



Álvarez, Oscar Juan v. Province of Buenos Aires et al.

A.304.XXXVII

Country: Argentina

Region: Americas

Year: 2001

Court: Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

Health Topics: Disabilities, Health care and health services, Health systems and financing, Poverty

Human Rights: Right to health

Facts

Oscar Álvarez, a 46 year old man who was disabled, unable to work and facing economic difficulties, filed an guarantee of protection of individual constitutional rights (amparo protection) against the Province of Buenos Aires and the National State.

The plaintiff stated that he suffered from paralysis, both for congenital reasons and as a result of an accident. He was not covered by either social security or prepaid health insurance coverage, and had not been successful in obtaining disability pensions or tax benefits. Although he received surgery for the paralysis, neither the local, provincial, or national authorities provided him with the rehabilitation or orthotics needed for follow up treatment. He did not have the means to obtain this treatment independently, as he was unable to work, his wife was unemployed, and he had four young children.

Alvarez brought a claim of amparo under article 25 of the American Convention on Human Rights and several other instruments. He also requested an interim remedy. The Federal Civil and Commercial Court [Justicia en lo Civil y Comercial Federal] found that it was incompetent to solve the case and sent the case to the Supreme Court of Justice because it held that it was a case of original jurisdiction of the Supreme Court of Justice.

Decision and Reasoning

The Supreme Court of Justice held that it was a case of original jurisdiction and issued the interim remedy, under Art. 232 of the National Civil and Commercial Code of Procedure. It accepted the plausibility of the legal claims asserted by the plaintiff and ordered the authorities to provide the requested treatment and publish a report on the issue within five days.

Decision Excerpts

Spanish:

"Explica que carece de ingresos, como así también de fondos suficientes para atender el costo del tratamiento. Añade que su situación es desesperante, no sólo por la discapacidad, los intensos dolores físicos y el agobio anímico que padece, sino también porque tiene cuatro hijos menores y su esposa se encuentra desempleada, de manera que prácticamente vive de la escasa ayuda que le proporciona su suegra. Asimismo señala que al privarsele de tratamiento se deteriora su calidad de vida, porque todo el avance logrado durante meses se pierde rápidamente ante la interrupción de aquél." Paragraph 1) of the Supreme Court of Justice decision.

English:

"The claimant explains that he has no income, nor sufficient funds to meet the cost of the treatment. He adds that his situation is desperate, not only because of his disability, his intense physical pain and emotional and psychological exhaustion, but also because he has four young children and his wife is unemployed, and as a result they essentially live in poverty with some support provided by his mother-in-law. Accordingly, he states that the deprivation of treatment has resulted in the deterioration of his quality of life, because all progress made over course of months of treatment is rapidly lost once the treatment is interrupted." Paragraph 1) of the Supreme Court of Justice decision.

Spanish:

"(â€) por ello se resuelve: I) Requerir al Estado Nacional y a la Provincia de Buenos Aires el informe circunstanciado que prevÃ© el art. 8 de la ley 16.986, que deberÃ¡ ser presentado en el plazo de cinco dÃ­as. Para su comunicaciÃ³n, lÃ¡-brense los oficios correspondientes, con arreglo -en el caso de la provincia- a lo previsto en el art. 341 del cÃ³digo citado; II) Hacer lugar a la medida cautelar solicitada y, en consecuencia, ordenar al Estado Nacional y a la Provincia de BuenosAires que dentro del plazo de cinco dÃ­as dispongan lo necesario para que se suministre al actor el tratamiento y los elementos ortopÃ©dicos." Paragraph 3) of the Supreme Court of Justice decision.

English:

â€œThe National State and the Province of Buenos Aires are required to provide a detailed report in relation to the provisions of art. 8 of the Act 16.986, which must be presented within five days. In order to complete this, arrangements must be made for the relief of the relevant officials in accordance with-Â in the case of the Province-Â the provisions of art. 341 of the aforementioned code; II) The claim for the interim remedy is sustained, and, consequently, the National State and the Province of Buenos Aires are ordered to provide the necessary measures for the administration of the treatment to the claimant and the orthotics.â€•Â Paragraph 3) of the Supreme Court of Justice decision.

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