

Decriminalization of abortion by the Mexican Supreme Court

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Abstract

In September 2021, the Mexican Supreme Court issued a decision disallowing any federal or local judicial authority to indict someone for the offense of voluntary or consensual abortion. This decision also declared unconstitutional penalties imposed on medical personnel who facilitate or assist such procedures. Furthermore, the Court decided that limiting access to abortion in cases of rape to a specific time frame was disproportionate. Later on, in September 2023, the Supreme Court confirmed that absolute criminalization of abortion was unconstitutional and declared that the rule supporting criminalization in the Federal Penal Code was without effects. Consequently, healthcare providers who work in public federal health institutions cannot be criminalized for guaranteeing the right to abortion. This article reviews the reasons advanced by the Supreme Court to guarantee the right of reproductive self-determination, as well as the effects of both decisions beyond the decriminalization of abortion by Mexican federal and state legislatures. The paper also examines the scope and limitations of these rulings and identifies the remaining challenges regarding voluntary abortion procedures in Mexico.

KEYWORDS

abortion in Mexico, *Acción de Inconstitucionalidad 148/2017*, *Amparo en Revisión 267/2023*, decriminalization of abortion, legal termination of pregnancy, Mexican Supreme Court, reproductive self-determination, sexual and reproductive health

1 | INTRODUCTION

On September 7, 2021, the Mexican Supreme Court declared unconstitutional the criminalization of the following: (1) the voluntary termination of pregnancy (VTP); (2) care provided by specialists during the procedure, or assistance such as the provision of medicines; and (3) the time limitation of 12 weeks to request a VTP in cases of rape. The Court's primary analysis was based on the right to reproductive self-determination. The criminalization of the intention to end pregnancy was seen as unjustifiably contradicting this right.

Based on this rationale, on September 6, 2023, the Supreme Court declared unconstitutional the criminalization of VTPs in the Federal Penal Code. As a result of this ruling, federal public health

institutions, such as the Mexican Social Security Institution (IMSS) for the private sector and the Social Security and Services for State Workers (ISSSTE) for the public sector, among others, no longer have to abide by a prohibitive rule, and may guarantee the reproductive right to freedom of choice over one's own body.

The present article reviews the reasons advanced by the Court in the landmark 2021 ruling "Acción de Inconstitucionalidad 148/2017" (AI 148/2017)¹ and the 2023 ruling "Amparo en Revisión 267/2023" (AR 267/2023).² Furthermore, the article identifies the potential reach of the decisions to measure their scope and limitations. The present article's subsequent section will analyze the Supreme Court's opinion concerning medical personnel. Finally, the authors will present the most significant

challenges they identify in order to guarantee the right to reproductive self-determination by VTP.

2 | THE ACCIÓN DE INCONSTITUCIONALIDAD 148/2017 DECISION AND ITS IMPLICATIONS

The AI 148/2017 case was initiated in 2017 by the former Attorney General of the Federal Government of Mexico, who challenged various provisions of the Criminal Code of the state of Coahuila regarding the criminalization of abortion and the categorization of spousal rape. The Court ruled on four main aspects of VTP as follows: (1) the decriminalization of VTP at all times, in order to comply with the decision-making rights of women and all individuals with gestational capacity (IGC), such as some transgender men;³ (2) the removal of the deprivation of liberty penalty and the temporary suspension of professional practice in cases that involve providing care or assistance for VTP; (3) the removal of sanctions in cases of abortion, without changing its criminal characterization; and (4) the extension of the legal permission to practice VTP in cases of rape beyond the first 12 weeks of pregnancy.

