

CONSTITUTIONAL JUDGMENT 1586/2002-R
Sucre, December 18, 2002

Filed: 2002-051414-11-RAC
District: Santa Cruz
Judge Reporting: Dr. Felipe Tredinnick Abasto

In reviewing the decision of October 17, 2002 (at 72-74) made by the First Criminal Chamber of the Supreme Court of Santa Cruz, in the action for constitutional *amparo* [an extraordinary remedy that offers immediate protection against illegal acts and omissions of authorities or individuals that restrict, deny or threaten to restrict or deny fundamental rights and guarantees of the person, as recognised by the Constitution and laws] filed by Marco Marino Diodato del Gallo against Germán Flores, Governor of the Centre for Rehabilitation “Santa Cruz”, alleging infringement of his rights to life and health and safety.

I. BACKGROUND WITH LEGAL RELEVANCE

I.1 Content of the Appeal

I.1.1 Grounds for Appeal

In the brief filed on October 14, 2002 (at 25 to 28), this extraordinary remedy was raised asserting the following:

That Marco Marino Diodato del Gallo (claimant), on March 12, 2001 underwent a risky surgical procedure following a triple heart attack caused by obstruction of more than 90% of the claimant’s arteries. In the postoperative stage, the claimant was returned to the prison Palmasola and confined to the maximum-security division Choncocorito, despite the serious health risks posed by the precarious conditions of the penitentiary.

That the Judge of the Third Division of Criminal Sentencing and Monitoring, by Order 85/2002 of June 2, provided that the claimant was to be admitted to the Micro Hospital of the Jail and that he was to be provided with everything necessary for recovery in the post-operative stage. However, the present Governor of the prison (the respondent) abused his authority by refusing to comply with this court order.

That the health of the complainant and the death threats received from other inmates meant that the complainant was unable to remain where he was. For this reason he repeating his request to the judicial authority, who delivered the same result as the Judge of Criminal Sentencing, issuing a decree issued on October 7, 2002 reiterating the transfer order. However, once again, the respondent verbally refused to comply with the judicial order.

I.1.2 Rights and guarantees supposedly violated

The claimant alleges that the failure to comply with the judicial orders to transfer him to the Micro-Hospital of the Palmasola Prison is in violation of his rights to life, health and security.

I.1.3 Respondent authority or person and petition

This background forms the basis for a claim for the constitutional remedy of *amparo* against Germán Flores, Governor of the Centre for Rehabilitation “Santa Cruz”, requesting that the claim be allowed and ordering the aforementioned authority or the party acting in the capacity of the Governor at that date to comply with the court order to transfer the claimant to the Micro-Hospital pending his complete recovery and until his security at the prison has been stabilised, by penalty of law.

I.2 Hearing and Ruling of the of the Court of Constitutional *Amparo*

At the public hearing was held on October 17, as per the court record (at 64 to 71), the following occurred:

I.2.1 Confirmation and extension of the claim

Counsel for the claimant confirmed the nature of the claim and stated that there had been three orders for his client to be transferred to the Micro Hospital of the Prison, which had not been complied with and that there is no further avenue of appeal because the previous appearances had been before the Judge of Sentencing, and to date his direction had not been complied with.

I.2.2 Report of the Respondent

In turn, counsel for the respondent stated that: a) the claimant, following a surgical procedure and a lengthy treatment, was admitted to various medical centres and permanently guarded until a determination of the jurisdictional authority ordered his transfer to the detention centre; b) the Judge of Criminal Sentencing issued a standing order directing the transfer of the claimant to the Prison Micro-Hospital when this became possible; c) in an appearance before the Sentencing Judge, it was stated that the Micro-Hospital is located in the women’s wing (pursuant to the established prison system of inmate segregation), the Micro-Hospital does not meet the minimum standards of security, and that the claimant is a high-danger inmate, the cumulative effect of which is that the refusal cannot be considered to be in violation of a court order; d) the transfer of the claimant to the Micro-Hospital would not generate any health benefits because the security situation is as unstable in the Micro-Hospital as it is in his cell; and e) if the claimant considered that his rights were being restricted, he had the option to appear before the Judge of Criminal Sentencing that directed the transfer.

I.2.3 Decision

Following the hearing, on October 17, 2002 the First Criminal Chamber of the Supreme Court issued a ruling (at 72 to 74) which, in accordance with Prosecutor’s opinion, ALLOWED the appeal and ordered the respondent authority to immediately comply with the judicial rulings to transfer the claimant to the Micro-Hospital of the

Prison until his internal health has improved and the security of the Prison has stabilised. The following grounds were given for the ruling: a) the respondent authority unjustifiably failed to comply with the judicial order to transfer the complainant to the Prison Micro-Hospital, thereby endangering the claimant's fragile state of health, and b) the respondent did not take into consideration that Palmasola is on the most violent detention centres and that the sole aim of the Sentencing Judge when ordering the transfer of the claimant was to protect his life, health and physical integrity as deserved by all citizens, even those incarcerated.

