



Case 108-2010-R

Country: Bolivia

Region: Americas

Year: 2010

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

Health Topics: Child and adolescent health, Health care and health services, Health systems and financing, HIV/AIDS, Medicines, Poverty

Human Rights: Right to health, Right to life

Facts

A constitutional amparo (writ of injunctive relief) petition was brought the petitioner on behalf of his minor daughter against the Department Director of the Sexually Transmitted Infections/A.I.D.S. ("STI/AIDS") Program, alleging violations of his daughter's rights to life, to health, to "legal certainty," and to petition, as guaranteed by the Bolivian Constitution.

The petitioner's daughter lived with HIV/AIDS, contracted through vertical transmission from her mother during childbirth. To carry on a normal life, she required regular and life-long access to antiretroviral drugs. Such drugs were to be provided by the State in accordance with Bolivia's international obligations. Despite such State obligation, the petitioner claimed that the provision of such medication was always irregular and at times it lacked the proper dosage. He had made several appeals to the Departmental STI/AIDS Program, without receiving appropriate recourse (or, at times, any response at all).

A public hearing took place on August 8, 2006 in front of the First Penal Division of the Superior Court of the Judicial District of Santa Cruz wherein the lower court ordered the respondent authority to "promptly, immediately and efficiently" provide the petitioner's daughter with the necessary medication. The case was then brought before the Constitutional Tribunal on appeal.

Decision and Reasoning

The Court noted that the Bolivian Constitution imposed on the State the obligation to guarantee the right to health, including special protection for children and adolescents. The Court also determined that "the prevention, attention and rehabilitation of HIV/AIDS and the protection of the rights of people who suffer from that disease is an obligation of the State" and that the character of such illness required State authorities to give persons living with HIV/AIDS special protection.

The Court concluded that the fundamental rights of life and health belonging to the petitioner's daughter had been violated. The State was required to protect this right without interference, hindrance through bureaucratic procedures, or subject to exhaustion of resources. These rights also carried a special protection in the case of minors, including medication and treatment for those with insufficient resources.

The Court concluded that the authorities incurred a wrongful and unlawful omission by failing to provide the petitioner's daughter with medication required. The Court noted that the respondent's "passive and conformist" attitude in not pursuing such medication where the respondent was told there was a delay in its supply was inconsistent with its responsibilities; such behavior violated the right to life and health of the petitioner's daughter.

Ultimately, the Court granted the requested injunctive protection of the petitioner's daughter's constitutional rights.

Decision Excerpts

"The infected or sick person with AIDS enjoys the same rights as all other persons. Nevertheless, due to the character of the illness, authorities are obligated to give these persons special protection aimed at guaranteeing their human rights and their dignity. In particular, the State should avoid any discriminating or stigmatizing method against these persons in the provision of services, in employment, and in freedom of

movement.” Section III.4

“From the analysis carried out, we conclude that the fundamental rights of life and health, invoked by petitioner in favor of his daughter, were affected, which is the underlying right whose essential characteristic constitutes the basis for exercising the remaining rights and assuming obligations of one’s own existence; for that, the State is obligated to its protection without interference nor hindrance through bureaucratic procedures nor subject to exhaustion of recourses.” Section III.5

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