



Case 1437-2009

Corte Constitucional Case No. 1437-2009, February 9, 2010.

Country: Guatemala

Region: Americas

Year: 2010

Court: Constitutional Court [Corte Constitucional]

Health Topics: Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Hospitals

Human Rights: Right to bodily integrity, Right to health, Right to life, Right to social security

Facts

This case was an appeal of a constitutional protection (amparo) action before the Constitutional Court filed by the Public Defender of Human Rights, acting on behalf of Maria Gabriela Garcia Fernandez, against the Board of Directors of the Guatemalan Social Security Administration. The Board denied the claimant medical coverage for her juvenile diabetes and chronic kidney failure, based on its determination that she was not affiliated with the social security administration. The claimant was not given personal notification of the termination of services and did not discover that she was unable to access treatment until she arrived at the hospital. Given the severity of her diseases, without treatment the claimant was at risk of dying at any moment.

The claimant filed a protection action, arguing the Board's violation of her rights to physical integrity, health and social security. The lower court granted the protection action, considering that the claimant had provided sufficient and uncontested proof of her affiliation through her employer. The respondent authority appealed, arguing that the claimant had not exhausted administrative and ordinary judicial resources, and that therefore the extraordinary recourse of the protection action could not proceed.

Decision and Reasoning

The Constitutional Court held that medical attention could not be denied or suspended to a person while an (administrative) appeal was pending on her case, as this could violate a fundamental right. The administration would be within its rights to pursue any legal remedy available to it in the case that it were later determined that a person claiming affiliation was not in fact affiliated, but pending resolution of such a matter, the benefit of the doubt must go to the individual and the patient must be permitted to receive treatment.

In the case at hand, given that the Court did not consider that the respondent had properly notified the claimant of its decision to declare her not affiliated nor given her an opportunity to exercise her right to defend herself against this decision, the Court confirmed the lower court's decision to grant the protection action, and ordered the Institute of Social Security to give the claimant access to treatment until the resolution of such proceedings.

Decision Excerpts

“This Court, in respect of the rights that have been infringed by the decision previously mentioned, considers that a person’s health is fundamental, given that it arises from the right to life, which is the most elemental and fundamental of all human rights, and the right from which all other human rights derive.” (translation, page 5)

“Este Tribunal, en relación a los derechos que se estiman infringidos con la decisión mencionada precedentemente, considera que el de salud es fundamental, debido a que surge del derecho a la vida, que como el más elemental y fundamental de los derechos humanos, se despliega en todos los demás.” (original, pages 1-2)

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“the proper implementation of these [fundamental international law] rights includes a person’s actual ability to receive timely and effective medical treatment simply for the fact of being human, a right that includes the prevention of illness and treatment and rehabilitation through the provision of hospital services or medical

attention, all with the object of preserving the life of the person who is ill. The objective is to make the right to health a positive obligation of the State to protect all persons and to guarantee their lives and their comprehensive development, in accordance with Articles 1, 2 and 93 of the Political Constitution of the Republic of Guatemala.â€• (translation, page 6)

â€œsu desarrollo conlleva la posibilidad real de una persona, de recibir atenciÃ³n mÃ©dica oportuna y eficaz por sÃ³lo hecho de ser humano, derecho dentro del cual se incluye la prevenciÃ³n de enfermedades y el tratamiento y rehabilitaciÃ³n de Ã©stas mediante laprestaciÃ³n de servicios mÃ©dicos hospitalarios o de atenciÃ³n mÃ©dica, todo ello con el objeto de que a quien le aqueje enfermedad tenga la posibilidad adicional de preservar su vida. Con el objeto de positivar el derecho a la salud y la obligaciÃ³n que el Estado tiene de proteger a la persona y garantizarle su vida y desarrollo integral de acuerdo con los artÃculos 1, 2y 93 de la ConstituciÃ³n PolÃtica de la RepÃblica de Guatemalaâ€• (original, page 2)

â€œThis Court, as the highest authority on those rights established by the Constitution, believes that coverage for medical services cannot be suspended based on the issuance of an (administrative) decision that is subject to appeal, given that this could lead to the Stateâ€™s failure to comply with its primordial responsibilitiesâ€”among these, the preservation of the life of its inhabitants. Given that in the present case, the Court does not consider that the patient had an adequate opportunity to defend herself, prior to the Instituteâ€™s declaration that she was not an affiliate thereof, the Institute should therefore first open proceedings to allow the affiliate to defend herself against such decision, including providing her with personal notice of the motivation for the review proceedings and the final decision resulting therefrom, and then the Institute of Social Security must provide for the Board of the Directorsâ€™ review of the decision of the aforementioned Deputy Office, and determine if the actions of the respondent authority were in keeping with the law.â€• (translation, page 7)

â€œEsta Corte como supremo garante de los derechos que la ConstituciÃ³n establece, estima que la cobertura de servicios mÃ©dicos no puede ser suspendida o negada con fundamento en la emisiÃ³n de una decisiÃ³n (administrativa) que puede ser posteriormente impugnada, debido a que ello podrÃa derivar en incumplimiento, por parte del Estado, de sus fines primordiales, entre ellos, la preservaciÃ³n de la vida de sus habitantes, y siendo que en el presente caso, no se aprecia que la paciente haya tenido adecuada oportunidad de defensa, previo a declararle no afiliada al RÃgimen, el Instituto, para hacer tal declaratoria deberÃ abrir procedimiento que le permita el derecho de defensa a la afiliada y notificÃndole personalmente a la paciente la razÃ³n del cuestionamiento y la decisiÃ³n final que resulte, a efecto de que se le permita instar la revisiÃ³n ante la Junta Directiva del Instituto de lo resuelto por la Subgerencia aludida y, establecer si la actuaciÃ³n de la autoridad recurrida se encuentra ajustada a Derecho,â€• (original, page 2)

â€œIt is understood that when a controversy arises over whether or not a person is entitled to coverage, in cases such as the one at hand, the Guatemalan Institute of Social Security must proceed in the patientâ€™s favor...â€• (translation, page 8)

â€œEs entendido, que si surge la controversia sobre si debe o no prestar la cobertura en sede administrativa, la misma debe continuarse a favor de la beneficiariaâ€• (original, page 2)

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