

RULING WITH A GENDER PERSPECTIVE: FROM JUDICIAL OBLIGATION TO PROCEDURAL STRATEGY

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Executive Summary:

The Supreme Court of Justice of Mexico (SCJN) has established the obligation to adjudicate cases with a gender perspective across all areas of law whenever potential situations of gender-based inequality or vulnerability arise. This article examines the key judicial precedents, the methodology established by the SCJN, and the procedural mechanisms for invoking a gender perspective, as well as its implications for companies and litigants in developing legal strategies, mitigating risks, and ensuring the proper assessment of evidence.

The SCJN Protocol and the Jurisprudential Criteria Every Litigant Should Know

A gender perspective is often associated with family or criminal matters. However, the doctrine of the Supreme Court of Justice of the Nation (SCJN) has been clear that it is a method of analysis that must be applied in any legal dispute where gender may create an imbalance between the parties, regardless of the subject matter. For companies, executives, and litigants, understanding how this tool works (and what its limitations are) is becoming increasingly important.

WHAT IS THE PROTOCOL FOR RULING WITH A GENDER PERSPECTIVE?

The Protocol is a document issued by the SCJN to assist judges in applying this method of analysis. Its first edition dates back to 2013, and its updated version was presented on November 25, 2020, during the Eighth National Congress on Justice and Gender.

The document is organized into three main sections: a conceptual framework (gender roles, power relations, stereotypes, and gender-based violence); a study of the evolution of the gender perspective in the

universal and inter-American human rights systems and in the SCJN's jurisprudence; and a practical guide that distinguishes three levels of application: before examining the merits of the case, during the examination of the merits, and throughout the drafting of the judgment.

The SCJN has recognized that the obligation to rule with a gender perspective is not expressly provided for in any legal code but rather derives from the interpretation of the rights to equality and non-discrimination recognized in the Constitution and in international treaties.

The Protocol, therefore, serves as a guiding tool; what binds the courts is case law. In fact, within the SCJN's Plenary Session, there are positions that have questioned the inclusion of the Protocol within the framework of constitutional review.

Our highest court has established that every judicial body must apply a method in every legal dispute—even when the parties do not request it—to determine whether a situation of violence or vulnerability exists that, due to gender-related factors, prevents justice from being administered fully and equitably (see case

law with digital registration number 2011430, a <https://sjf2.scjn.gob.mx/detalle/tesis/2011430>).

To this end, the judge must:

- Determine whether there are power dynamics that, due to gender, indicate an imbalance between the parties.
- Examine the facts and evaluate the evidence, setting aside any gender stereotypes or biases.
- Order the necessary evidence to bring to light situations of violence, vulnerability, or discrimination when the existing evidence is insufficient.
- If a situation of disadvantage is detected, question the neutrality of the applicable law and assess the differential impact of the proposed solution.
- Apply human rights standards to all individuals involved, especially children.
- Avoid the use of language based on stereotypes or prejudices and strive for inclusive language.

Furthermore, other judicial precedents have established that this obligation is intrinsic to the judicial process (it does not require a request from a party). In other words, the method requires analyzing whether an imbalance exists, not presuming it.

HOW CAN IT BE INVOKED IN A JUDICIAL PROCEEDING?

Although the obligation is ex officio, in practice it is advisable for the interested party to raise it explicitly and with supporting arguments. Some relevant procedural stages and avenues are as follows:

- Initial pleadings. In the complaint or answer, set forth the facts that demonstrate an asymmetry of power or a context of vulnerability, and request that the matter be resolved in accordance with the Protocol.

Evidence phase. Present evidence aimed at highlighting the context (expert reports in psychology or social work, documentary evidence, witness testimony) and, if this proves

- insufficient, request that the court order the necessary proceedings ex officio, in accordance with the third element of the method.
- Arguments and Appeals. Point out stereotypes or biases in the evaluation of evidence or in the language of the contested decision.
- Amparo. The First Chamber has reiterated that the failure to rule with a gender perspective constitutes a constitutional issue, as it is linked to the human right to equality, which may justify the admissibility of a direct amparo petition under review.

RELEVANCE TO THE CORPORATE SPHERE

For companies, this issue is not unfamiliar. The courts have applied this methodology in labor disputes (cases involving sexual harassment or abuse must be rule with a gender perspective), as well as in civil and family litigation with financial implications.

From a strategic perspective, this means that organizations must anticipate how a dispute might be analyzed under this method: reviewing internal policies, rigorously documenting disciplinary proceedings, and being mindful of the language used in their communications and court filings.

Ruling with a gender perspective is now a well-established obligation in the doctrine of the SCJN, with a clear and verifiable methodology. Understanding its elements, the procedures for invoking it, and its limitations allows the parties to build more robust procedural strategies and anticipate risks. As with any legal tool, its effectiveness will depend on whether it is raised in a timely manner, supported by evidence, and presented with technical precision.