In its approach the Supreme Court applied a robust gender perspective. By gender perspective, the Court refers to a method that must be applied in all judicial proceedings, even if the parties do not require it, to ascertain whether there is any situation of violence or vulnerability based on gender that limits the full and equal administration of justice. The obligation to judge from a gender perspective demands the remedy of potential discriminatory effects that legal regulations and institutional practices might have to the detriment of individuals, particularly women. This is an issue on which the Supreme Court had pronounced itself in a few cases regarding VTP, particularly in such cases as *Amparo en Revisión* 1388/2015⁴ and *Amparo en Revisión* 438/2020.⁵ In the 2021 decision, it was essential to apply a gender-identity perspective and to contemplate individuals with diverse gender identities in contrast to the traditional concept of women¹ (para. 47).

The Court's reasoning relied on several crucial matters, as follows: (1) rights related to reproductive self-determination, including the time frame to exercise such rights in cases of VTP; (2) right to protection; (3) criminalization of VTP at any moment during gestation; (4) assistance in VTP provided by specialized medical personnel; (5) exculpatory reasons to justify or excuse instances of abortion; and (6) the time frame to access VTP in cases of rape.

2.1 | Reproductive self-determination

The Mexican Constitution has granted the right to free and informed self-determination regarding family planning since 1974. The extent of this right has been further clarified and expanded through various rulings by the Supreme Court.⁶ This is because an amendment to Article 4 of the Constitution in 1975 did not modify either the Federal Criminal Code nor the distinct Criminal Codes governing

crimes committed within sub-national (the 32 separate states including Mexico City) jurisdictions.⁷

In 2000, the Court addressed the issue of abortion for the first time. This was regarding a legislative Bill called the "Ley Robles", promoted by Rosario Robles Berlanga, the then Mayor of Mexico City (*Distrito Federal*). The Supreme Court pondered on whether the recently added provision in the Mexico City Criminal Code, which decriminalized abortion in cases where the fetus has genetic or congenital abnormalities that may endanger its survival, was constitutional. During this hearing, the arguments centered around the right to life, and the Supreme Court concluded that the Constitution protects this right from conception⁸ (pp. 90 and 103).

Even when the parties' arguments did not consider the right of women to access health care or abortion, the Court determined that the challenged provision was constitutional because it did not "actually" allow the deprivation of life of the fetus and, regarding parties fulfilling specific requirements, no penalty should be applied⁸ (p. 112). While these reasons were not the most protective of the right of reproductive self-determination, this ruling was crucial because it validated the first steps to legal VTP.

After another case in Mexico City, amendments were introduced into some individual state Criminal Codes and the federal Health Law (*Ley General de Salud*) to decriminalize abortion. The amendments proposed that women could terminate a pregnancy within 12 weeks of commencement of gestation and that the government would be required to provide essential medical care and counseling. These amendments were approved in April 2007 and led to the Court 2008 decisions *Acciones de Inconstitucionalidad* 146/2007 and 147/2007.⁹

In contrast to the previous cases, the Court carried out a comprehensive assessment in its 2008 judgments, incorporating international standards and comparative law. The verdict determined that there is no complete safeguard for the right to life, which is primarily protected once it is shown that the condition of life already exists. Furthermore, the Court concluded that protecting life from conception is not absolute, particularly since there is no consensus on when "life" begins⁹ (p. 173–175).

The Court also ruled that the right in question pertained not just to reproductive freedom, which involves deciding whether to have children, but also to sexual freedom and the choices individuals make about their sexuality. This was determined through the decisive points in the ruling⁹ (p. 187).

A decade later, the Court issued the decision regarding AI 148/2017, in which there is a deeper analysis of the scope of the right of reproductive self-determination and what it means concerning other rights such as the following:

1. *Dignity*, insofar as this is a prerequisite for exercising other rights and, specifically, is a fundamental condition for women and IGCs to have the ability to make decisions about their bodies with complete awareness and independence. This allows women and IGCs to establish their identities without violations or constraints¹ (paras. 63 and 64).

