



Case 4053-2009

Corte Constitucional de Guatemala, Exp. No. 4053-2009

Country: Guatemala

Region: Americas

Year: 2009

Court: Constitutional Court [Corte Constitucional]

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

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

Facts

Julio César Bravo Villata, a minor, was a beneficiary of the Guatemalan Social Security Institute. He suffered from cerebral paralysis due to a respiratory arrest that occurred at the time of birth (a “congenital defect”) and his parents were told that once the child turned five, his treatment would be suspended. The Board of Directors of the Guatemalan Social Security Institute argued that its internal regulations generally only contemplated treatment for a child until the child turned five. The Human Rights Ombudsman filed a request to issue a writ for the protection of fundamental rights against the Board of Directors of the Guatemalan Social Security Institute so that the child’s treatment and medical assistance was not ceased when he turned five but rather, was continued until it ceased to be necessary.

This case was heard on first instance and then appealed before the Second Chamber of the Court of Appeals of Matters of Labor and Social Organization and this entity had held for the plaintiff. Given the risk of the child’s treatment being suspended, the Human Rights Ombudsman filed an amparo.

Decision and Reasoning

The Court determined the following:

An amparo was designed to ensure the efficacy of fundamental human rights and for this reason, it sought to timely protect an essential right. The right to life was of supreme relevance. Further, the right to health could not be an exception, because it was justified as a mechanism for the protection of life.

The refusal to provide medical treatment and medications to the child was a violation of a right to health and thus, his right to life.

The Internal regulations of the Guatemalan Social Security Institute featured three categories and the case set forth by the minor plaintiff fit under the second category (providing medical services to minors until they turn fifteen years of age, when such minors suffer from any anomaly and congenital illness) that should be provided prolonged medical services.

The Guatemalan Social Security Institute had to provide adequate medications and treatment to preserve the child’s health, since these could not be denied or suspended without a final judicial resolution.

Considering that the refusal of the challenged authority threatened the rights guaranteed by the constitution, as well as by international law applicable to the child, the Court concluded that protection must be granted in order to prevent an eventual violation of the constitution. For this reason, the amparo granted in first instance had to be affirmed.

Decision Excerpts

“Se ha considerado por esta Corte que el amparo opera como instrumento constitucional por el que puede instarse la eficacia de los derechos humanos fundamentales, ya sea para asegurar su vigencia y respeto o para restablecer su goce cuando existe amenaza de violación o violación propiamente de ellos por decisiones o actos indebidos; pues lo que se pretende en amparo es la tutela en forma oportuna de un derecho esencial; lo que adquiere suprema relevancia cuando se trata de la protección del derecho a la vida, considerado como el de mayor importancia en la escala de derechos fundamentales, ya que todos los demás giran en torno a él. De ahí que el derecho a la salud no puede ser la excepción, pues éste sólo se justifica como mecanismo de protección a la vida. Siendo estos dos derechos de orden prioritario, y como tales, objeto de protección estatal, salvo ilegitimidad de la acción, el Estado tiene el deber de proteger por

todos los medios que dispone, pues el garantizar el goce de una adecuada calidad de vida debe constituir uno de sus fines primordiales.”

“This Court has considered that the amparo operates as a constitutional instrument that can ensure the efficacy of fundamental human rights, whether to ensure their validity and respect or to restore their enjoyment when there is a threat to a violation or a violation properly attributed to improper decisions or acts; as, what is sought by an amparo, is the timely protection of a fundamental right; this acquires supreme relevance when it refers to the protection of the right to life, considered of greatest importance in the scale of fundamental rights, since all other rights turn with respect to it. Thus, the right to health cannot be the exception, as it is only justified as a mechanism for protection of life. These are two priority rights and, as such, are subject to state protection, excepting illegitimate actions. The State has the duty to protect, through all means available, because guaranteeing the enjoyment of an adequate quality of life must constitute one of its main objectives.”

“El derecho a la vida y a la salud que le asiste a una persona está contemplado en el texto supremo como una obligación fundamental del Estado, pues el propio preámbulo de la Constitución afirma la primacía de la persona como sujeto y fin del orden social, y de ahí que en la ley matriz también se regula que el Estado de Guatemala debe organizarse para proteger a la persona humana y que por ello debe garantizar a los habitantes de la República (entre otros aspectos) la vida y su desarrollo integral, por lo que este derecho constituye su fin supremo, y como tal merece su protección. El derecho a la salud, conlleva en este caso la posibilidad real de que una persona reciba atención médica oportuna y eficaz. De ahí que este derecho sea objeto de protección, no sólo en la normativa interna del país (artículo 93 de la Constitución como norma primaria directamente aplicable), sino en la normativa internacional convencional de protección de derechos humanos (artículos 12 del Pacto Internacional de Derechos Económicos, Sociales y Culturales y XI de la Declaración Americana sobre Derechos y Deberes del Hombre, por mencionar dos ejemplos). No es ocioso recordar (por ilógico que parezca), que si el derecho a la salud surge del derecho fundamental a la vida, una afectación del mismo, implica una violación al más fundamental de todos los derechos humanos: la vida.”

