

National Supreme Court of Justice

Buenos Aires, 12 July 2001

Orders and Reviews; Considering;

1) That (at 177/82 of the court report) Oscar Juan Alvarez appeared before the National Civil and Commercial Court and commenced a claim of *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] against the National State and the Province of Buenos Aires, alleging the violation of his right to health. Specifically, he claims that the respondents must provide an intensive rehabilitation treatment (at least three times per week continuously until he received medical or therapeutic discharge), special shoes, crutches and medication specific to his pathology.

The claimant states that he is 46 years old and that he is disabled (certified by the relevant national and provincial authorities), in poor economic condition and unable to work. In addition, he states that he has no social security or prepaid health insurance coverage.

The claimant specifies that he is affected with paralysis (with atrophy of the tibia and fibular) of a congenital nature, which was aggravated by an accident he suffered at the start of last year, as a result of which he required surgical intervention. However, he adds that the surgery must be supplemented with rehabilitation treatment and the provision of orthotics, which were never supplied, despite that claims made before the Council of Arrecifes, the Province of Buenos Aires and the Ministry of Social Development and Environment. The claimant reports that he repeatedly attempted to obtain disability pension and tax exemption, but until this point has had no positive result.

The claimant explains that he has no income, nor sufficient funds to meet the cost of the treatment. He adds that his situation is desperate, not only because of his disability, his intense physical pain and emotional and psychological exhaustion, but also because he has four young children and his wife is unemployed, and as a result they essentially live in poverty with some support provided by his mother-in-law. Accordingly, he states that the deprivation of treatment has resulted in the deterioration of his quality of life, because all progress made over course of months of treatment is rapidly lost once the treatment is interrupted.

He bases the existence of this legal right on art. 25 of the American Convention on Human Rights, in the Act 24.901 and on the other norms that are cited in the annex to 124/135 of the court report.

Finally, he requests that the court issue an interim remedy ordering the defendants to implement the necessary measures to provide him with the treatment and orthotics as indicated above.

2) That the National judge of the first instance dismissed the claim and referred the proceedings to this Court.

In response to the grounds expressed by the Fiscal Procurator (at 190/191), that the Court has shared and condensed for the sake of, it is declared that the claim is within the original jurisdiction of the Court (arts. 116 and 117 of the National Constitution).

3) That it must be noted that this Court has repeatedly stated that, as a result of the nature of the interim relief sought, it does not require the verification of the existence of the alleged right, but merely the plausibility of its existence. Moreover, a determination of truth in relation to this matter is at odds with the purpose of the interim measure, which involves attending to that which does not exceed the scope of the hypothetical, within which, at the same time, its potential is exhausted (Cases: 315:2956; 316:2855 and 2860; 317:243 and 581; 318:30 and 532; 323:1877 and 324:2042).

In the present matter, the credibility of the legal right is verified and is in accordance with the provisions established in art. 323 of the National Civil and Commercial Procedures Code, which relate to the provision of the remedy requested.

Therefore, the resolution of the Court is as follows: I) The National State and the Province of Buenos Aires are required to provide a detailed report in relation to the provisions of art. 8 of the Act 16.986, which must be presented within five days. In order to complete this, arrangements must be made for the relief of the relevant officials in accordance with- in the case of the Province- the provisions of art. 341 of the aforementioned code; II) The claim for the interim remedy is sustained, and, consequently, the National State and the Province of Buenos Aires are ordered to provide the necessary measures for the administration of the treatment to the claimant and the orthotics (described at 167/167) within five days, under penalty of law. Notified and officialised. CARLOS S. FAYT – ENRIQUE SANTIAGO PETRACCHI – ANTONIO BOGGIANO – GUSTAVO A. BOSSERT – ADOLFO ROBERTO VAZQUEZ.