2. *Autonomy, free development of personality, and privacy.* These rights are essential for women and IGCs to define their life projects through individual decisions, preventing a state government from using its punitive power to affect them. The decision to continue or terminate a pregnancy belongs to the most intimate sphere of individuals, and a state has no authorization to assess or condemn their reasons¹ (paras. 67, 72, 84, and 133).
3. *Legal equality.* It is necessary to eliminate all stereotypes that affect women negatively,¹⁰ specifically those which suggest that sexuality can be exercised only around procreation. These discriminatory considerations assign roles threatening a person's dignity and right to choose an autonomous and individual life plan¹ (paras. 93, 94, and 106).
4. *Health (physical and psychological) and reproductive freedom.* In deciding whether to continue or terminate gestation, health conditions play a crucial role. This was extensively discussed in the *Amparo en Revisión 1388/2015* ruling, which emphasized that making such decisions should prioritize individuals' right to the highest attainable standard of health of which they are capable, including their physical, mental, emotional, and social well-being⁴ (para. 96).
5. *State provision of resources.* The Court ruled that the right of reproductive self-determination does not end with government passively allowing individuals by their own means, without state intervention, the freedom to adopt decisions over their health and reproductive freedom; it also means that the state must positively provide the necessary resources to ensure that individuals' decisions can be appropriately carried out. This includes preventing unsafe abortions and ensuring that the proper infrastructure be put in place to provide safe, accessible, acceptable, respectful, high-quality, and affordable medical services¹ (para. 124).
6. *Mexico's context.* The Court also ruled that to achieve the right of reproductive self-determination, it is necessary to consider fundamental issues such as Mexico's social, economic, cultural, and violent context. From this perspective, the conditions of poverty and extreme poverty under which more than 65 million people live in the country (as of 2020) cannot be ignored. The percentage of the population living in poverty increases considerably when it comes to women inhabitants of rural areas. The lack of individuals' access to health care has dramatically increased in recent years, especially in rural areas, rising from 13.7% to 30.5%¹ (paras. 266 and 270). This suggests that exercising the right of reproductive self-determination becomes more complicated when individuals face marginalization and vulnerability, particularly when the state fails to provide necessary support.

For these reasons, the Supreme Court established that fulfillment of the federal and individual states authorities' obligation to ensure access to the right of reproductive and sexual health self-determination implies seven fundamental matters: (1) implementing sexual and reproductive education programs as a cornerstone of public policy on reproductive health care; (2) ensuring access

to information and counseling on family planning and methods of birth control; (3) recognizing women as holders of the right of self-determination regarding whether to continue or terminate their pregnancy; (4) guaranteeing informed decision-making; (5) acknowledging that the state must ensure the protection of self-determination regarding pregnancy; (6) securing free, confidential, safe, non-discriminatory, and expeditious access to VTP in public health institutions; and (7) controlling the right to decision-making on VTP inside a time frame close to the beginning of gestation (generally, 12 weeks)¹ (paras. 156–181).

2.2 | Right to protection

Regarding the time frame to exercise the right of self-determination in cases of VTP when pregnancy results from a consensual sexual relationship, the Court followed its own jurisprudence that public authorities (including through judicial decisions) do not have legitimacy nor capacity to define when human life begins, since this remains a contested matter¹ (para. 185). However, the Supreme Court aligned with the standpoint of most national and international standards that define the protection of personhood to begin, as a rule, at live birth¹ (paras. 187–198).

The state recognizes the importance of protecting gestation, while also respecting the right of women and IGCs to make their own decisions regarding their pregnancy. The Court has determined that the debate between protecting either unborn life during gestation or pregnant persons' right to choose is unnecessary. Instead, a compromise should be reached, as it is only through the decision of women and IGCs to begin gestation that the state can fulfill its obligation to protect human life during gestation, which is considered a valuable constitutional good¹ (paras. 226 and 232).

Considering the previous facts, the Court determined, in accordance with its prior reasoning, such as advanced in the *Acción de Inconstitucionalidad 146/2007* ruling, that the period for VTP must be reasonable and take into account the gradual increase in the social value attributed to gestation. Thereby, a harmonious balance between gestation and the right of self-determination regarding VTP resulted in a reasonable period being set at 12 weeks before state regulation can be legitimate¹ (paras. 233–240).

