

CONSTITUTIONAL JUDGMENT 1716/2003-R

Sucre, November 25, 2003

Filed: 2003-07459-15-RAC

District: Santa Cruz

Judge Presiding: Dr. Elizabeth Iñiguez de Salinas

In reviewing the Judgment (at 53 to 55) issued on 10 September 2003 by the Social and Administrative Chamber of the Supreme Court of the District of Santa Cruz, within the 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 Luz Saavedra Vaca, representing Rubén Suárez Saavedra, against Gerardo Catacora, Director of the establishment Prison “SantaCruz” (Palmasola), alleging that they have violated the rights to life and health of his son Rubén Suárez Saavedra.

I. BACKGROUND WITH LEGAL RELEVANCE

I.1. Content of Appeal

I.1.1 Grounds for Appeal

In the claim filed on September 2, 2003 (at 15 to 20), the appellant stated that on June 18, 2003, at 11am, his two sons Carlos Orlando and Rubén Suárez Saavedra were recaptured in a violent and brutal manner by members of the national police. Physical harm was inflicted on Carlos Orlando, who is suffering from appendicitis and an inflamed gallbladder, resulting in “a broken rib”, and while, no action was taken against Rubén because he is suffering from AIDS, both were in need of urgent medical attention.

The appellant further stated that, despite the order made following a hearing by the Judge of the Court of Instruction in Criminal Matters, Eighth Division on June 20, 2003 that his two sons were to be reintegrated into the Santa Cruz Centre for Rehabilitation “Palmasola” in the open system (PC4) and sent to the medical centre in order to receive the appropriate treatment, medication and food to alleviate their ailments, the appellant authority instructed the Chief of Prison Security to remit them to the maximum-security division known as “Chonchocorito”, where there is no health centre or any medical assistance whatsoever.

He added that on the 2nd and 4th of August 2003 the Settlement Judge of the Eighth Division, Lily Salazar immediately and urgently ordered the two invalid prisoners to be transferred to the medical centre in the open system to rapidly receive the medical treatment respectively required. Despite this, the respondent obstinately refused to obey, and on his instructions Carlos was shackled, hit in the face, and told, “if you continue with these allegations you will die like a dog, just like your brother Rubén is dying”.

In conclusion, based on the above, on behalf of his son Carlos Suárez, the applicant commenced a constitutional claim of *amparo* against the respondent, which was allowed by the Criminal Court of First Instance, which stated that the Director of the Court instructed that sufficient medical assistance were to be given to the detainees in the Micro-Hospital in PC4, and that the respondent wrongfully refused to comply with the resolution.

I.1.2. Rights and guarantees supposedly violated

The applicant asserts that the rights to life and health of his son Ruben Suárez Saavedra have been violated.

I.1.3. Appeal authority and request

In accordance with the claim related, a constitutional *amparo* is raised against Gerardo Catacora, Director of the jail “Santa Cruz” (Palmasola), requesting that it be allowed with costs and that the court record be forwarded to the Public Prosecutor directing the following: 1) the immediate, permanent and continuing relocation of his son Ruben Suárez Saavedra to the medical facility of the open regiment PC.4 of the Central Prison; and 2) Permit access to all medications needed by him without any financial charge.

I.2. Hearing and Resolution by the Court of the constitutional *amparo*

At the public hearing held on September 10, 2003 (at 50 to 53), the following issues were raised.

I.2.1. Confirmation and extension of the remedy

The appellant confirmed and reiterated the terms of the application and added a request that: a) the previous remedy of *amparo* was filed on behalf of the two brothers Suárez and Saavedra, but the Criminal Court declared it admissible only in respect of Carlos because with respect to the other claim there was no legal personality; 2) as the admission to hospital never eventuated, the immediate relocation and administration of medical care in the hospital at PC 4, regardless of whether the constitutional sentence, must be adhered to immediately or within 24 hours; and c) the court report is dated after to reflect a date after the passage of court orders.

I.2.2. Report of the Respondent Authority

The respondent authority’s in its report (at 48 and 49) and in the hearing, stated the following: a) the claim should be dismissed on the basis of the provisions in art. 96.2 of the Constitutional Court Act (LTC), because there is another *amparo* claim raised by the applicant with the subject, object and cause identity; b) there has been strict compliance with the constitutional decision of August 19, 2003 that allowed the aforementioned remedy, having directed on that occasion the periodic and continuing review of both prisoners by the head of medical services; and c) “it is clear that the representative ordered the transfer of both inmates to the Closed Regiment of PC-3 ‘Chonchocorito’ because it avoided the use of firearms and penitentiary violence

more than once, given that they are repeat offenders and considered highly dangerous”. It was requested that the claim be dismissed with costs and a fine.

