



## Orlando, Susana Beatriz v. Provincia de Buenos Aires et al.

O. 59. XXXVIII

**Country:** Argentina

**Region:** Americas

**Year:** 2005

**Court:** Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

**Health Topics:** Chronic and noncommunicable diseases, Disabilities, Health care and health services, Medicines, Poverty

**Human Rights:** Right to health

### Facts

Susana Orlando, a 55-year-old-woman suffering from multiple sclerosis, brought a claim of amparo against the Federal State and the Province of Buenos Aires for acts and omissions preventing her to obtain the medicine she needed to fight her disease and that she could not afford. In particular, she complained about the fact that her illness was not contemplated within the provincial government's jurisdiction for coverage, and that even though she had received medications from the Federal State they were insufficient. Therefore, she demanded the aforementioned authorities to provide her with the medications, founding her claim in articles 42 and 75 of the National Constitution (right to health and the incorporation of human rights instruments, respectively), national law 23.661 (establishing the national health insurance system), the Ministry of Health Resolution No. 939/2000, laws Nos. 24.901 and 22.431, and the Constitution of the Province of Buenos Aires.

Previously, the Plaintiff requested the judiciary to issue a provisional measure ordering the Respondent to provide the necessary medications. The 2002 judgment was the provisional measure; the present judgment is the ruling on the merits.

### Decision and Reasoning

The Court upheld the Plaintiff's claim. It established that under international human rights treaties signed by Argentina, the Federal State had the obligation to develop positive measures aimed at guaranteeing the rights to life and health, extending that obligation to political subdivisions and other public entities participating in the health system. This obligation included the duty to promote and facilitate the population's access to medicine where needed and based on the circumstances of each case. Therefore, denying the Plaintiff access to medication essential to control her disease, placed her life and health in grave risk.

The Court also considered the facts that the Plaintiff was disabled as a result of the multiple sclerosis, and that there was a legal regime assuring medical services and social security for disabled people lacking economic resources. Therefore, excluding the Plaintiff from receiving medication to fight her disease would constitute a discriminatory act in respect to other people in similar situations but suffering from other diseases.

### Decision Excerpts

3°) That the right to health, especially when it comes to serious issues, is intimately related to the right to life, which is recognized in the National Constitution and international treaties with constitutional hierarchy (article 75, subs. 22 of the National Constitution). In this sense, the Court has emphasized the imperative obligation of the public authority to guarantee that right with positive actions, without prejudice of the obligations that the local jurisdictions, social works, or entities of the so-called prepaid medicine, must assume in its fulfillment.

3°) Que el derecho a la salud, máxime cuando se trata de enfermedades graves, se encuentra íntimamente relacionado con el derecho a la vida, que está reconocido por la Constitución Nacional y por los tratados internacionales que tienen jerarquía constitucional (art. 75, inc. 22, de la Ley Suprema). Así, el Tribunal ha destacado la obligación impostergable que tiene la autoridad pública de garantizar ese derecho con acciones positivas, sin perjuicio de las obligaciones que deban asumir en su cumplimiento las jurisdicciones locales, las obras sociales o las entidades de la llamada medicina prepaga.

4°) That the National State has assumed explicit international obligations directed to promote and facilitate health benefits, and that obligation extends to its political subdivisions and other public entities participating in

the same health system.

4°) Que el Estado Nacional ha asumido compromisos internacionales explícitos orientados a promover y facilitar las prestaciones de salud y dicha obligación se extiende a sus subdivisiones políticas y otras entidades públicas que participan de un mismo sistema sanitario.

8°) That in this context, the consequences of the criteria used by the Province of Buenos Aires –stating that multiple sclerosis is not a pathology covered by the Directorate of Drug Policy and, therefore, the prescribed drug is not provided by the local authorities– can not result in a direct damage to the affected, since depriving her of the health care that the Constitution of the Province of Buenos Aires guarantees, would be tolerating an inequality with respect to other people in similar situation but suffering from diseases contemplated by the aforementioned body, which would be in conflict with the current constitutional and legal provisions.

8°) Que en estas condiciones, las consecuencias del criterio esgrimido por la Provincia de Buenos Aires –en cuanto a que la esclerosis múltiple no es una patología cubierta por la Dirección de Política del Medicamento y por lo tanto la droga prescrita no es provista por las autoridades locales– no pueden redundar en un perjuicio directo a la afectada, pues al privarla de la atención sanitaria que la Constitución de la Provincia de Buenos Aires le garantiza, se estaría tolerando una desigualdad respecto de otras personas en similar situación pero aquejadas de enfermedades contempladas por el citado organismo en pugna con las disposiciones constitucionales y legales vigentes.

9°) That, in respect to the responsibility assigned to the Province of Buenos Aires in face of the situation that compromises the life and health of its population, it is evident that the obligations arising from the analyzed normative framework impose on the local authorities the duty to create an effective mechanism to promote the delivery of medication with the urgency and continuity required by each case, without implying to ignore the duty of coordination with the National State –through the ministry of Health–, whom must participate in a subsidiary manner, not affecting the rights of the Plaintiff.

9°) Que, con respecto a la responsabilidad asignada a la Provincia de Buenos Aires frente a la situación que compromete la vida y la salud de sus habitantes, resulta evidente que las obligaciones emergentes del marco normativo examinado imponen a las autoridades locales el deber de articular un mecanismo eficaz para encauzar la entrega del medicamento con la urgencia y la continuidad que el caso exige, sin que ello implique desconocer el deber de coordinación con el Estado Nacional –mediante el Ministerio de Salud–, el que debe acudir en forma subsidiaria, de manera de no frustrar los derechos de la amparista.

10) That in this sense is understood the the decision of the national authority –the ministry of Social Development– to provide the medicine for six months considering the initial reluctance of the Province of Buenos Aires to attend the Plaintiff, according to the records of the case. That action aimed at addressing a situation of urgency and extreme necessity in terms of the treatment prescribed, was in accordance with the applicable constitutional principles and laws, as analyzed above. For this reason, the interruption of the delivery of medication and the lack of response to the Plaintiff relating to her request of renewal are a matter of complain, ever since that action put in serious risk her rights to life and health.

10) Que en esa inteligencia ha de entenderse la decisión de la autoridad nacional –el Ministerio de Desarrollo Social– de proveer la medicación por seis meses ante la reticencia inicial de la Provincia de Buenos Aires de asistir a la amparista, de acuerdo a las constancias de autos. Esa acción orientada a atender una situación de urgencia y extrema necesidad en orden al tratamiento prescripto, se ajustó a los principios constitucionales aplicables y a las leyes dictadas en su consecuencia, según han sido analizadas anteriormente. Por tal motivo, la interrupción de la entrega de la medicación y la falta de respuesta a la amparista ante el requerimiento de su renovación resultan materia de reproche, pues puso en riesgo grave su derecho a la vida y a la salud.