



## Case 1294-2004-R

Tribunal Constitucional de Bolivia [Constitutional Tribunal of Bolivia], Constitutional Judgment 12/94/2004-R, August 12, 2004 (Bol.)

**Country:** Bolivia

**Region:** Americas

**Year:** 2004

**Court:** Tribunal Constitucional de Bolivia [Constitutional Tribunal of Bolivia]

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

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

### Facts

The National Commission on Benefits of the National Health Treasury (CNS) provided free medical insurance for the elderly. Alejandro Cuba Plaza, a beneficiary of CNS, was diagnosed with "terminal chronic kidney failure" and treated with ongoing hemodialysis at Obrero Hospital.

After 52 weeks of treatment, CNS ordered the Director of Obrero Hospital to transfer Plaza to the specialized services of the Ministry of Health and Social Prevention at the Clinical Hospital. When contacted, the Director of the Clinical Hospital told the Director of Obrero Hospital that the Clinical Hospital would not be able to treat Plaza because of a broken hemodialysis machine. Nonetheless, Plaza was transferred to the Clinical Hospital on February 4. Then on April 28, all hemodialysis ceased and CNS denied Plaza future treatment. On May 6, the Clinical Hospital refused to treat Plaza citing a broken machine and other similarly situated patients with kidney failure that needed the working machines. Unable to pay for private treatment, Plaza entered a "depressed renal state."

Plaza brought a constitutional amparo action (writ for injunctive relief) against the Minister of Health and Sports, the Director of the Clinical Hospital, the Director of the Obrero Hospital, and members of CNS, alleging violations of his right to life, right to health, right to legal certainty, and right to social security as guaranteed under Article 7 of the Bolivian Constitution. He sought a court order mandating the reestablishment of his hemodialysis treatments and that CNS and the Ministry of Health and Sports "establish a mechanism of coordination" to assure "effective treatment."

The Third Civil Division of the Superior Court of the Judicial District of La Paz determined on May 28, 2004 that Obrero Hospital and the Clinical Hospital had violated Article 7 of the Constitution protecting the right to life and health. The case was then brought before the Constitutional Tribunal.

### Decision and Reasoning

The Court held that the National Health System was required to give "preferred application" to the right to life and health under the Constitution, the Social Security Code, and the San Jose Pact over any other rules. In addition, the Court stated that the right to life was the most important constitutional right and the state must both refrain from destroying or weakening the right and create conditions to ensure observation and compliance with the right. Specifically, treatment of the chronically ill must be "immediate and continuous" and not interrupted by administrative procedures; every interruption of treatment was a violation of the right to life. Thus, the Court held that the failure of the Ministry of Health and Social Welfare to provide treatment for chronically ill patients either by creating health centers or by assuming the cost of private treatment violated the constitutional right to life and health.

The Court next held that the Director of the Obrero Hospital violated the right to health and life in transferring Plaza to the Clinical Hospital when he had been informed that treatment would not be provided after the transfer. In order to legally transfer Plaza under the regulations, the Director must have ensured that Plaza would have been provided with continuous and effective hemodialysis treatment.

The Court ordered that CNS provide Plaza with treatment at the Obrero Hospital and that the Ministry of Health and Social Welfare assume the costs.

## Decision Excerpts

“[T]he right to life is the most important legal right of all those that the constitutional order establishes; for it is the highest of the catalogue of the fundamental rights provided in article 7 of the CPE.”

“Además, señala que el derecho a la vida es el bien jurídico más importante de cuantos consagra el orden constitucional, de ahí que se encuentre encabezando el catálogo de los derechos fundamentales previstos en el art. 7 de la CPE.”

&nbsp;

“[T]he treatment of the chronically ill supposes an attention that shall be provided in immediate and continuous form, not to be interrupted by administrative processes and resolutions”

“[E]l tratamiento de los enfermos crónicos supone una atención que debe ser prestada en forma inmediata y continua, no debiendo ser interrumpida por trámites y resoluciones administrativas”

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)