



## Nabieh Taha Muhammad al-Bahy, et al. v. President of the Republic, et al.

Cases no. 21550/61, 21665/61, 22912/61, 23003/61, 25752/61, and 25857/61

**Country:** Egypt

**Region:** Africa

**Year:** 2008

**Court:** State Council, Court of Administrative Justice, First Circuit

**Health Topics:** Health care and health services, Health systems and financing, Hospitals

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

### Facts

On March 21, 2007, the Egyptian Prime Minister issued a Decision (â€œThe Decisionâ€•), no. 637/2007, establishing the Egyptian Holding Company for Health Care (â€œThe Holding Companyâ€•). The Decision transferred the assets of the Public Health Insurance Organizationâ€™s (â€œHIOâ€•) hospitals and clinics to The Holding Company and its affiliates, declaring the assets privately owned by the State.

Plaintiffs have moved to freeze the execution of The Decision and seek to nullify the decision and all its effects. Additional litigants submitted a declared petition stating their joining to Plaintiffs and their adoption of the same demands as put forward by the Plaintiffâ€™s petition. The fourth plaintiff challenges the constitutionality of The Decision and of the agreements made between Egypt and international donors regarding health reform.

Plaintiffs maintain that they are â€œbeneficiaries of health insurance and citizens of [Egypt] who are entitled to the right of health care according to the constitution and according to international law and international conventionsâ€• (4). Plaintiffs argue that the Prime Minister is not authorized to issue the Decision and, furthermore, that The Decision is unconstitutional on the basis that it converts a public organization into a private holding company. They argue that The Decision â€œconstitutes a neglect from the state towards its duty to protect and promote the right to health, to which it is committed by means of the Constitution and of the regulations of international responsibility through its ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR)â€• (5).

The State Legal Department (â€œThe Departmentâ€•) requests a rejection of Plaintiffsâ€™ petition for a lack of standing and a lack of interest, arguing that interest has to be personal and direct. In reservation, The Department requests rejection of the petition on the basis of its lack of urgency and its subject matter. The Department argues that the Holding Company will not affect the legal position of the Plaintiffs and that they can therefore have no standing and no interest in the petition.

### Decision and Reasoning

The Court accepted the joinder of litigants and further accepted Plaintiffsâ€™ standing and interest in the petition. Looking to the Egyptian Constitution, the Court found that Plaintiffs fulfilled the criteria for a serious interest in the petition because they are Egyptian citizens and are therefore granted the Constitutional right to health and social care according to Articles 16 and 17. The Court commented that Article 17 specifically refers to â€œallâ€• citizens and is intended to â€œelevate the status of the right to health care which is intricately related to the right to lifeâ€• (10).

The Court further ruled to freeze the execution of The Decision. In deciding to do so, the Court required two criteria to be fulfilled: â€œfirst, the criterion of seriousness, i.e. that the request appears to be based on serious grounds that favor the cancellation of the impugned decision; and secondly: the criterion of urgency, i.e. the consequences and effect of the execution of the impugned decision would be difficult to reverse (sic)â€• (11).

First, the Court found that â€œThe Decision, as it has established a [holding] company to seize from the HIO the provision of health services to health insurance beneficiaries, has thereby conflicted with a social objective ordered by the Constitution and states by the lawsâ€• (33). It found that the Decision was in violation of the

provisions of the law and that the Prime Minister was not authorized to execute such an order. The Decision is referred to as "a gross aggression against a constitutional right" and thus satisfies the seriousness criterion for freezing its execution. References to the ICESCR helped to bolster the importance of the right to health and to life within Egypt according to their ratification of the convention.

The Court found that the urgency criterion was satisfied in that "The Decision has elements which would constitute an aggression and a threat to the right of citizens to health and a transfer of the ownership of hospitals and clinics and the conversion of the HIO funds into private funds." The court found that such an order would have irreversible consequences if the decision were to be annulled, and therefore granted the petition to freeze the execution of The Decision.

As for the claim of unconstitutionality, the court found no need to adjudicate on that claim since it had sufficient findings for the freezing of its execution. Further, the claim concerning the constitutionality of Egypt's agreement with international donor states was auxiliary and due to the success of the original claim there is no need to adjudicate on that either.

## Decision Excerpts

"Since health insurance is on top of the means and manifestations of the right to health, which has become one of the basic human rights in laws and legislations about human rights, both nationally and internationally, in view of the close link between the right to health and the right to life; and since the state's provision of health care protects the right to health from being subject to investment, bargaining or monopoly; " (p. 20)

"[The Decision] at the end would convert the health insurance from a social right to a commercial project, and this is at a time when the principle of social reciprocal responsibility and solidarity has become a national demand in Egypt and an objective to be achieved by every citizen including the incapable." (p. 32).

"In view of the vitality of the regulations of social health insurance and its relation to public utility and its attachment to the protection of vulnerable classes with a view to ensure distributive justice, these regulations thereby constitute a component of public order as confirmed by the Constitution and stated by health insurance legislations and international conventions and agreements. This led the legislator to provide health insurance funds with special protection, granting them a preference over that of the debtor upon their collection, permitting their collection through an administrative court order of seizure and exempting them of all kinds of taxes, interests and fees. All of the above is incompatible with the executive authority's aggression on the HIO, its funds or property; [nor is it compatible] with the organization's abandonment of its commitments dictated by the Constitution and the law." (p. 26).