II. CONCLUSIONS

Based on the analysis of the court record and the supporting evidence, the following can be concluded:

II.1 On the 12th of June, 2002 a medical surgery report was issued which stated that after emergency surgery was performed on the complainant on March 12, 2001, in his post-operative evaluation it was evident that he had heart failure. Furthermore, in the examinations performed by different cardiology specialists, it was established that the patient had necrotic cardiomyopathy with diffuse lesions in the coronary tree, and therefore the patient may later suffer from hypertensive complications, intestinal haemorrhages, cerebral vascular incidents and metabolic abnormalities (at 1 to 8).

II.2 At the request of the party, on July 2 the Judge of Criminal Sentencing of the Third Division issued Order 85/2002, which ordered the Director of the Penitentiary to transfer the complainant to the Prison Micro-Hospital and to provide every necessary for his post-surgery recovery (at 16 to 17).

II.3 On October 3, 2002, the claimant filed a brief requesting that the Judge of Criminal Sentencing ensure compliance with Order 85/2002 (at 19 to 20), having issued the judicial resolution of October 7, 2002 that the respondent authority "move the detainee to the Micro-Hospital in the women's wing indefinitely and, when it is possible and permissible within the security provisions of the Law, until his recovery and checkups, and the security of the inmate, has stabilised" (at 21) ordering it be immediately effected (at 22).

II.4 In a brief filed on October 8, 2002, the claimant stated before the Judge of Criminal Sentencing that the respondent authority refused to comply with the degree of October 7, 2002, and requests that the authority appear and explain why the judicial orders have not been obeyed (at 53 to 54). There is no record of the reply of the judicial authority to this request.

II.5 On October 10, 2002, the respondent authority appeared before the Judge of Criminal Sentencing and stated that the transfer of the claimant to the Micro-Hospital could not be effected because of security reasons and lack of space, given that the inmate Walter Téllez Ovale has been admitted to the ward.

II.6 on 14 October 2002, the action was brought for review.

III. LEGAL GROUNDS OF THE JUDGMENT

The respondent authority refused to comply with the order issued by the Judge of Criminal Sentencing that directed the transfer of the complainant to the Prison Micro-Hospital. It is alleged that the respondent illegally infringed the right to health, to life and security of the complainant. Furthermore, in prison, the complainant received death threats, which demonstrated the need to determine the nature of the complaint, in order to establish whether or not to provide the protection requested.

III.1 The LEPS, in art. 5, provided that “In the prison establishments there prevails a respect for human dignity, constitutional guarantees and human rights”. In addition, art.9 of the cited Act established that an incarcerated person can exercise the same rights as non-detainees.

In turn, the Enforcement Regulations of Criminal Incarceration, approved by Supreme Decree no. 26715 of 5 August 2002, stipulates in art.2 no.2 that it is the duty of the officials of the Prison Administration to promote and respect the human rights of all inmates.

By virtue of the order of 2 July of this year, the Judge of Criminal Sentencing ordered the transfer of the claimant to the Prison Micro-Hospital for his post-operative recovery. The aforementioned judge gave this instruction in his capacity as the authority responsible for monitoring the respect of and compliance with the rights of the inmates, within the context of the provision in art. 19 LEPS and 55 CPP. However, the Governor of the Prison failed to comply with this, thereby placing at risk the claimant’s rights to life and health.

Additionally, “The right to life, as proclaimed in SC 687.2000-R, is the most important legal entitlement of those enshrined in the Constitution, and it heads the list of fundamental rights stipulated in art. 7. It is the right of every person to be and exist. Its essential characteristic is that it is the basis for the exercise of other rights, as life itself is the indispensable prerequisite to possessing rights and obligations. The right to life is an inalienable right of the person that the State is obligated to respect and protect. The State authority is constitutionally barred from doing anything that may destroy or weaken the essential content of this right, and must implement conditions to ensure full observance and complete compliance. Similarly, the right to health and security is also recognised, as per art. 7-a) CPE”.

III.2 With respect to the argument of the respondent that the complainant did not exhaust all possible avenues of appeal to defend his interests, it is considered elementary to demonstrate that when it comes to actions that undermine the right to life or health, it should be the exception to the rule of subsidiarity because the omission by the respondent authority may be irreparable or irreversible.

Accordingly, the Court of *amparo*, having allowed the remedy, has made a correct assessment of the case in review, as per the full application of art. 19 CPE.

THEREFORE:

The Constitutional Court, by virtue of the jurisdiction vested in it by arts. 19-IV, 120-7 CPE and 7-8 and art 102-VLTC, APPROVES Ruling of 17 October 2002 (at 72 to 74) issued by the First Criminal Chamber of the Supreme Court of Santa Cruz

Dr. René Baldivieso Guzmán Chairman Dr. Willman Ruperto Durán Ribera DEAN
Dra. Elizabeth Iñiguez de Salinas Magistrate Dr. Felipe Tredennick Abasto
Magistrate

Dr. José Antonio Rivera Santivañez
MAGISTRATE