



ChÃ¡vez Alvarado, Susana y otras v. el Ministerio de Salud

Tribunal Constitucional [Constitutional Court] Nov. 13, 2006, Sentencia 7435-2006-PC/TC (Peru).

Country: Peru

Region: Americas

Year: 2006

Court: Constitutional Court of Peru

Health Topics: Health care and health services, Health information, Health systems and financing, Medicines, Poverty, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right of access to information, Right to bodily integrity, Right to family life, Right to health, Right to life

Facts

In 2001, Peru's Department of Health approved the emergency oral contraceptive and resolved to provide it at no charge throughout the nation. Following cases of repeated noncompliance with this resolution, plaintiffs initiated this legal action to enforce compliance. Specifically, the petitioners asserted that the mandates whose compliance they were demanding were: (1) To ensure a person's free choice of, and informed access to, the contraceptive that she wished to use; (2) That service and information and/or supplies for contraceptive methods were provided free at public sector institutions; (3) That emergency oral contraception (EOC) was one of the contraceptive methods accepted in the Family Planning technical regulations; (4) Fulfillment of the requirements that were described as obligatory for the Regional Health Offices and public and private health centers that carry out Family Planning activities. The Department of Health believed that the mandates complied with the minimum requirements demanded in constitutional precedent. Several national and international organizations, among them the World Health Organization (WHO), the Pan-American Health Organization (PAHO), and the United Nations Population Fund (UNFPA), presented amicus curiae in support of the plaintiff.

Decision and Reasoning

The Court held that the petition for compliance was well founded; the resolutions must be fulfilled. The existence of National Guidelines for Comprehensive Reproductive Health Care given to healthcare providers does not exempt the Department from the responsibility of producing information for every citizen who requests it, nor from demonstrating that the information is actually accessible. Moreover, the obligation to distribute the contraceptive at no charge means that all health centers should make samples available for distribution.

Decision Excerpts

"In regard to the second part of the petition, demanding that the Secretary of Health place EOC materials free of charge at the disposal of male and female citizens, the petitioners have verified, in writing dated 26 March 2006 (page 175), that several hospitals subordinate to the Department of Health lacked material pertaining to the emergency oral contraceptive. It should be emphasized that such information is important whenever it applies not to health clinics, but rather to national hospitals. In addition, the Public Defender has verified that during the period between April and August 2006 various Health Centers in the states of Ayacucho, La Libertad, and Piura had no EOC. That sample proves that this neglect has occurred at a national level."

"This social and economic situation that places women in a serious state of defenselessness cannot escape the notice of those who would interpret the Constitution. The rights of a woman cannot be defended in the context of constitutional law if the person who is called upon to defend them fails to take into account the social, constitutional, and cultural aspects that determine those rights."