2.3 | Criminalization of VTP at any moment of pregnancy

The Court analyzed if a total prohibition of VTP is constitutional when a state Criminal Code contains the crime of abortion, punishing whoever caused death to a fetus at any moment of pregnancy¹ (para. 242). It has been established that such protection of unborn life by criminalization was adequate in cases of forced abortion undertaken by a third person contrary to an individual's right of gestational self-determination. In such a case, protection

must be complete and include any moment of pregnancy¹ (paras. 249 and 250).

However, unconstitutionality arises from using such a prohibition of VTP to define the criminal offense of self-induced or consensual abortion. Criminalizing voluntary abortion at any time of pregnancy totally negates the right of reproductive self-determination of women and IGCs and all related rights, such as the right to dignity, autonomy, privacy and intimacy, health, and free development of personality¹ (para. 270). Furthermore, when revisiting legal precedents,⁹ the Court noted that such restrictive regulation goes against the principle of using the government's coercive measures only as a last resort for the protection of critical societal values. By outlawing abortion altogether, criminal law is inappropriately used as a symbolic gesture rather than only as a last resort¹ (para. 282).

For these reasons, the Supreme Court has insisted that the imposition of a punishment for deciding to terminate a pregnancy is ineffective to ensure the correct development of the gestational process and, on the contrary, discriminates against women and IGCs. In this sense, criminalizing this conduct is completely inefficient as it does not prevent women from seeking abortion, but only pushes them to go through unsafe procedures that put their lives at risk (paras. 281 and 282);¹ (p. 183 and 184).⁹

The Court's constructive reasoning on the right of reproductive self-determination is valuable because of its precision, and in clarifying that the guarantee of this right does not contradict the protection of life during gestation. On the contrary, both rights must be guaranteed in their just measure and proportionality (gestation being seen in a gradually progressive perspective) without suppressing the rights of women and IGCs over their bodies.

2.4 | Specialized medical assistance in cases of VTP

In the state of Coahuila, the Criminal Code, like many other local state Codes, had classified facilitating abortion procedures or providing aid to terminate a pregnancy—including providing medicines—as an offense. This offense could result in the deprivation of liberty and the temporary suspension of the right of professional practice of health specialists and birth assistants, such as midwives¹¹ (arts. 196 and 198). In its 2021 decision, the Supreme Court struck down custodial and other penalties for those who induced VTP in its declaration of unconstitutionality, for the reasons explained above.

The Court found that the sanction of temporary suspension of professional practice should prevail in cases of forced abortions, but invalidated such sanctions for medical personnel or specialists who provide aid in VTP. If this punitive sanction were to remain, it would make it impossible to exercise the right to reproductive self-determination in such cases or would lead to its realization under unsafe or hazardous conditions for women's health and integrity¹ (para. 308).

2.5 | Exculpatory excuses or the use of criminal law to perpetuate stereotypes

The ruling in AI 148/2017 indicates that the Court aims to discourage discriminatory practices beyond the specific case of VTP. The decision explicitly states that the goal is to reduce the negative impact generated by criminalizing abortion and the gender stereotypes that criminalization perpetuates. These stereotypes suggest that women must conform to the traditional role of motherhood and condemns those who choose a different life path labelling them as “bad women” or “bad mothers”.

This decision aims to combat these harmful gender stereotypes and stigmas¹ (paras. 298–302). The decision concludes that defining abortion as a crime, even though exceptions might make it excusable or non-punishable (like abortion in cases of rape, improper insemination or implantation, continuation of pregnancy endangering women's lives, and severe or congenital fetal anomalies), infringes upon the right of reproductive self-determination. This is because such definitions perpetuate conformity with specific expected stereotypical behavior of conscientious motherhood even if breach of that stereotype is not always punishable due to exculpatory circumstances¹ (para. 316).

