

Díaz, Brigida v. Province of Buenos Aires, and others
(National Government - Ministry of Health and Social Action of the Nation)

National Supreme Court of Justice

Buenos Aires, 25 March 23.

Orders and Reviews; Considering;

1) That (at 12/15 of the court report) Brígida Díaz appeared and commenced the 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 Federal State and the Province of Buenos Aires alleging the violation of her right to health. Consequently, the claimant requests an urgent surgical intervention to replace the pacemaker currently in place, as well as the coverage of any necessary resources or materials necessary for the intervention.

The claimant states that in 1991 she attended the Cardiological Institute of San Salvador de Jujuy where she was diagnosed with chronic Chagas' cardiomyopathy class 2 to 3, with dysfunction of the sinus node. As a consequence of this condition, she was fitted with a pacemaker that was replaced the following year. On these two occasions, the bills were covered by the social welfare scheme that she belonged to at the time, which she no longer receives benefits from. The claimant states that on 14 February 2002, she attended the Ramos Mejía Hospital in the city of Buenos Aires, where she was informed that the battery of the pacemaker had run out and needed to be replaced. For this reason, given the urgency, her lack of resources, and the fact that she resides in the Province of Buenos Aires, on 22 February 2002, the claimant appeared before the Sanitation Commission Region VII, part of the Ministry of Health in the Province of Buenos Aires, and filed a request for the replacement of the pacemaker that had been implanted in the Ramos Mejía Hospital. The claimant adds that on 20 June, without having obtained any response and aware that her health had been deteriorating, she returned to the hospital, where the professional insisted, on this occasion as a matter of urgency, that the pacemaker be replaced. The claimant states that since then she has made regular calls to the Sanitation Commission Region VII, until, without having received any response to her request, on 15 August, she contacted the lawyer Josefuna Roldán. The claim and supporting documentation are submitted, basing her right on arts. 43, 75 inc. 22 of the National Constitution, art. 15, 12, 28, 36, inc. 8 of the Constitution of the Province of Buenos Aires, and Act 16.986.

Finally, the claimant requested that the court issue an injunction or, as a subsidiary remedy, an interim remedy ordering the respondents to locate the necessary resources so they can order the claimant's surgical operation and cover the costs of the necessary materials.

2) In light of the interim measure requested as a subsidiary remedy, it must be noted that this Court has repeatedly stated that, as a result of the nature of the interim relief, it does not require the verification of the existence of the alleged right, but merely the

plausibility of its existence. Moreover, the 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 right is deemed plausible and the provisions established in art. 232 of the Civil and Commercial Procedures Code are applied in order to grant access to the interim measure, though not in its entirety.

3) That, in fact, it should be noted that the terms of the demand and of the accompanying documentation demonstrate that the claimant only made a request for a pacemaker, and only before the Ministry of Health and the Province of Buenos Aires, circumstances which –prima facie- enabled exclusively the grant of the interim measure relating to the provincial State.

On this basis it is decided that: 1) The National State and the Province of Buenos Aires are required to present a report detailing circumstances related to art. 8 of the Act 16.986, which must be submitted within five days. In order to compile this, the relevant officers must be relieved of their duties, in accordance with –in the case of the province- the provisions in art. 341 of the National Civil and Commercial Procedures Code. 2) The request for the subsidiary interim measure is sustained and, consequently, the co-respondent Province of Buenos Aires is ordered to provide the claimant the relevant pacemaker within five days, under penalty of law. Notified, as qualified by the Court's convenience. EDUARDO MOLINE O'CONNOR – CARLOS S. FAYT – ENRIQUE SANTIAGO PETRACCHI – ANTONIO BOGGIANO – GUILLERMO A. F. LOPEZ – ADOLFO ROBERTO VAZQUEZ – JUAN CARLOS MAQUEDA.