



Case 0012-09-SIS-CC, Case 0007-09-IS

Corte Constitucional Judgment N. 0012-09-SIS-CC, Case No. 0007-09-IS, October 8, 2009.

Country: Ecuador

Region: Americas

Year: 2009

Court: Constitutional Court [Corte Constitucional]

Health Topics: Aging, Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Hospitals

Human Rights: Right to health, Right to social security

Facts

This case addressed an individual's right to health care and reimbursement for health services from the National Social Security Institute (Instituto Ecuatoriano de Seguridad Social, IESS) as a type of retirement benefit. The action was specifically filed against Econ. Fernando Guijarro Cabezas, General Director of IESS.

This case was filed against Ecuador's Social Security Institute for failure to grant health services to Mr. Miguel Elicio Arroba Pájiz, who had attempted to obtain health services from Hospital del Seguro Carlos Andrade Marín (a public hospital) in Quito, Ecuador in March 2006, for a "pathological case showing a sudden and serious expression"; the plaintiff was specifically afflicted with severe pneumonia as well as an acute heart attack. The individual was turned away at this hospital and, as a result, attended Hospital General de las Fuerzas Armadas (General Hospital of the Armed Forces) and was treated from March 14 to April 23, 2007. He was charged an amount of US\$ 26,862.53 for services rendered at this hospital.

Mr. Miguel Elicio Arroba Pájiz filed a request with the Medical Expenses Compensation Commission to review his expenses within the allotted framework of eight days pursuant to Art. 5 of resolution No. C.I. 009 issued by the Intervening Commission of IESS. Said commission declared that this request was extemporaneous, as Mr. Arroba Pájiz's rights had been suspended via Resolution No. 0244-2008-RA, dated July 14, 2008 of the Third Chamber of the Constitutional Tribunal.

The Provincial Subdirección of the Pension System of Pichincha, approved by the Commission of Services and Controversies of Pichincha (IESS) and the National Appeals Commission of Social Security issued Resolution No. 2006-1614 dated May 8, 2006 depriving the plaintiff both of his monetary benefits, as well as health benefits.

Therefore, Mr. Arroba Pájiz filed a suit claiming breach of the 2008 Constitution.

Decision and Reasoning

The Court held that IESS had restored additional health services in favour of the petitioner via resolution 2008 "3090 and that this resolution (No. 0244 " 2008- RA of the Third Chamber of the Former Constitutional Tribunal) upheld the mandatory nature of providing the plaintiff with all of the retirement benefits that inured to him. Thus, the Constitutional Court upheld that the retiree had a right, not only to monetary benefits, but also to other services, and, in particular, health services.

The Court also held that individuals, under the Constitution, had a right to full redress for their rights. The Court held that plaintiff had a right to receive reparation for harm related to the denial of health services, including harm that was not specifically included in the plaintiff's claim.

The judgment issued by the Constitutional Court held the following:

It found that the Third Chamber of the Constitutional Tribunal had violated its duties under the constitution by denying Mr. Miguel Elicio Arroba Pájiz access to compensation for expenses incurred to treat his serious illness at the General Armed Forces Hospital.

It found that Mr. Miguel Elicio Arroba Pájiz had a right to comprehensive redress for harm caused by IESS in denying access to the required treatment at Public Hospital, Hospital del Seguro Carlos Andrade Marín.

The Court found that Mr. Arroba Pájiz had a right to reimbursement of the full amount of his expenses within

a term no greater than 30 business days.

It found that IESS had a right to hold the officers denying access to the patient jointly and severally liable for breach of the resolutions at issue in this action.

Decision Excerpts

“For this reason, it is coherent that the State is obligated not only to ensure compliance with constitutional rights, but to propose the means necessary so that its resolutions and reparations are actually completed. It is not enough for fundamental rights to be established in constitutional rules, since, their preeminence would be worthless if they are not actionable; on the contrary, constitutional guarantees must be understood as a right linked to the effective protection and redress of a mandatory conditioning of the State in search of compliance, so that these are rights that are fully actionable and not merely programmatic.

It is for this reason that this Court ensures that the right to health is a fundamental and comprehensive right that cannot be denied under any circumstance, even when such refusal stems from a resolution that it itself has violated and other attached fundamental rights. Through this law, the State is obligated to ensure ongoing, timely access to health programs without exclusion which also implies a major struggle against inequalities in society”

Copyright © 2015 www.GlobalHealthRights.org