



Case T-081/04

Constitutional Court, Ninth Revision Chamber, February four (4), two thousand and four (2004), Magistrate: Dr. CLARA INES VARGAS HERNANDEZ, Ruling T-081/04

Country: Colombia

Region: Americas

Year: 2004

Court: Constitutional Court [Corte Constitucional]

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

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

Facts

Mr. Rodrigo Alberto Valencia Echeverri brought a Constitutional Action against Cafesalud EPS (â€œEPSâ€•), a Health Promoting Entity, arguing that his fundamental rights to health and social security had been violated. The plaintiff affirmed that EPS would not administer a medicine called â€œgadolinium contrast dyeâ€•, which was required to conduct a â€œbrain magnetic resonanceâ€• exam. This exam had been previously approved by the defendant.

The defendant refused to perform the exam because: i) the plaintiffâ€™s employer was not up to date with its health insurance payments, and ii) although the defendant was willing to perform the magnetic resonance if the employer were to pay its pending contributions, the medicine â€œgadolinium contrast dyeâ€• was not included in the insurance scheme.

The plaintiff confirmed that the exam of magnetic resonance was ordered by a neurologist working for the defendant, because it was considered necessary within the treatment that the plaintiff required as a consequence of the cranial fracture he suffered in a transit accident. The plaintiff stated that he had been affiliated with the Social Security System through Cafesalud EPS for several years, and he was thus entitled to health services.

The plaintiff requested that the defendant should be ordered to administer the medicine â€œgadolinium contrast dyeâ€•, which is indispensable for the performance of the magnetic resonance of his brain. The lower court had denied the plaintiffâ€™s request, considering that in order to access health services, the employer and employeeâ€™s obligations--mainly the timely payment of the contributions--must be fulfilled because, otherwise, EPS would be brought before the law without legal cause.

Decision and Reasoning

The Court reversed the lower courtâ€™s decision.

The Court framed the issue by examining i) whether EPS must assume of the rendering of health services for an employee, where the employer has defaulted on its contributing payments; and ii) whether, where the required medicine was excluded from the Mandatory Health Plan, such a responsibility fell on the defaulting employer or on the Solidarity and Guarantee Fund â€œ FOSYGA.

The Court confirmed that, despite the default in the employerâ€™s maintenance fees, â€œ E.P.S. must carry out the treatment required by the plaintiff and ordered by the treating doctor, given that such treatment was necessary for the protection of the plaintiffâ€™s right to health and social security, in connection to the right to life in dignified conditions. However, E.P.S., was legally enabled to sue the plaintiffâ€™s employer in order to obtain payment of the employer-employee contributions, which were due.

Likewise, and as for the provision of the medicine required by the plaintiff, which was excluded from the Mandatory Health Plan, the Court stated this case complied with all the requirements necessary for applying the exception in law by means of which a medicine, although excluded from the Mandatory Health Plan, must still be provided to the patient.

In view of the above, the defendant was ordered not only to perform the required exam, but also to perform such exam with the required medicine â€œcontrast dye gadoliniumâ€•, even if the latter was excluded from the

Decision Excerpts

â€œNo obstante, la Corte tambiÃ©n ha indicado que en ciertos casos la entidad no puede sustraerse del deber de atender a la persona que soporta una merma en sus condiciones de salud, aunque el empleador se encuentre en mora de transferir los aportes correspondientes a la seguridad social del empleado. Lo anterior, en consideraciÃ³n a los principios de continuidad en la prestaciÃ³n de servicio, en la solidaridad y en general en los fines que les han sido impuestos por la ConstituciÃ³n y la Ley. Tal situaciÃ³n ocurre cuando existen eventos en los cuales el afiliado o sus beneficiarios enfrentan una situaciÃ³n que pone en peligro o vulnera su integridad fÃsica o psÃquica, de manera tal que se menoscaba su derecho a la vida en condiciones dignas. Teniendo en cuenta la responsabilidad de cada uno de los intervinientes del triÃngulo conformado por E.P.S.- empleador - trabajador, no es Ã©ste Ãºltimo quien debe soportar la negligencia de su empleadorâ€•.

â€œNevertheless, the Court has also indicated that in certain cases the entity cannot refuse to attend to the person suffering a diminishing in their health conditions, even if the employer is in default of transferring the corresponding payments to the employeeâ€™s social security. This, considering the principle of continuity of the serviceâ€™s rendering, of solidarity and, in general, of the objectives that have been set forth by the Constitution and the Law. Such situation occurs when certain events in which the affiliate or her/his beneficiaries face a situation that undermines or places her/his physical or psychological integrity at risk, in such a way that the right to life worthy of human dignity is violated. Taking into account the responsibility of each one of the parties in the triangle formed by EPS, employer, and employee, it is not the latter who must endure the negligence of his employerâ€•.

â€œAdicionalmente es pertinente reiterar la necesidad de proteger a aquellas personas, que por su condiciÃ³n fÃsica o mental se encuentran disminuidos y por lo tanto inmersos en una condiciÃ³n de debilidad manifiesta, condiciÃ³n que expresamente fue protegida por nuestra Carta Fundamental en su artÃculo 47. De Ã©sta manera, cuando de una persona se predica su disminuciÃ³n sensorial o psÃquica y del suministro de un medicamento, tratamiento o procedimiento mÃ©dico depende mantener o alcanzar un estÃndar de vida aceptable y digno, es evidente que la E.P.S. no podrÃ¡ negarse bajo ninguna excusa a prestarloâ€•.

â€œAdditionally, it is important to reiterate the need of protecting those people who, due to their physical or mental condition, are diminished and thus submerged in a manifest weakness condition, condition which was expressly protected by our Fundamental Letter in its article 11. Accordingly, when a person is sensorial or psychological disabled and the provision of the medicine, treatment or medical procedure is what guarantees reaching or maintaining an acceptable and dignified living standard, it is

