



Case SU-225/98

Country: Colombia

Region: Americas

Year: 1998

Court: Constitutional Court

Health Topics: Child and adolescent health, Health systems and financing, Infectious diseases, Medicines, Poverty, Water, sanitation and hygiene

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

Facts

Through a representative, 418 parents, inhabitants of the sector of Puente Aranda in Bogota, filed a tutela against the national and district health authorities alleging that the authorities's failure to provide a free vaccination program against meningitis violated the duty to protect the health of their children.

The Plaintiffs were poor, worked in the informal sector, and lived in overcrowded conditions which increased the risk of contracting meningitis. As such, they approached the local health district in order to procure vaccines against meningitis, and were told the price of the vaccine and where to obtain it. The price of the vaccine ranged from 20 000 to 28 000 pesos, which was beyond the means of the Plaintiffs. The Minister of Health later informed the plaintiffs that the health authorities were providing the meningitis vaccine free of charge in epidemic depressed areas, and that the vaccine would be added in the following year to the Extended Program of Immunization (PAI). However, these vaccination programs were not implemented.

The judge of first instance granted the tutela for the protection of the rights to life, to health and to social security of the plaintiffs's children. This decision was sent to the Constitutional Court for revision.

Decision and Reasoning

The Constitutional Court affirmed the judgment at first instance, considering that the State had a duty to protect the fundamental rights of children and that a minimum core of the fundamental socio-economic rights of children could be directly enforced by tutela. It held that these duties had been violated by the State's failure to provide the meningitis vaccine to poor children.

The Court first considered that children had fundamental rights not conferred on other groups, and further, that these fundamental rights prevailed over the fundamental rights of others. These rights included socio-economic rights such as health. However, the court recognized that despite this, substantive equality rights conferred on children still raised concerns about the respective roles of the judiciary and legislature in implementing policies. In such cases, there was a tension between the values of a democratic state in ensuring that policy was implemented by elected representatives, and the values of a social state, which sought universal provision of basic needs.

The Court resolved this tension by proposing a two-tiered model of responsibility for such rights: a minimum core that would be directly enforceable by the judiciary, and a complementary zone that would be reserved to the political branches subject to resource constraints. Further, in exceptional cases, the Court could enforce a duty to provide services to a marginalized group if to do so would correct a grave breach against the human dignity of people that are part of a vulnerable group of the population, and if the State, having the opportunity to do so, did not provide the minimum material support that a helpless person requires not to be subject of her own impotence. In such cases, the Court needed to strictly carry out the following stages of analysis:

- (1) identifying a group of discriminated or marginalized persons;
- (2) demonstrating the existence of a basic need and of its lack of satisfaction;
- (3) examining the State's response to the specific situation of marginalization or discrimination;
- (4) applying any constitutional qualification regarding the degree of historical compliance with mandates

aimed at eradicating actual injustices in the specific situation, taking into account legal and factual possibilities of the moment.

Applying this reasoning, the Court concluded that the failure to provide vaccines violated the right to health of the children, as the children were part of a vulnerable group both socio-economically and in terms of their disease risk, their basic health needs were not being met, and there were effective vaccines available that were not being provided. The State had failed to show any measures it was taking against meningitis, and had further not collected data or addressed the disease in its National Health Plan, despite being called on twice to do so.

Decision Excerpts

“This third alternative, closer to the view of the Social and Democratic Rule of Law of the State, implies that fundamental rights of social entitlement have double content. Firstly, they are composed of an essential minimum core that is not negotiable in democratic discussion that gives subjective rights that are directly enforceable through a tutela. Secondly, they are composed by a complementary zone that is defined by the political organs subject to the availability of resources and to conjuncture policies.”

“The Court has established that, in certain exceptional cases, the constitutional judge may grant the tutela of a service right. This may be done only if it is proven that there exists “a grave breach against the human dignity of people that are part of a vulnerable group of the population, and if the State, having the opportunity to do so, did not provide the minimum material support that a helpless person requires not to be subject of her own impotence.” Para. 19.

“The Chamber must clarify that resources addressed to satisfy the essential core of the right to health of minors that are at risk may not be obtained by reducing the assets that are addressed to achieve identical ends. In other words, immunization campaigns against meningitis may not be executed with the funds that were previously addressed to cover other pathological cases that threaten the essential core of the right to health of children, such as poliomyelitis or measles. It is the constitutional obligation of the State to establish a minimum structure of health in order to avoid dramatic, foreseeable and avoidable contingencies that threaten the minimum and non-negotiable content of the right to health of children. As it was established, this non-negotiable content is a constitutional priority that political organs may not disregard. Therefore, it is necessary to obtain additional funds and not merely to take funds from a program that satisfies a constitutionally recognized basic need to satisfy a different program with identical aims.” Para. 41.