



## Case 332-2010

Constitutional Court Case No. 332-2010, March 10, 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, Medicines

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

### Facts

The claimant, the Public Defender for Human Rights, brought a protection action on behalf of Maynor Wilfredo Cardenas Morales against the Guatemalan Institute of Social Security for its failure to provide the patient with the drugs Rapamune and Cellcep, as prescribed for his kidney transplant. The drugs were not included on the Therapeutic Drug Registry, and therefore the Institute denied coverage for the drugs. The claimant argued that the drugs were essential in order to provide the best chance for Morales's kidney transplant to be successful, and failure to provide them violated his rights to life, health and social security.

The lower court found for the claimant, and ordered the respondent to provide him with the drugs.

### Decision and Reasoning

The Constitutional Court upheld the lower court's decision, granting the protection action. The Court noted that it was the duty of the Guatemalan Institute of Social Security to provide quality medication in accordance with the clinical needs and condition of the individual patient. Therefore, the protection action was being granted "within the reasonable scope of the constitutional protections to which the claimant has a right, and respecting, in accordance with the dispositive principle, the patient's preference and his own acceptance of the risk of taking the drugs in question, and without limiting the respondent authority's right, always at its own risk and liability, to provide coverage for other drugs that, according to the proven and determined scientific criteria as described above, it considers appropriate for the medical conditions of its patients." The Court therefore ordered the respondent to provide the claimant with the drugs in question, while evaluating his medical condition in order to determine the best course of treatment in line with its responsibilities to safeguard his life and health.

### Decision Excerpts

"This Court has held on numerous occasions that it is an inalienable principle that the State's highest purpose is to protect the public interest. This Court has also confirmed that the State, among other functions that it exercises for this purpose, provides social security to its citizens. By legal mandate, this duty is assigned to the Guatemalan Institute of Social Security. This is a public, national, unified and obligatory responsibility." English translation, page 4.

"Abundantes fallos de esta Corte enuncian como principio inteligible el fin supremo del Estado y su correspondiente realización del bien común; asimismo, se afirma, que entre otros institutos para alcanzarlo, presta la seguridad social a los ciudadanos, la que por mandato legal le corresponde al Instituto Guatemalteco de Seguridad Social y se encuentra instituida como una función pública, nacional, unitaria y obligatoria." Spanish text, page 1.

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"...the Constitutional Court considers that it would be improper to attempt to determine the appropriate medication for the patient's health problems without specific information relating to the patient who is requesting constitutional protection, and without the corresponding professional recommendation and prescriptions, as such a determination exceeds the technical and legal scope of this Court's expertise.

Therefore, it must be taken into account that the Guatemalan Institute of Social Security is responsible for the quality of the medications it provides coverage for, in accordance with relevant clinical criteria that are sufficiently proven and verified by scientific testing, according to the condition of the individual patient and in accordance with his or her corresponding medical prescription, as well as for refraining from providing coverage for medications that may put the patient's health at risk, in accordance with each patient's specific course of treatment. English translation, page 5.

“...este Tribunal Constitucional considera que sería impropio que sin información específicamente relacionada con el paciente a favor de quien se solicita la protección constitucional, y sin la correspondiente recomendación y prescripción profesional, se determinara el tipo de medicamento viable para tratar los problemas de salud colateral que padece, porque ello rebasa la esfera técnico - jurídica de este Tribunal. En ese sentido, debe traerse a cuenta que corresponde al Instituto Guatemalteco de Seguridad Social asumir la responsabilidad por la calidad del producto a suministrar, conforme criterios eminentemente clínicos, suficientemente comprobados y verificados bajo controles científicos, según las condiciones de los pacientes en lo individual y de acuerdo a la prescripción médica adecuada, y abstenerse de suministrarle medicamentos que pongan además en riesgo el resto de su salud, conforme al tratamiento particularizado.” Spanish text, page 1.

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