The Supreme Court was clear in determining that defining abortion as a crime, even if it is not punishable, is not as serious as criminalizing VTP. However, it insisted that the act of defining abortion as a crime, even when it is not punishable, may affect the relationship between the person who wished to terminate their pregnancy and those who participate in the procedure (such as medical personnel), as it perpetuates the notion of identifying the woman or IGC as an “outlaw”, and this may have consequences in the way they are treated³ (para. 318). For this reason, it is important that laws do not perpetuate stereotypes that may have an impact on people's conduct and on the collective imagination of the society that they regulate.

2.6 | Termination of pregnancy in cases of rape

Lastly, the Court ruled on the 12-week limitation time frame established in the Coahuila state Criminal Code to terminate pregnancy when it is the result of rape¹¹ (art. 199). The Supreme Court of Mexico considered that such a term lacked justification and rationality. It found that it could be justifiable, however, to differentiate the cases where the pregnancy did not result from unlawful conduct¹ (para. 323) (see the “Limitations of the judgment AI 148/2017” section below).

The Court acknowledged that the legal 12-week time frame did not consider the conditions women endure when they are victims of violent acts that cause pregnancy. This is because, given the traumatic nature of sexual violence and social stigmatization, a short time frame in which to decide how best to react might prevent victims from presenting appropriate complaints and seeking remedies¹

(para. 331 and 5, para. 137). Limiting the timeframe to access VTP would aggravate the effects of the crime, amounting to a form of revictimization, and violate women's rights to reproductive self-determination¹ (para. 332). The Court emphasized that there should be no time limit for VTP in cases of rape. The commission of such a crime requires extra measures to support and assist victims in a timely and safe manner, especially for women who decide to continue with their pregnancy¹ (para. 333).

The Court had previously ruled on a case that discussed the unfairness of setting a specific time frame for terminating pregnancy in rape cases.⁵ However, this decision applied only to the particular case under review (*Amparo en Revisión*). In contrast, the 2021 judgment AI 148/2017 has broader implications as it extends to federal and all state courts in decriminalizing abortions resulting from rape before as well as at any time after 12 weeks of gestation.

2.7 | Effects of the Judgment AI 148/2017

The Court struck down the challenged provisions of the Coahuila state Criminal Code by declaring them unconstitutional. Accordingly, VTP in the state of Coahuila will not be considered punishable under the state's criminal regulations. Furthermore, the Court decreed that invalidity is retroactive, meaning that it would be effective from the moment the challenged regulations were implemented, which was 4 years before the ruling date (November 26, 2017)¹ (para. 374). This consequently forced judicial and related authorities to review possible cases of women, IGCs, or medical personnel facing proceedings or penalties for performing or assisting VTP. By official data, from 2015 until the date of the Court's decision, 25 investigation files for the crime of abortion were registered in Coahuila.¹² On the day of the Court's ruling, the government of Coahuila declared that it would abide by the decision, adding that if there were any women deprived of their liberty due to the commission of the crime of abortion, they would immediately be released from custody.¹³

By Mexican law, the fact that more than eight judicial votes approved the Supreme Court's reasons implies that they are mandatory for all judicial authorities at the federal and local state levels. This is the crucial and groundbreaking aspect of the ruling: Because of this, no local state or federal judge is allowed to proceed against a woman for VTP.

2.8 | Limitations of the judgment AI 148/2017

The implications of the Court's decision are a crucial advancement in respecting and ensuring women's and IGCs' right of reproductive self-determination. However, it is necessary to understand and acknowledge the decision's limitations.

