



## Case T-484/92

**Country:** Colombia

**Region:** Americas

**Year:** 1992

**Court:** Constitutional Court

**Health Topics:** Health care and health services, Health systems and financing, HIV/AIDS, Poverty

**Human Rights:** Freedom from discrimination, Right to health, Right to life

### Facts

The Petitioner, a Colombian national living with HIV, filed an appeal for legal protection against the Colombian Social Security Institute. The Petitioner claimed that his right to medical services was threatened when a doctor at the Cali Social Security Institute informed him that his treatment would cease in 30 days. However, medical directors at the Tuluá Social Security Institute (a different hospital within his insurance plan) permitted a 180-day extension of his treatment. Pursuant to the constitutional right to health, the Petitioner requested the Court to define his right to access to medical services beyond the 180-day extension. The Petitioner argued that the State's failure to continue his treatment beyond the 180-day extension would violate his right to health. The Petitioner claimed that the right to health, when read in conjunction with the constitutional right to equal protection, required the State to ensure special protection of the health of population groups facing economic, physical or mental vulnerabilities.

### Decision and Reasoning

The Court held that the State, because of its limited resources, was not required to provide free health care to all persons. However, pursuant to the constitutional right to equal protection, the State was required to provide special protection to individuals lacking economic resources who were subject to suffering, discrimination or social risk associated with serious illnesses. The Court stated that the State was required to provide health services that were fundamental in nature, as opposed to those of a more general character. Although it did not define a line between the two kinds of services, the Court held that the right to health was a fundamental right when related to the protection of life.

The Court found that the Petitioner was a member of a vulnerable population group in need of special protection due to the fact that he was living with HIV. Accordingly, the Court ordered the Social Security Institute to continue providing the Petitioner free treatment while the competent authorities at the Institute determined how best to proceed in line with the Court's ruling.

### Decision Excerpts

"Este derecho, así-entendido, busca el aseguramiento del fundamental derecho a la vida (art. 11 C.N.), por lo cual, su naturaleza asistencial impone un tratamiento prioritario y preferencial por parte del poder público y el legislador, con miras a su protección efectiva.(...) En desarrollo ulterior del precepto (...) estableció que la salud es un servicio público a cargo del Estado, garantizándose en él a todas las personas el acceso al mismo, para la promoción, protección y recuperación de este derecho. Se agrega que corresponde al poder público organizar, dirigir, reglamentar, establecer políticas para que las personas privadas presten ese servicio (...). Igualmente se establece la obligación para toda persona de velar por el mejoramiento, conservación y recuperación de su salud personal y la de su comunidad, evitando acciones u omisiones perjudiciales y el desacato a las autoridades de salud pública."

"El derecho a la salud conforma, en su naturaleza jurídica, un conjunto de elementos que pueden agruparse en dos grandes bloques: el primero, que lo identifica como un predicado inmediato del derecho a la vida, de manera que atentar contra la salud de las personas equivale a atentar contra su propia vida, (...) Por estos aspectos, el derecho a la salud resulta un derecho fundamental. El segundo bloque de elementos, sitúa el derecho a la salud con un carácter asistencial, ubicado en las referencias funcionales del denominado Estado Social de Derecho, en razón de que su reconocimiento impone acciones concretas, en desarrollo de predicados legislativos, a fin de prestar el servicio público correspondiente, para asegurar el goce no sólo de los servicios de asistencia médica, sino también los derechos hospitalario, de laboratorio y farmacéuticos."

La frontera entre el derecho a la salud como fundamental y como asistencial es imprecisa y sobre todo cambiante, según las circunstancias de cada caso (art. 13 C.N.), pero en principio, puede afirmarse que el derecho a la salud es fundamental cuando está relacionado con la protección a la vida."

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