



Case 2945-2003-AA/TC

Sentencia 2945-2003-AA/TC (2004). (Azanca AlhelÃ- Meza GarcÃ-a v. Ministry of Health)

Country: Peru

Region: Americas

Year: 2004

Court: Constitutional Court

Health Topics: Health care and health services, Health systems and financing, HIV/AIDS, Infectious diseases, Medicines, Poverty

Human Rights: Right to bodily integrity, Right to health, Right to life

Facts

The petitioner filed a writ of amparo (appeal for legal protection) against the Ministry of Health of Peru. She sought free administration of comprehensive medical treatment for HIV, including both the continuous delivery of necessary medicines and the performance of periodic CD4 cell count and viral load tests upon medical indication and/or the patient's urgent needs. The petitioner submitted that she lacked the financial means to obtain the medicines herself and contended that the State's failure to provide such treatment constituted violations of the principle of personal dignity, the right to life and the right to health under the Constitution of Peru. She also claimed violation of the right to medical treatment pursuant to Peru Law No. 26626, which recognized the fundamental rights of autonomy, confidentiality and non-discrimination of people living with HIV and guaranteed provision of treatment according to the State's capacity.

The State's Attorney argued that the Petitioner had failed to claim a specific violation of any rights under the Constitution. He contended that while the Constitution of Peru did recognize the right to life and physical integrity, the State did not have a positive obligation to provide free treatment for HIV. He further argued that the right to health, established in articles 7 and 9 of the Constitution, represented merely a programmatic action plan that provided for no specific, justiciable rights.

Decision and Reasoning

The Court held that Peru was a liberal democracy in which it was necessary to secure minimum material conditions in order to achieve the country's social ends. Economic and social rights were therefore not merely programmatic goals of gradual efficacy, but rather fully justiciable, concrete rights of immediate efficacy; the State's failure to fulfil those rights required a judicial remedy.

The Court further stated that the right to health was a fundamental right, given its close relation to the right to life. The Court declared that the right to health comprised the right of every human being to maintain normal organic functioning, both physical and psychological, and the right to re-establish such functioning when it was subject to interruption. The Court, however, qualified its ruling by noting that social rights, such as the right to health, could not be adjudicated in the same fashion in every case, given that the Constitution did not refer to specific obligations of the State. Judicial recognition of a violation of a social right would depend on factors such as the severity of the case and the reasonableness of the appeal.

The Court held that the petitioner's case represented one in which judicial recognition of the right to health and appropriate remedy was required. It thus acknowledged the petitioner's appeal for legal protection and ordered the State to provide the requested medical treatment.

Decision Excerpts

"12. Si bien es cierto que la efectividad de los derechos sociales requiere un mÃ-nimo de actuaciÃ³n del Estado a travÃ©s del establecimiento de servicios pÃºblicos, asÃ- como de la sociedad mediante la contribuciÃ³n de impuestos, ya que toda polÃ-tica social necesita de una ejecuciÃ³n presupuestal, tambiÃ©n lo es que estos derivan en obligaciones concretas por cumplir, por lo que los Estados deben adoptar medidas constantes y eficaces para lograr progresivamente la plena efectividad de los mismos en igualdad de condiciones para la totalidad de la poblaciÃ³n."

"32. â€los derechos sociales, como la salud pÃºblica, no pueden ser exigidos de la misma manera en todos los

casos, pues no se trata de prestaciones específicas, en tanto dependen de la ejecución presupuestal para el cumplimiento de lo exigido, lo contrario supondría que cada individuo podría exigir judicialmente al Estado un puesto de trabajo o una prestación específica de vivienda o salud en cualquier momento."

"33. En consecuencia, la exigencia judicial de un derecho social dependerá de factores tales como la gravedad y razonabilidad del caso, su vinculación o afectación de otros derechos y la disponibilidad presupuestal del Estado, siempre y cuando puedan comprobarse acciones concretas de su parte para la ejecución de políticas sociales."

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