



Case 4111-2009

Corte Constitucional Case No. 4111-2009, January 28, 2010.

Country: Guatemala

Region: Americas

Year: 2010

Court: Constitutional Court [Corte Constitucional]

Health Topics: Disabilities, Health care and health services, Health systems and financing, Hospitals, Medicines

Human Rights: Right to bodily integrity, Right to due process/fair trial, Right to health, Right to life, Right to social security

Facts

This case was an appeal of a constitutional protection (amparo) action before the Constitutional Court filed by the Public Defender of Human Rights, acting on behalf of Maritza Ninnette Cuellar Morales, against the Board of Directors of the Guatemalan Social Security Administration. The Board denied the claimant medical coverage for her spinal condition, based on its determination that she was not affiliated with the social security administration. She appealed this decision before the Board, which appeal remained pending at the time of the Constitutional Court's decision. The claimant then filed a protection action, arguing the Board's violation of her rights to life, health, physical integrity and social security. The lower court granted the protection action, considering that the claimant had provided sufficient and uncontested proof of her affiliation through her employer. The respondent authority appealed, arguing that the claimant was not legitimately employed and therefore was not properly affiliated.

Decision and Reasoning

The Constitutional Court held that medical attention could not be denied or suspended to a person while an (administrative) appeal was pending on her case, as this could violate a fundamental right. The administration would be within its rights to pursue any legal remedy available to it in the case that it were later determined that a person claiming affiliation was not in fact affiliated, but pending resolution of such a matter, the benefit of the doubt would go to the individual and the patient must be permitted to receive treatment. In the case at hand, given that the claimant's administrative appeal was pending, the court confirmed the lower court's decision and ordered that the claimant be given access to treatment and the corresponding disability payments.

Decision Excerpts

“Esta Corte, en relación a los derechos que se estiman infringidos con la decisión mencionada precedentemente, considera que el de salud es fundamental, debido a que surge del derecho a la vida, que como el más elemental y fundamental de los derechos humanos, se despliega en todos los demás. De ahí que merezca reconocimiento en normas de Derecho Internacional como lo son, entre otros, el artículo 12 del Pacto Internacional de Derechos Económicos Sociales y Culturales y XI de la Declaración Americana de Derechos y Deberes del Hombre. Pero, aparte de la protección que a ese nivel de los Derechos Humanos se le ha dado, su desarrollo conlleva la posibilidad real de una persona, de recibir atención médica oportuna y eficaz por el sólo hecho de ser humano, derecho dentro del cual se incluye la prevención de enfermedades y el tratamiento y rehabilitación de éstas mediante la prestación de servicios médicos hospitalarios o de atención médica, todo ello con el objeto de que a quien le aqueje enfermedad tenga la posibilidad adicional de preservar su vida. Con el objeto de positivar el derecho a la salud y la obligación que el Estado tiene de proteger a la persona y garantizarle su vida y desarrollo integral de acuerdo con los artículos 1, 2 y 93 de la Constitución Política de la República de Guatemala”

“This Court, in respect of the rights that have been infringed by the decision previously mentioned, considers that a person's health is fundamental, given that it arises from the right to life, which is the most elemental and fundamental of all human rights, and the right from which all other human rights derive. In this respect, the Court feels it relevant to mention such international law standards as, among others, Article 12 of the International Convention on Economic, Social and Cultural Rights, and Article XI of the American Declaration on the Rights and Duties of Man. However, apart from the protection that is provided at the international level

of human rights law, the proper implementation of these rights includes a person's actual ability to receive timely and effective medical treatment simply for the fact of being human, a right that includes the prevention of illness and treatment and rehabilitation through the provision of hospital services or medical attention, all with the object of preserving the life of the person who is ill. The objective is to make the right to health a positive obligation of the State to protect all persons and to guarantee their lives and their comprehensive development, in accordance with Articles 1, 2 and 93 of the Political Constitution of the Republic of Guatemala." (page 6-7, translation)

"Esta obligación del Estado la desarrolla, para los trabajadores del sector público y privado, a través del Régimen de Seguridad Social establecido en el artículo 100 de la ley matriz, el cual tiene como uno de sus fines fundamentales la prestación de los servicios médico hospitalarios conducentes a conservar o restablecer la salud de sus afiliados y beneficiarios, desde el momento del diagnóstico de la enfermedad hasta el desarrollo del tratamiento que éstos requieran para su reestablecimiento. Por ello, resulta innegable e incuestionable la importante función social que ejerce el régimen de Seguridad Social para preservar o mantener los niveles de salud de la población con el propósito de resguardar la salud y la seguridad de las personas y hacer efectivo y garantizar el goce del derecho a la vida."

"This State obligation is implemented, in the case of workers in the private and public sectors, through the Social Security Administration, established by Article 100 of the Constitution, and whose fundamental purpose is to provide hospital and medical services intended to protect or recover the health of its affiliates and beneficiaries, from the moment of their diagnoses through the application of the treatment required for recovery. Therefore, the role in society that the Social Security Administration plays in order to preserve and maintain the population's health is undeniable and unquestionable, with the objective of protecting the health and safety of all persons and guaranteeing the effective enjoyment of all persons' right to life." (page 7, translation)

"Esta Corte, como supremo garante de los derechos que la Constitución establece, estima que la cobertura de servicios médicos y lo concerniente al pago de las prestaciones dinerarias en concepto de suspensión por enfermedad, no puede ser suspendida o negada con fundamento en la emisión de una decisión (administrativa) que puede ser posteriormente impugnada, debido a que ello podría derivar en incumplimiento por parte del Estado de sus fines primordiales, entre ellos, la preservación de la vida de sus habitantes"

"This Court, as the highest authority on those rights established by the Constitution, believes that coverage for medical services and the payment of economic benefits corresponding to medical leave cannot be suspended based on the issuance of an (administrative) decision that is subject to appeal, given that this could lead to the State's failure to comply with its primordial responsibilities, among these, the preservation of the life of its inhabitants." (page 9, translation)

"Los motivos expuestos permiten arribar a la conclusión de que la persona patrocinada por el postulante, mientras no haya sido esclarecida su situación de afiliada al Régimen de Seguridad Social, tiene derecho a recibir atención médica por parte de la autoridad impugnada y de percibir las prestaciones dinerarias que le correspondan en concepto de suspensión por enfermedad, habiendo quedado evidenciado que al denegársele el tratamiento médico respectivo se pone en riesgo su salud y, por ende, su vida, y siendo que resguardo de ésta constituye un fin supremo del Estado de conformidad con la Constitución Política de la República de Guatemala, se hace necesario otorgar la protección constitucional solicitada, ya que no puede hacerse nugatorio el derecho más elemental de los que reconoce el Texto Fundamental."

"The arguments set forth herein allow us to arrive at the conclusion that the person sponsored by the claimant in the present case, as long as her situation as an affiliate of the Social Security Administration has not been definitively established, has the right to receive medical attention from the respondent authority and to receive such economic benefits as are owed to her for reasons of her medical leave from her employment. It is evident that a denial of medical treatment to her would put her health, and, as a consequence, her life, at risk. Given that the State's primary concern must be the protection of the life and health of its citizens, in accordance with the Political Constitution of the Republic of Guatemala, it is necessary to grant the constitutional protection action requested. It is not possible to deny the most elemental right that the Constitution recognizes." (page 10, translation)

