabis for personal, recreational purposes in Mexico might have been derived from the negative (non-interference) dimension of the right to health, as recognized in Article 4 of the Mexican Constitution. When combined with the liberal constitutional principle that *everything which is not expressly*

¹⁰² Merriam-Webster Dictionary, “*jurisprudence*,” <https://www.merriam-webster.com/thesaurus/jurisprudence>. ANA I. MARRADES PUIG, LUCES Y SOMBRAS DEL DERECHO A LA MATERNIDAD: ANÁLISIS JURÍDICO DE SU RECONOCIMIENTO 83 (Univ. de València, 2002).

¹⁰³ *Id.*

¹⁰⁴ Corte Constitucional [C.C.], *Sentencia* C-221/94, at 3 (Colom.), https://norcolombia.ucoz.com/sentencias/C/sentencia_C-221_de_1994.pdf (author’s translation). A similar argument may be found in Daniel Márquez Gómez, *Jurisdictio, derecho al libre desarrollo y el consumo lúdico de tetrahidrocannabinol*, 5 REV. DIG. UNIV. (May 1, 2016), <http://www.revista.unam.mx/vol.17/num5/art33/> (translated by authors).

prohibited by law is permitted, this approach would arguably provide a firmer and more internally consistent doctrinal basis, especially within the Mexican legal system, than the abstract and open-ended category of free development of personality.

C) From the analysis in points A and B, we can observe judicial activism in the construction of the right to free development of personality. Judicial activism can be understood as “the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.”¹⁰⁵

D) Therefore, we can conclude that the right to free development of personality, in Mexican legal jurisprudence is more of a political decision than a legal one.

V. Conclusions

The jurisprudential trajectory of the right to the free development of personality in Mexico reveals a transformative shift in constitutional interpretation after the 2011 human rights reform. The SCJN and federal judiciary have used this right as a doctrinal vehicle for advancing personal autonomy across a diverse group of legal contexts, including gender identity, reproductive rights, familial relationships, and contractual freedom.

This analysis confirms that the right has been constructed as an extension of human dignity and the principle of progressivity. It now functions as a normative foundation for recognizing emerging freedoms and limiting both public and private restrictions that challenge personal self-determination. This expansive interpretation highlights the Mexican judiciary’s alignment with a dynamic and human-rights-centered constitutionalism.

However, this study has also identified significant risks associated with this doctrinal evolution. Among these is the tendency toward conceptual overextension, whereby the right is invoked as a residual category, without any clear definitional boundaries. This vagueness threatens doctrinal coherence and weakens the justiciability of the right. Moreover, the insufficient articulation between the right and related constitutional guarantees like privacy, equality, and legal certainty, raise concerns about internal consistency and normative control.

A further critique concerns the limited engagement with comparative jurisprudence where it might enhance or temper the interpretive extent of the right. For instance, omitting reference to the German *Cannabis* decision in Mexican rulings on recreational drug use represents a missed opportunity for deeper doctrinal grounding. Similarly, the possibility of anchoring certain claims to other

¹⁰⁵ Merriam-Webster Dictionary, “*Judicial activism*,” <https://www.merriam-webster.com/legal/judicial%20activism>

rights such as the negative dimension of the right to health or to fundamental principles, such as the one that states that everything which is not expressly prohibited is permitted, remains underexplored.

Ultimately, this article argues for a more disciplined and theoretically justified approach to the judicial construction of the free development of personality. Themes like analytical omission, interpretive excess, judicial activism, and political decision should be identified. Future jurisprudence should aim to refine the conceptual contours of the right, clarify its limits, and ensure its incorporation into Mexico's broader constitutional framework. Doing so would not only preserve the transformative potential of this right but also enhance its legitimacy and legal sustainability within a system committed to the rule of law and human dignity.

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