



## Cruz del Valle Bermúdez, et al. v. Ministerio de Sanidad y Asistencia Social (MSAS)

Sentencia No. 196

**Country:** Venezuela

**Region:** Americas

**Year:** 1999

**Court:** Supreme Court

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

**Human Rights:** Freedom from discrimination, Right to health, Right to liberty and security of person, Right to life, Rights to the benefits of culture

### Facts

The petitioners were a group of persons living with HIV. They filed a writ of amparo against Venezuela's Ministry of Health and Social Assistance (the Ministry). The Petitioners asked the Court to enjoin the Ministry to provide, free of charge: (1) the regular and periodic delivery of antiretroviral drugs and medication for opportunistic diseases; (2) the administration of tests, such as viral load tests and white blood cell count tests, in order to monitor their health status; (3) the development of information campaigns aimed not only at the Petitioners but the general population and all people living with HIV. The Petitioners also requested that the Court's ruling be extended to all persons living with HIV.

The petitioners argued that they lacked the economic means to procure treatment for HIV, and that expenses associated with such treatment were not covered by any social security institution. They claimed that the State, through the failure of the Ministry to provide necessary treatment and medication, had violated their Constitutional rights to life, health, liberty and personal security, non-discrimination, and the benefit of science and technology.

The respondent Ministry contended that it had not violated any rights of the petitioners. The Ministry claimed that it lacked the economic means to deliver appropriate treatment to all people living with HIV. It further argued that allowing the Court's judgment to extend to all persons living with HIV was contrary to principles of judicial process in Venezuela.

### Decision and Reasoning

The Court held that the Ministry of Health and Social Assistance had not met its constitutional obligations to the petitioners and all other people living with HIV in Venezuela. It considered that the rights to health, life and benefit from science and technology were inextricably linked to the subject matter of the case. In particular, the Court held that, due to Venezuela's international obligations, fulfillment of right to life and the right to health was of the highest concern. Accordingly, the Court held that although the Ministry could not be held responsible for an omission per se, the fact that the Ministry's budget was insufficient to cover treatment expenses for people living with HIV was enough to enjoin the State to increase funding for health so as to comply with the Petitioners' demands. The Court further held that the Ministry was obligated to study appropriate means to develop social awareness campaigns.

The Court held that although the ruling would not extend to all persons living with HIV, it was nevertheless the duty of every administrative body to comply with the Court's interpretation of the Constitution.

The Court held that the rights to personal liberty and security and to non-discrimination were not implicated in this case, given the Court's established understanding of these rights.

### Decision Excerpts

"El más supremo de los bienes jurídicos del individuo (la vida), está protegido como derecho humano de la forma más amplia posible, tanto en el ámbito nacional como internacional. El derecho fundamental a la vida, en cuanto derecho subjetivo, da a sus titulares la posibilidad de recabar el amparo judicial y, en último

término, el de este Supremo Tribunal frente a toda actuación de los poderes públicos que amenace su vida o su integridad. Asimismo, la preservación de ese derecho a toda costa es un fin que el ordenamiento impone a esos mismos poderes públicos y en especial al legislador, el cual debe adoptar las medidas necesarias para proteger esos bienes, vida e integridad física, frente a los ataques de terceros, sin contar para ello con la voluntad de sus titulares e incluso cuando ni siquiera quepa hablar, con estricta rigurosidad, de titulares de ese derecho. Se trata, por tanto, de la configuración del derecho a la vida con un contenido de protección positiva que impide configurarlo como un derecho de libertad. De allí que, en la garantía de ese preciado bien juega un papel fundamental una política de Estado en materia de salud pública. Por ello, en el caso de autos, las obligaciones que se imponen al poder público en materia de prevención y tratamiento del VIH/SIDA resulta fundamental."

"The greatest of the legal rights of the individual (life), is protected as a human right in the broadest manner possible in both the national and international sphere. The fundamental right to life, in terms of the subjective right, gives their owners the possibility of redress through the judicial amparo, and lastly, the one of this Supreme Court towards all public action that threatens life or their integrity. In this same way, the preservation of this right at all costs is an end that the legal system imposes the same public powers and specially to the legislator, which must adopt the necessary measures to protect legal rights, life, and physical integrity from the attacks of others, without counting for this with the will of its owner and even when its even unnecessary to talk about it, with strict meticulousness, about the owner of that right. It is about, the configuration of the right to life with a content of positive protection that impedes the configuration as a right of freedom. From there, that the guarantee in this precious legal right plays a fundamental role in the State's political policy in the subject of public health. This is so in this case, where the obligations imposed on the public power in the subject of prevention and treatment of HIV/AIDS is fundamental. "

"Ahora bien, visto el derecho que tienen todos los ciudadanos y los actores en el caso de autos- a la protección de la salud y el correlativo deber del Estado de velar porque ese derecho se realice efectivamente, sobre todo en el caso de aquellos que carezcan de medios suficientes, observa esta Sala que de la documentación aportada hay indicios suficientes que permiten colegir que, existe un evidente incumplimiento de ese deber, cuya consecuencia inmediata es que se pone en riesgo la salud y la vida de los accionantes. Por otra parte, cabe señalar que, como personas humanas, los enfermos de VIH/SIDA también se encuentran amparados por las normas protectoras de derechos fundamentales que se han dictado a nivel internacional."

"[E]ntiende esta Sala que el incumplimiento de su deber constitucional de prevención y asistencia sanitaria, en que incurriría el presunto agravante no es deliberado, ya que dentro de sus capacidades presupuestarias ha atendido a las exigencias de esta enfermedad de alto riesgo y de elevados costos. No se trata, por tanto de "en sentido estricto jurídico- de una conducta omisiva de la Administración. Así- se declara."

"Así- las cosas, el asunto debatido se reduce a un problema de tipo presupuestario. De manera que, dada la insuficiencia presupuestaria, el Ministro de Sanidad y Asistencia Social puede hacer uso de los mecanismos antes señalados, a los fines de que se puedan satisfacer las demandas de los enfermos de VIH/SIDA, y solicitar del Presidente de la República los recursos que estime necesarios, a los fines de resguardar el derecho a la salud y a la vida de las personas infectadas de VIH/SIDA. Así- se declara."