The judgment ensures that no individual seeking VTP will ever again be judged or condemned by local or federal judges in a court of law. However, this does not imply that the criminal offense is invalid under laws of other states. The only criminal regulation struck down

was for the state of Coahuila, which means that in other states, the local prosecutor's office can open an investigation for the commission of the crime of VTP within the first 12 weeks of pregnancy, or later if the pregnancy resulted from rape. Nevertheless, no judicial authority can prosecute anyone for such a crime and must order any related prisoners' immediate liberty. The same applies to investigation files that could be opened against medical personnel who had facilitated or assisted VTP. When any proceedings reach a court, they cannot be linked to any crime for providing these services, except for such tangential offenses as gross negligence causing serious bodily injury, or the unqualified practice of medicine.

3 | THE 2023 JUDGMENT: AMPARO EN REVISIÓN 267/2023

Two years after the 2021 judgment in the case AI 148/2017, the Supreme Court resolved *Amparo en Revisión 267/2023*. An "amparo" is a legal claim brought in federal court to protect rights endangered by unconstitutional laws. Using the same reasoning as in the earlier judgment, the Supreme Court analyzed the articles of the federal Criminal Code that determined that abortion and participation in it was a crime² (para. 28). This Code even granted a lesser prison sentence to women who had abortions but (1) were not of ill repute; (2) had concealed their pregnancy; or (3) the pregnancy came from an "illegitimate union"¹⁴ (art. 332). This made clear the perpetuation of gender stereotypes that affect women who are expected to be good women and good mothers² (paras. 157–163).

Based on the rights and principles of dignity, autonomy, free development of personality, legal equality, health (psychological and physical), and reproductive freedom, the Supreme Court insisted on the right of women and IGCs to decide² (paras. 29–135). In analyzing the specific articles of the federal Criminal Code that regulated abortion, it determined, in the same way as it did in AI 148/2017, that criminalizing abortion was contrary to reproductive freedom and individuals' right to decide² (para. 140).

The Court reiterated that this criminalization did not, in practice, inhibit induced abortion. On the contrary, criminalization led to governments discarding other possible less harmful options, such as provision of counseling and support, to make a free and informed decision, or the adoption of policies on sex education, family planning, and the use of methods of contraception, among others² (para. 149).

This *Amparo en Revisión* determined that the protection of the legitimate interest that defends a collective right obliges the judges to remedy the unconstitutional flaws, even when the effects go beyond the person (or civil association, as in this case) that filed the amparo² (paras. 224–227).

The Court determined that the rights of women and IGCs to reproductive health, equality, and non-discrimination have a constitutional basis and that the protection of human rights must be preferred and maximized. Therefore, in accordance with the principles of choosing what is best for people, effective judicial protection and

constitutional supremacy, the Court ordered the Federal Congress to repeal the articles of the Federal Criminal Code that established abortion and the participation of medical personnel or any other person who assists women or ICGs in these procedures as a crime² (paras. 233, 235, 237, and 238).

It is important to remember that this federal Criminal Code regulates the actions that occur in public hospitals that are governed by federal regulations, such as those belonging to the IMSS and ISSSTE or those exclusive to the Mexican Armed Forces (ISSFAM), among others.

The importance of this decision is that medical personnel who work in these institutions and the women or ICGs who go to them are no longer governed by a criminal code that criminalizes their conduct. The effects of this judgment are similar to those that occurred in Coahuila derived from the AI 148/2017 judgment. That is, neither judicial officers nor prosecutors will be able to associate those persons who attend or assist a VTP with a crime, because the crime no longer exists. This is unlike what happens in the other states that continue to classify VTP as a crime in their local criminal codes.

4 | CURRENT SITUATION OF HEALTHCARE PROVIDERS REGARDING VTP

While the 2021 and 2023 Supreme Court rulings provide fundamental protection for licensed healthcare providers who, according to their medical specialty, perform or assist VTPs, it is essential to distinguish relevant issues regarding their functions. Despite the Court's ruling on the unconstitutionality of characterizing VTP and its performance or assistance by medical personnel as criminal, decriminalization by itself does not guarantee anyone's access to a right of VTP in a public or private hospital or to delivery of VTP by a particular provider of their choice.