I.2.3. Resolution

The Judgement (at 53- 55) issued on September 10, 2003 by the Social and Administrative Chamber of the Supreme Court of the Judicial District of Santa Cruz, allowed the claim relating to the appellant’s son, Rúben Suárez Saavedra receiving medical treating in the micro hospital of PC4 for the time set by the doctors, and finding the respondent authority responsible and liable to fines on the following grounds: a) the sentence of the previous constitutional *amparo* in relation to the applicant’s children is contradictory because it excludes Rúben Suárez Saavedra and exclusively pertains to Carlos Orlando, and is pending execution because it is conditional on the issuance of the resolution of the Constitutional Court, art. 96.2) LTC not being applicable; b) the present claim must be addressed because it relates to constitutional rights to life and the health of a person, which are not curtailed by the confinement in a penitentiary, nor by conviction in criminal matters; and c) the provision of medical attention to the inmate interferes with the isolationary nature of unit “Chonchocorito”, and the inmate should therefore be moved to unit PC4.

II. CONCLUSIONS

Having reviewed and validated the background information, the following conclusions have been reached:

II.1. Based on the documents and works (at 3 to 6) it is evident that Carlos and Rúben Suárez Saavedra, were serving a sentence in the public prison when they fled, and were captured by the Police on June 18, 2003. They were brought before the Court of Instruction in Criminal Matters, 8th Division, chaired by Justice Luis Hernando Pachi, on June 20, 2003 who determined that they were to be remitted to the Santa Cruz Rehabilitation Centre, to be treated at the hospital of unit PC4.

II.2 In the hearing of August 3, 2003 (at 8) that was held in the prison chamber, the Justice of the Eighth Criminal Division, Lily Salazar Valverde, ordered the Governor that Rúben Darío Suárez Saavedra was to be admitted to the hospital and appropriate laboratory testing be undertaken by medical examiners. In addition, she ordered that Carlos Orlando Suárez Saavedra be admitted to the prison health centre and referred to the dentistry section.

II.3. On August 4, 2003 (at 9), Justice Lily Salazar Valverde instructed Hernán Isita Velasco, the Departmental Director of the Rehabilitation Centre “Santa Cruz”, to provide immediate medical attention to the brothers Ruben Dario and Carlos Suárez Saavedra, and then provide medical examiner’s certificates and laboratory test results.

II.4 The medical surgeon of Palmasola reported that Rubén Suárez Saavedra suffered from pulmonary tuberculosis, symptoms of depression and immunodeficiency, and suggested immediate consultation with specialists and the prison doctor (at 13).

II.5. The PC-3 Health Report, issued August 16, 2003 by the Head of Health Services (at 40) reports that in the daily visits to unit “Chonchocorito”, it was evident

that Ruben Suárez Saavedra received daily medical treatment for tuberculosis, and that he was permanently attended to by a SEDES doctor and that he refused to receive treatment in the other Hospital Centre on the 3rd floor, despite the court order.

II.6. Per the judgment delivered on August 19, 2003 (at 29 and 30) by the Criminal Chamber of the Supreme Court of the District of Santa Cruz, the claim for constitutional *amparo* filed by the applicant on behalf of his son Carlos Orlando Suárez Saavedra was allowed and the constitutional *amparo* filed in relation to his son Rubén Dario was dismissed, on the basis of insufficient standing.

The Constitutional Court endorsed the above resolution, by means of SC 1540/2003-R of October 30.

11.7. The Medical Care Centre of Palmasola reported on September 10, 2003 (at 46) that the inmate Ruben Suárez Saavedra was receiving treatment for pulmonary tuberculosis, displayed symptoms of depression and was suffering nasal obstruction, and suggested consultation with specialists, and the continuation of treatment of tuberculosis.

III. LEGAL GROUNDS OF JUDGMENT

In the present claim for the remedy of *amparo* the appellant asserted that the Director of the Santa Cruz Penitentiary (Palmsola), by failing to finalise the transfer of his children Carlos Orlando and Rubén Suárez Saavedra to the medical centre at the Open Regiment, thereby ignoring court orders and the constitutional resolution that allowed the remedy of *amparo* in favour of Carlos Orlando, have violated the right to life and health of his son Rubén. Accordingly, the purpose of the review is to analyse whether this situation should be granted the protection sought.

III.1. The constitutional *amparo* was instituted as 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.

