



Case 4448-2008

No. 4448-2008 (26 febrero 2009)

Country: Guatemala

Region: Americas

Year: 2009

Court: Constitutional Court [Corte Constitucional]

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

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

Facts

This case was filed by the Human Rights Ombudsman of Guatemala acting on behalf of patients who suffer from vitiligo, psoriasis, fungoid mycosis, alopecia, lichen planus, uremic pruritus, and sclerodermas, against the Board of Directors of the Guatemalan Social Security Institute. He argued that the patients were informed that the company that was providing services to treat these types of illnesses would no longer provide them and that, furthermore, a special unit at the Institute would be created to treat these types of illnesses "a circumstance that has not occurred. He argued that leaving the patients unprotected could cause irreparable harm to the health of the group of members and that this threatened the right to health, and therefore life, of the persons who suffered from these affectations. The Human Rights Ombudsman argued violations of articles 3, 93, 94, 95 and 100 of the Political Constitution of the Republic of Guatemala.

This case was heard on first instance and then appealed before the First 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 treatment being suspended for the affectations noted above, the Human Rights Ombudsman filed an amparo.

Decision and Reasoning

The Court held in favour of the Human Rights Ombudsman.

The Court held that the Guatemalan Social Security Institute has a duty to provide these services to guarantee the right to health, highlighting the harm that would be caused via suspension of the above treatment to these patients. The Court held that the Institute still had right to health obligations that could not be denied based on budgetary rationales.

The Court held that the Guatemalan Social Security Institute had justified its decision on a law with inferior importance in the hierarchy of law, a law that can never have priority over the rights contained in the Constitution. Thus, refusal of treatment would be unfounded and aggravate the rights to life, health and social security of these persons, who find support in the matters contemplated by articles 93, 94 and 100 of the Constitution. Thus, this Tribunal considered that the patients who suffer from vitiligo, psoriasis, mycosis, fungoid, alopecia, lichen planus, uremic pruritus, and sclerodermas must be subject to all the necessary medical studies to determine the degree of evolution of the specific illnesses and the treatments necessary to reduce or make its effects disappear.

Decision Excerpts

"En relaci3n a los derechos que se estiman infringidos con la decisi3n mencionada, esta Corte considera que el de salud es fundamental, debido a que surge del derecho a la vida, que como el m3s elemental y fundamental de los derechos humanos, se despliega en todos los dem3s. De ah3- que merezca reconocimiento en normas de derecho internacional como lo son, entre otros, el art3culo 12 del Pacto Internacional de Derechos Econ3micos Sociales y Culturales y XI de la Declaraci3n Americana de Derechos y Deberes del Hombre."

"With respect to the rights that are considered violated by the referenced decision, this Court considers that health is fundamental, due to the fact that it arises from the right to life, which, as the most basic and fundamental of human rights, is displayed in all the others. Thus, it merits recognition among rules of international law, such as, inter alia, article 12 of the International Covenant on Economic Social and Cultural

Rights and XI of the American Declaration of Rights and Duties of Man. (WHEREAS IV)

"Con el objeto de positivizar 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 del texto supremo, además, la Constitución Política de la República contiene en su artículo 94 una obligación del Estado de velar por la salud y asistencia social de todos los habitantes,"

In order to enforce the right to health and the State's obligation to protect a person and guarantee his or her life and comprehensive development in accordance with articles 1, 2, and 93 of the supreme text, further, the Political Constitution of the Republic of Guatemala contains, in its article 94, the State's obligation to safeguard the health and social treatment of all inhabitants, developing through its institutions -which includes the Guatemalan Social Security Institute- prevention, recovery and rehabilitation actions for illnesses in order to ensure the most complete physical, mental and social well-being for the country's inhabitants. (WHEREAS IV)

"Situados los elementos que interesan al caso sub judice, este Tribunal considera que en materia de Derechos Humanos, cuando la aplicación de un precepto normativo de grado inferior -como en el caso que nos ocupa las normas que regulan las licitaciones y concursos de precios para la adquisición de bienes y servicios por parte del Estado y las recomendaciones de la Contraloría General de Cuentas para los procesos de adquisición de servicios-, pueda estar sujeto en cuanto a su interpretación a la preeminencia de una norma de grado superior más garantista, la interpretación debe llevar congruencia con el espíritu de la superior. En ese orden de ideas, se parte de que si el Decreto 295 del Congreso de la República -Ley Orgánica del Instituto Guatemalteco de Seguridad Social- establece como un derecho para los habitantes de la República de Guatemala, y principalmente para sus afiliados, el de recibir beneficios para sí mismos o para sus familiares que dependan económicamente de ellos, la interpretación que se haga de lo dispuesto en los artículos de una norma de grado inferior, nunca puede hacer nugatorio el derecho contenido en el cuerpo legal citado."

"Having situated the elements that are of interest in the instant case, this Tribunal considers that in Human Rights matters, when the application of a normative precept of a lower level -as, in the instant case, the rules that govern the bids and tenders of proceedings for acquisition of services-, could be subject, as to their interpretation, to the preeminence of a rule of superior degree that is more protectionist, the interpretation must be coherent with the spirit of the higher rule. In this order of ideas, if Decree 295 issued by Congress of the Republic "the Organic Law of the Guatemalan Social Security Institute" establishes receiving benefits for themselves and the relatives who depend economically from them, as a right for the inhabitants of the Republic of Guatemala, and primarily, for its members, the interpretation that is made from the matters in articles of a rule that is inferior in level, can never have priority over the rights contained in the referenced legal framework. (WHEREAS IV)