



Campodónico de Beviacqua, Ana Carina v. Ministerio de Salud y Acción Social & Secretarí-a de Programas de Salud y Banco de Drogas Neoplásicas

C. 823. XXXV

Country: Argentina

Region:

Year: 2000

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

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

Human Rights: Right to health, Right to life

Facts

The plaintiff filed a guarantee of protection of individual constitutional rights (amparo protection) in the name of her son, who suffered from Kostmann's disease, a severe bone marrow defect. Because of this disease, the plaintiff's son was entirely dependent on a medicine called Neutromax 300. From June 1996 to December 1998, the National Bank of Antineoplastic Drugs, a Federal Government body, administered medicine to the child at no charge. In 1998, the bank informed the claimant that it was no longer going to provide the medicine. The bank argued that because the disease was non-oncological, the public social insurance scheme and not the Bank was obligated to provide the medicine, and that the bank had only provided the medicine earlier for humanitarian reasons.

At first instance, the Court ruled that the Bank could not suspend the medication, because the Federal Government had the primary obligation to guarantee the health system and the right to life and could not shift responsibility to social insurance agencies. This ruling was confirmed by an appeals court which further added that in order to preserve the rights to health and life, the Federal Government was required to intervene if a social welfare agency did not have the financial capacity to pay for the treatment. The Bank appealed to the Supreme Court. It argued that the judgment had effectively freed the local authority and social welfare agency of responsibility and instead placed the burden on the State, contrary to the principle that the State's duties were subsidiary to those of the provinces. The State also sought the overturning of the lower courts' decision for arbitrariness and lack of normative grounds.

Decision and Reasoning

The Supreme Court upheld the action and ordered the National Bank of Antineoplastic Drugs to continue providing the drugs. It reiterated that the right to life was the "first right of human beings" under the Constitution and that the right to health was a part of the right to life. It also emphasized that the state had elevated a number of human rights treaties containing the right to life and health to constitutional legal status. The State was therefore obligated to progressively realize the right to health to the maximum of its available resources. In particular, the Court noted that the State had a duty to guarantee the right to health under article 12 of the International Covenant of Economic and Social Rights, including through the development of a plan of action to reduce infant mortality, improve child health, and ensure access to medical services in the event of illness.

The Court observed that while districts could be responsible for these rights, the federal government was their ultimate guarantor under international law. By signing the treaties, the Federal State had assumed explicit international commitments on children's access to health services. The relevant domestic legislative regime was designed to implement these commitments, with the Federal State as the primary guarantor of the right and the provinces and social agencies forming a decentralized system for implementation. The Federal State therefore could not avoid its own obligations by arguing that another body was responsible for them.

These duties were even more relevant in the case of disabled children, who were also protected by laws ensuring "comprehensive protection for disabled persons." Accordingly, if a disabled child could not access medical and rehabilitation treatments at the provincial level, the Federal State had a subsidiary responsibility

to supply them. This responsibility did not absolve the provincial government of its responsibility, but also did not allow the Federal State to ignore violations of the right to health on the ground that other bodies were responsible.

Since the plaintiff's son was not able to obtain the medicines from another body, the Court found in favor of the plaintiff and the Bank's appeal was dismissed.

Decision Excerpts

"18) Que ese último tratado reconoce, asimismo, el derecho de todas las personas a disfrutar del más alto nivel posible de salud física y mental, así como el deber de los estados partes de procurar su satisfacción. Entre las medidas que deben ser adoptadas a fin de garantizar ese derecho se halla la de desarrollar un plan de acción para reducir la mortalidad infantil, lograr el sano desarrollo de los niños y facilitarles ayuda y servicios médicos en caso de enfermedad (art. 12, Pacto Internacional de Derechos Económicos, Sociales y Culturales)."

"19) Que los estados partes se han obligado 'hasta el máximo de los recursos' de que dispongan para lograr progresivamente la plena efectividad de los derechos reconocidos en dicho tratado (art. 2º, inc. 1). En lo que concierne al modo de realización en estados de estructura federal, el propio Comité de Derechos Económicos, Sociales y Culturales de las Naciones Unidas ha reconocido que dicha estructura exige que los cantones sean los responsables de ciertos derechos, pero también ha reafirmado que el gobierno federal tiene la responsabilidad legal de garantizar la aplicación del pacto (conf. Naciones Unidas. Consejo Económico Social. Aplicación del Pacto Internacional de Derechos Económicos, Sociales y Culturales. Informes iniciales presentados por los estados parte con arreglo a los arts. 16 y 17 del Pacto. Observaciones. Suiza -E/1990/5/Add.33-, 20 y 23 noviembre de 1998, publicado por la Secretaría de Investigación de Derecho Comparado de esta Corte en 'investigaciones' 1 (1999), págs. 180 y 181)."

"21) Que el Estado Nacional ha asumido, pues, compromisos internacionales explícitos encaminados a promover y facilitar las prestaciones de salud que requiera la minoridad y no puede desligarse válidamente de esos deberes so pretexto de la inactividad de otras entidades públicas o privadas, máxime cuando ellas participan de un mismo sistema sanitario y lo que se halla en juego es el interés superior del niño, que debe ser tutelado por sobre otras consideraciones por todos los departamentos gubernamentales (art. 3º, Convención sobre los Derechos del Niño, ya citada)."

"27) Que lo expresado pone en evidencia la función rectora que ejerce el Estado Nacional en este campo y la labor que compete al Ministerio de Salud y Acción Social, como autoridad de aplicación, para garantizar la regularidad de los tratamientos sanitarios coordinando sus acciones con las obras sociales y los estados provinciales, sin mengua de la organización federal y descentralizada que corresponda para llevar a cabo tales servicios."

English Translation:

• That that final treaty recognizes, likewise, the right of all people to enjoy the highest level of physical and mental health attainable, and the duty of the state parties to secure it. Among the measures that must be adopted to guarantee that right is the development of a plan of action to reduce infant mortality, achieve the health development of children and assure medical service and medical attention in the event of sickness (art. 12, International Covenant on Economic, Social and Cultural Rights). • Translation para. 18.

• Regarding the mode of implementation in federal states, the United Nations Committee of Economic, Social and Cultural Rights has recognized that said structure requires that the districts are responsible for certain rights, but it has also reaffirmed that the federal government has the legal responsibility to guarantee the implementation of the agreement. • Translation para. 19.

• That the Federal Government has assumed, therefore, international responsibilities explicitly designed to promote and facilitate health benefits that the minority require and that it cannot validly avoid those duties under the pretext of other public or private entities' failure to act, especially when they participate in the same health system and what is at stake is the critical interest of the child, which should be taken care of before other considerations by all governmental departments. • Translation para. 21.

That the above-expressed places in evidence the governing function that the Federal Government exercises

in this area and the work over which the Ministry of Health and Social Welfare is responsible, as enforcement authority, to guarantee the regularity of health treatments coordinating its actions with the social welfare agencies and the provinces, without deterioration of the federal and decentralized administration that is necessary to carry out these services.â€• Translation para. 27.

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