III.2. The Acquired Immunodeficiency Syndrome (AIDS), as declared by SC 26/2003-R of January 8, constitutes a disease that is, at present, incurable, progressive and fatal. It attacks the CD4 cells, which are an essential part of the human immune system, introducing their genetic code in them and forcing them to reproduce the virus, at the same time as destroying them. When the virus has managed to destroy a considerable part of the immune system, immunodeficiency occurs, subsequently enabling the development of so-called “opportunistic” cancers and infections, resulting in gradual and inexorable deterioration of the body carrying the disease, in the absence of a remedy that eliminates the virus itself. It is considered a “catastrophic” illness, given the personal, family and economic problems that it causes, as well as the irreparable damage to health, psychological problems suffered by the patient and the breakdown in workplace, social and family relationships, as well as the high cost of treatment.

In the same ruling, this Court declared the following:

“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.”

As stated by this Court in SC 411/2000-R, the right to life is the origin from which the other rights stem, so that its exercise cannot be hindered by bureaucratic procedures or subject to appeals, especially when the possessor of the right is at a serious risk of dying. For this reason, in addition to proclaiming the right, the Basic Law institutes mechanisms to protect the real and effective exercise of the right to life. Specifically, art. 158 requires the State to defend humankind, by protecting the health of the population, ensuring the continuity of livelihood and rehabilitation of disabled people, and requiring as well that the State establish a “social security system” based on the principles of universality, solidarity, unity of management, economics, opportunity and effectiveness.

The right to health is the right by virtue of which individuals and social groups—specifically the family—as holders of this right, can demand, as taxpayers, that the organs of the State establish adequate conditions so that they can achieve an optimal state of physical, mental and social wellbeing, and ensure that these conditions are maintained. The right to health does not just mean the right to be free of disease; it also entails the right to an existence with quality of life.

In our legal system, the right to health is a fundamental right that must be subject to even greater protection when it is linked to the primary right to health or human dignity, especially in the case of vulnerable members of the population, such as children, people with disabilities, seniors and the terminally ill.

III.3. The Law on the Enforcement of Criminal Sentences (LEPS) 2298, of December 20, 2001, in art.5, provides that “In the established penitentiaries, respect of human dignity, constitutional guarantees and human rights prevails. Cruel, inhumane and degrading treatment is prohibited.” Similarly, art. 9 of the cited Act establishes that a detainee may exercise those same rights as those not imprisoned.

In turn, the Regulations on the Enforcement of Imprisonment, approved by Supreme Degree No. 26715 of August 5, 2002, stipulates in art. 2, no. 2 that it is the duty of Prison Service Officials to promote and respect the human rights of all inmates.

In the case at hand, by the Order made on June 20, 2003 by the Judge of the Eighth Division, Instructing in Criminal Matters, an injunction was issued, ordering that the two sons of the appellant were to be sent to the Santa Cruz Centre for Rehabilitation “Palmasola”, in the open regiment (PC4), and admitted to medical centre in order to receive the appropriate treatments, medications and food to alleviate their ailments. This instruction was given by the Judge as the authority responsible for ensuring the compliance with the rights of the inmates, as per the provision in art. 19 LEPS and 55CPP. However, this order was not complied with by the respondent authority, which is admitted in their report, thereby putting at risk the rights to life and health of the inmates.

II.4. It is clear that the first claim of constitutional *amparo* commenced by the applicant was allowed in relation to his son Rubén Suárez Saavedra for lack of standing, a ruling approved by SC 1540/2003-R of October 30. The applicant is making the same claim in relation to a request for protection in his son's favour, based on evidence that the defendant has infringed his rights as cited in this claim, and taking into consideration that this court has established that, having dismissed the claim for failure to comply with procedural demands, the appellant has the power to raise an amended claim, in which case the Constitutional Court may address and resolve the merits of the issued involved (at SC 869/2003-R).

In addition, considering that the first claim of constitutional *amparo* brought by the applicant was denied in relation to his son Rubén Suárez Saavedra for lack of standing, and he is making the same claim in relation to a request for protection in his favour, based on evidence that the defendant has infringed his rights as cited in this claim.

Accordingly, the Court of *amparo*, having allowed the constitutional *amparo*, has correctly evaluated the rules and process applicable.

THEREFORE

The Constitutional Court, by virtue of the jurisdiction vested in it by arts. 19-IV, 120-7th) CPE, 7.8th and 102-V on the grounds set out APPROVES the Judgement (at 53 So 55), issued on September 10, 2003 by the Social and Administrative Chamber of the Supreme Court of the Judicial District of Santa Cruz.

Registered, reported and published in the Constitutional Gazette.

No involvement by the dean Dr. Willman Ruperto Durán Ribera.

Dr. René Baldovieso Guzmán Dra. Elizabeth Iñiguez de Salinas
ACTING CHAIRMAN DEAN

Dr. José Antonio Rivera Santivañez Dra. Martha Rojas Álvarez
MAGISTRATES

Dr. Rolando Roca Aguilera
MAGISTRATE