



Case 2605-2009

Corte Constitucional Case No. 2605-2009, January 5, 2010

Country: Guatemala

Region: Americas

Year: 2010

Court: Constitutional Court [Corte Constitucional]

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Hospitals, Medicines

Human Rights: 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 Luisa Fernanda Morales Tumax, against the Board of Directors of the Guatemalan Institute of Social Security. The patient, a minor, received a kidney transplant in 2000, when she was 7. In 2007, her parents requested that her medical coverage be extended, as kidney failure could be fatal, but the Board denied the request, and confirmed that her coverage would expire on her 15th birthday, in March 2008. The family 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 that the Board's decision violated her rights to life, health and physical integrity.

The lower court granted the protection action, considering that the right to social security extends through the patient's diagnosis until the completion of rehabilitative treatment, and that therefore the suspension of medical services on the patient's 15th birthday would violate her rights to life and health. The respondent authority appealed, arguing that continuing coverage for the patient after her birthday would violate its internal regulations, benefitting her to the detriment of other patients.

Decision and Reasoning

The Constitutional Court held that the Institute had to provide medical treatment as long as the patient was in critical condition, as failure to do so would put the patient's life at risk, violating her rights to life and health. The Court ruled that the right to social security operates in service of these fundamental rights, and the Institute therefore had a duty to provide medical attention to the patient in order to safeguard these rights. The Institute's internal regulations required that the Institute continue providing treatment to a patient after the age of five if the child is in critical condition, up to the age of 15. The Court noted that the suspension of treatment would put the patient's life at risk, and thus held that her treatment must continue until her condition was no longer critical, regardless of age.

The Court also held that the administrative appeal did not need to be resolved, as its ruling was definitive on the matter.

Decision Excerpts

"...The protection action is thus designed to provide a timely remedy that ensures the protection of a fundamental right. This is highly relevant in the context of the protection of the right to life, considered the most important in the hierarchy of fundamental rights, given that all other rights revolve around it. Hence, the right to health cannot be separated from the right to life, but is instead only justified as a manner of protecting the right to life. Given that these two are primary rights, and as such, subject to state protection, unless there is no standing to bring the protection action, the State has a duty to protect using all available means, as guaranteeing the enjoyment of an adequate quality of life must be one of its primary responsibilities." (Part IV.I)

"...pues lo que se pretende en amparo es la tutela en forma oportuna de la protección 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,

garantizar el goce de una adecuada calidad de vida debe constituir uno de sus fines primordiales.”

“...the right to health in practical terms implies that a person receive timely and effective medical attention.” (Part IV.III.A)

“El derecho a la salud, conlleva en este caso la posibilidad real de que una persona reciba atención médica oportuna y eficaz.”

“...this Court concludes that the disease suffered by the minor, whose extension of medical treatment and attention is requested, puts her in a critical condition that puts her life at risk. It is necessary that the Guatemalan Institute of Social Security provide the appropriate medicines and treatment in order to preserve the state of her health. Such services may not be denied to her, nor suspended, without a final judicial resolution that authorizes such suspension or denial, or until her critical health condition is resolved.” (Part IV.IV)

“Tomando en cuenta los tres supuestos antes indicados de dicha norma, se determina que la enfermedad que padece la menor cuya prórroga de la asistencia médica y tratamiento se reclama, la ubica en estado de emergencia que pone en riesgo su vida, 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 o bien que el estado de emergencia finalice.”

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