“The supreme text contemplates the right to life and health that every person is entitled to as a fundamental State obligation; the Constitution’s preamble itself highlights the primacy of the person as a subject and the objective of the social order, as well as the fact that the mother law also contemplates that the Guatemalan State must organize itself to protect the human person and must therefore guarantee life and comprehensive development to the inhabitants of the Republic (among other aspects). Thus, this right constitutes its supreme objective and, as such, justifies its protection. The right to health entails, in this case, the real possibility of a person receiving timely and effective medical treatment. Based on this, this right must be an object of protection, not only in the country’s internal regulation (article 93 of the Constitution as a primary and directly applicable law) but in the conventional international human rights law as well (articles 12 of the International Covenant of Economic, Social and Cultural rights and XI of the American Declaration on the Rights and Duties of Man, to mention two examples). It is worth recalling (as illogical as it may seem), that if the right to health arises from the fundamental right to life, an affectation to it implies a violation of the most fundamental of all human rights: life.”

“Sin perjuicio del ejercicio de dicha facultad, cabe considerar que por elemental humanismo, en aquellos casos excepcionales en los que lo que se esté demandando es la preservación del derecho a la vida amenazado de privación de manera cierta e inminente, por la concurrencia de una enfermedad terminal o bien un caso no previsto (accidentes de tránsito, heridas ocasionadas con armas, por citar dos ejemplos de casos en los que una atención médica adecuada prestada de emergencia pudiese ser determinante para evitar un deceso), la cobertura de servicios médicos no puede ser suspendida o negada en tanto no exista declaración judicial que así lo autorice, pues de ser suspendida o negada con fundamento en la emisión de una decisión (administrativa) que puede ser posteriormente impugnada, ello puede derivar en incumplimiento por parte del Estado de sus fines primordiales.”

“Without prejudice to the exercise of said power, it is worth considering that by elemental humanism, in such exceptional cases in which the preservation of the right to life is being threatened by a certain and imminent deprivation, due to the concurrence of a terminal illness or an unforeseeable case (traffic accidents, wounds caused by arms, to cite two examples of cases in which adequate emergency medical attention could be determinative to avoid death), the coverage of medical services cannot be suspended or denied when there is no judicial declaration that authorizes this. If it is suspended or denied based on the issuance of an

(administrative) decision, it could be subsequently challenged, and this could lead to breach by the State of its main objectives.”

“..cuya normativa sustentó la negativa, que el mismo contiene tres supuestos para su aplicación, siendo estos: a) que el Instituto prestará el servicio médico a menores de edad, hasta que estos cumplan cinco años; b) el Instituto prestará el servicio médico a menores de edad, hasta que estos cumplan quince años de edad, cuando padezcan de alguna anomalía y enfermedad congénita; y c) cuando un menor de edad esté en estado de emergencia, se le continuará tratando hasta que termine dicho estado. Tomando en cuenta los tres supuestos antes indicados de dicha norma, se determina que la enfermedad que padece el menor cuya prórroga de la asistencia médica y tratamiento se reclama, lo ubica en todo caso, en el segundo supuesto y en ese sentido, se hace necesario que el Instituto Guatemalteco de Seguridad Social le proporcione el medicamento y el tratamiento adecuado para preservar su estado de salud, ya que éstos no pueden ser negados, ni suspendidos sin una resolución judicial firme que así lo autorice. En atención a lo anterior, y estimando que la negativa de la autoridad impugnada amenaza los derechos que le garantiza la norma suprema y el derecho internacional aplicable al menor, se concluye que la protección constitucional debe otorgarse a efecto de prevenir la eventual violación de los mismos y así pueda seguir recibiendo los servicios medico hospitalarios que su enfermedad requiere (lo que incluye la cobertura del tratamiento médico hospitalario, asistencia profesional, y, eventualmente, servicios de cirugía, cuando así sea pertinente) y que deban ser prestados por la cobertura del régimen de seguridad social. Por ello debe confirmarse el otorgamiento del amparo acordado en primera instancia, pero por los motivos aquí considerados, con las modificaciones que se especificarán en la parte resolutive del presente fallo.”

“The referenced legal framework used to support the refusal, contains three categories for its application, as follows: a) that the Institute must provide medical services to minors, until they turn five years of age; b) the Institute shall provide medical services to minors until they turn fifteen years of age, when they suffer from any anomaly and congenital illness; and c) when a minor is under a state of emergency, he or she shall continue to be treated until said condition ends. Taking into account the above referenced three categories, we determine that the illness that the minor suffers and that is subject to a claim for suspension of medical assistance and treatment is placed, in any case, in the second category and, in this sense, the Guatemalan Social Security Institute must provide adequate medications and treatment to preserve his health, since these cannot be denied or suspended without a final judicial resolution authorizing as much. Given the above, and considering that the refusal of the challenged authority threatens the rights that the supreme rule guarantees as well as the international law applicable to the child, we conclude that constitutional protection must be granted in order to prevent an eventual violation of said constitution and so that he can continue to receive the hospital medical services required by his illnesses (including coverage of the hospital medical treatment professional assistance, and, eventually, surgery, as relevant) and that must be provided by the coverage of the social security regime.”

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