Many medical professionals avoid participation in VTPs due to fear of criminal liability. However, even in the case of the Federal Criminal Code, where the Court removed such liability, the ruling does not compel a professional directly to ensure a woman's or ICG's access to VTP. Furthermore, in those states where VTP remains in the Criminal Codes, healthcare practitioners could refuse directly to provide VTPs because of such criminal classification, even when, in practice, no woman or healthcare provider can be indicted or disciplined for commission of the crime.

Multiple precedents of the Court provide the necessary grounds to advance the right to reproductive self-determination regarding VTP. Without claiming to be exhaustive, for instance, the ruling in *Amparo en Revisión 1388/2015* found fault with the authorities for denying a woman access to VTP because they believed it would endanger her health. This Amparo ruling emphasized that the right to health care should be prioritized as an essential aspect of an individual's physical, mental, social, and emotional well-being⁴ (p. 50).

The case of *Acción de Inconstitucionalidad 54/2018* recognized healthcare providers' right of conscientious objection to participation in services they oppose. Consistent with the ethical guidelines

of the International Federation of Gynecology and Obstetrics,¹⁵ the Court ruled that an objection could not be a reason to prevent or delay patients' access to healthcare services, including those related to sexual and reproductive health, which may involve VTP. To maximize access to medical care, it is essential that healthcare facilities offering gynecological services should engage enough medical and nursing staff who are not conscientious objectors. Objectors must inform women seeking such services of their objection, or, if working in facilities offering gynecological care, promptly refer women considering such services to their facility superiors or administrators to ensure patients' access to medical attention. This ruling applies to all private and public facilities that offer gynecological care. Individual objecting healthcare professionals are under an ethical and often a legal duty to refer patients they object to treat on grounds of conscience to appropriate others who will serve patients' timely access to VTP.^{16,17}

Some judicial decisions, such as AI 148/2017, the more recent AI 72/2021,¹⁸ and the *Amparo en Revisión 267/2023* highlight the governmental responsibility to ensure patients' access to medical services that are safe, available, acceptable, affordable, respectful, high-quality, and, in the case of public services, accessible. This includes access to procedures and medication needed for VTP, as well as aftercare and other abortion-related services.

The Court has insisted that no cause justifies blocking access to VTP when pregnancy is a product of rape: the service cannot be denied even when gestation is not considered a risk for the physical well-being of the person, and particularly when it refers to a girl or adolescent;¹⁹ VTP cannot be denied either under the argument that VTP does not constitute an urgent service,²⁰ nor that the right to VTP is claimed outside a time limit for termination of pregnancy caused by rape.^{1,5}

5 | CONCLUSIONS

It can be concluded from the above that the Supreme Court's role in advancing women's rights of reproductive self-determination has been crucial. The victories registered in the judgments of 2021 and 2023 allow Mexico to make significant progress in ending the threat of incarceration and of subtle legal arguments to limit the exercise of these rights.

Despite such progress, many local state legislatures still need to decriminalize VTP by amending language in the state Criminal Code. Currently, only 12 out of 32 local state governments have partially done so. In addition, there are obstacles to fully decriminalizing the right to reproductive self-determination, including the various criminal charges used to stigmatize those who exercise this right, such as of aggravated homicide, which is sometimes charged even in cases of incidental miscarriage.²¹

Decriminalization continues to be resisted by local state authorities whose Criminal Codes characterize VTP as criminal, even when this bears no material effects regarding imprisonment or suspension of professional licenses to practice. Criminalization in state Criminal

Codes will remain one of the main claims in Mexico to limit women's and IGCs' access to health care. In contrast to states' historical conditioning of hazardous or expensive abortions, efforts will continue to focus on ensuring women equitable access to legal, safe, and affordable abortion, according to the WHO's Abortion Care Guideline.²²

CONFLICT OF INTEREST STATEMENT

The authors have no conflicts of interest.

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