

O. 59. XXXVIII.

ORIGINAL

Orlando, Susana Beatriz v. Province of
Buenos Aires, and others s/ *amparo*.

National Supreme Court of Justice

Buenos Aires, 4 April 2002

Orders and Reviews; Considering;

1) That (at 19/25 of the court report) Susana Beatriz Orlando, the complainant, who is 55 years old and suffers visual and motor impairment as a result of multiple sclerosis, appeared before the National court and commenced the present action 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 Province of Buenos Aires and the National State, with the purpose of obtaining the necessary medication to treat her condition, in light of her lack of economic resources.

The claimant states that she directs her claim against acts and omissions of the respondents, as well as making a claim against the Provincial State on the basis that multiple sclerosis is not a condition covered by the Medicines Management Policy (see 10, 2946-2607/01), and therefore treatment is not provided for by the local authorities. In turn, the National State, through the National Minister of Social Development, provided only six batches of the medication in question, namely Glatiramer Acetate, Copolymer (Copaxone), in August 2001, a quantity that was insufficient to treat the illness, and the request for additional batches has not been answered since that date (see 3).

The claimant bases her allegations on arts. 42 and 75 of the National Constitution, and the provision contained in the National Act 23.661, which created the National Health Insurance System 939/2000, amended by 1.2001 in Act 24,901 and 22, 431 in the Provincial Constitution.

The claimant requests that the court issue an interim remedy ordering the respondents to acquire the means necessary for the provision of the medication in question, as this medication is indispensable for her life, and should therefore be provided without interruption in order to avoid outbreaks of illness.

The National justice intervened (at 28) and declared the claim procedurally invalid, in his opinion, based on the original jurisdiction of the Court.

2) That this claim is valid in accordance with the jurisdiction set out in art. 117 of the National Constitution, as well as in accordance with the statement by the Attorney General in the above opinion, to which a brief reference is made.

3) That within the present claim, the court has verified the credibility of the legal right as well as the danger of delaying the grant of the remedy requested.

Accordingly, it is held that: I. By virtue of the provision in art. 43 of the National Constitution and in conformity with the provision contained in art. 8 of the National Act 16,986, the Ministry of Health of the Province of Buenos Aires and the Ministry of National Health and Social Development are required to present a report detailing the circumstances, including background facts, and basis of the impugned measures, which must be submitted within 10 days. II. The claim for the interim remedy is sustained and the respondents are ordered to urgently provide the claimant with the medication Glatiramer Acetate, Copolymer (Copaxone). Once obtained, a report must be filed in order to avoid overlapping compliance by the co-respondents of the ruling in question.

Notified according to date and time.

Claimant notified

EDUARDO MOLINE O'CONNOR – CARLOS S. FAYT – AUGUSTO CESAR BELLUSCIO – ENRIQUE SANTIAGO PETRACCHI – ANTONIO BOGGIANO – GUSTAVO A. BOSSERT – ADOLFO ROBERTO VAZQUEZ