



Pannuto Martin Javier et al. v. Instituto de Obra Social de la Provincia de Entre Rios (I.O.S.P.E.R.)

Country: Argentina

Region: Americas

Year: 2009

Court: Civil Court of Appeal of Entre R os [C mara de Apelaciones en lo Civil - Entre R os]

Health Topics: Health care and health services, Health systems and financing, Medicines, Sexual and reproductive health

Human Rights: Right to family life, Right to health, Right to life

Facts

The plaintiffs, a married couple, filed a precautionary measure against the Health Insurance of the Province of Entre R os to provide comprehensive coverage of the assisted reproductive treatment by intracytoplasmic sperm injection (ICSI) until the pregnancy was achieved. The co-plaintiff suffered from oligoasthenozoospermia which left him infertile so they requested the health insurance company to provide coverage for the assisted reproductive treatment but denied it given the age of the co-plaintiff - 39 years old - , the low chances of success the treatment would have and that the treatment was not covered by this health insurance company or by any health insurance company in the country. The plaintiffs based their claim in articles 14 bis, 28, 33, 42, 43 and 75 inc. 23 of the National Constitution, article 25 of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights, article 264 of the Civil Code, Law 23 719 of Elimination of all forms of discrimination against women and law 25 672 of the National Program of Sexual Health and Responsible Procreation, articles 19 and 20 of the Provincial Constitution and Provincial Law 9501 of Sexual Health.

Decision and Reasoning

The Court of Appeal of the province of Entre R os found that even though there was no legislation that impose the health insurance company the comprehensive coverage of assisted reproductive treatment, the right of the plaintiffs was guaranteed by: article 14 of the National Constitution that established the "integral protection of the family" and law 25 672 of the National Program of Sexual Health and Responsible Procreation that establishes "to ensure the highest level of health for the population of sexual health and responsible procreation, to be able to adopt decisions without discrimination or violence." Also in the provincial constitution it is established that "the province recognizes the right to health as a fundamental right [...] the health services would be free, universal, equal, integral, adequate and opportune" and its article 20 states "sexual and reproductive rights are basic human rights. The province must ensure through public policies the information, orientation, methods and healthcare provided for sexual health, responsible procreation and the protection of the pregnant woman." Therefore, their right to health was guaranteed by constitutional and local norms and international treaties. The negative of the respondent constituted a violation of these rights, so they should provide coverage for the reproductive assisted treatment. As there was no law that determined the amount of the treatment that the health insurance companies should provide, they based the amount of coverage on other precedents, that determined that a comprehensive coverage would result in a detriment of other affiliates of the health insurance company, so it determined that the respondent should provide 60% coverage of the reproductive assisted treatment and the remaining 40% should be loaned to the plaintiff from the respondent.

Decision Excerpts

"Surge sin hesitaci n, atento la normativa se alada, que los amparistas poseen garantizado desde el

bloque de legalidad constitucional su derecho a la salud, el que se encuentra intrínsecamente relacionado con el derecho a la vida." Page 11

"According to the indicated norms it must be concluded that the plaintiffs have guaranteed their right to health from the constitutional norms, that are intrinsically related to the right to life" Page 11

"Asimismo los derechos vinculados con la salud reproductiva tienen un fuerte contenido social, ya que de ellos deriva la constitución de una familia, lo cual constituye una expectativa natural de una pareja [...] Y, exige "... una mirada alerta a través de prestaciones positivas que evite que la población de menores recursos vea incumplido su anhelo de progenie en resguardo del derecho consagrado por el art. 14 bis en torno de la familia, sin discriminaciones de ninguna naturaleza." Page 12-13

"Reproductive rights have a strong social component because they result in the constitution of a family, that constitutes a natural expectation of a couple [...] and requires that the population with lower resources don't see frustrated their desire for offspring, a right guaranteed in article 14 bis of the National Constitution regarding the constitution of family, without any discrimination." Page 12-13

Copyright © 2015 www.GlobalHealthRights.org