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Summary:

1. The decision that will settle the protection action that has been brought seeking to regulate and ensure the continuity of provision of medications for patients with HIV being treated in local health centers is not abstract, given the fact that the Ministry of Health and Social Action of the Province of Buenos Aires has provided these drugs in part, and it being understood that the patients' effective treatment requires that the drugs be provided in a certain sequence, as determined by specialists. As a result, this resolution specifies the manner in which such medicines should be provided—that is, it provides for continuity of treatment that such patients are receiving.

2. In light of the lack of continuity of treatment for patients with HIV by the Ministry of Health and Social Action of the Province of Buenos Aires, the remedy sought by the protection action that has been filed to ensure the continuity of provision of medications, cannot be remedied by the delivery to patients of a prescription for certain drugs on a single occasion, because it cannot be argued that if this omission occurs again, another protection action should be filed. This would violate not only the rights to health and physical, mental and moral health of the persons in question, but also their right to lead a life of dignity, and putting them at risk of losing their lives or aggravating their respective conditions.

Full Text:

On appeal. Bahia Blanca 2 September 1997

First: Should the decision under appeal, appearing at pages 63 – 68 of the record of the proceedings, be upheld? Second: What ruling should the court hand down?

First issue - Dr. Garcia Festa stated that:

I. The appellant, in its brief appearing at page 81 of the record of the proceedings, stated that currently those patients with AIDS who are being treated at the Dr. Jose Penna Inter Zonal Hospital and at the Dr. Leonidas Lucero Municipal Hospital, receive antiretroviral medications, Foscarnet and antimycotics, which the Ministry of Health and Social Action of the Province of Buenos Aires has provided to them in order to regulate their treatment. As a result, there is no certain and actual harm, and the question raised before the court is abstract and as a result, any ruling on the particular case in question would be outside the court's jurisdiction. The courts have repeatedly noted that they do not have jurisdiction to make general rulings or decisions in the

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abstract, and no more can they issue a judgment in a hypothetical case based on future or eventual harm. In the case at hand, if in the future the treatment of the patients in question is interrupted or the continuity of treatment is otherwise disturbed, the affected parties would then have the right to bring a protection action in order to remedy the violation of their rights. In light of the foregoing, the lower court's decision should be vacated. In addition, the appellant stated that the Government of the Province was under no obligation, as a result of the ruling, to guarantee the continuity of treatment of patients with AIDS, as to discontinue such treatment would not result in a violation of the patients' rights, as the lower court found. The issue before the court also raises a serious institutional problem, as it alters the balance between the provincial and municipal governments. The appellant also added that it would be valid for the court to find that the councils share authority over the provincial hospital. The appellant stated that the judgment ordered for the Province of Buenos Aires is "over broad, open ended, and pertaining to the future," and as a result would require the province to maintain the services in question continuously and permanently, "speaking in terms of the life of any particular patient, it would be possible, at any time and under any circumstances, for any person calling him or herself a 'citizen representative'", could enforce a judgment that had already been duly carried out. Finally, the appellant questioned the claimants' standing to bring the claim, noting that the status of the claimants, as representatives of the citizenry, only permit them to act within the scope of the group to which they belong, and through which they may advocate for specific remedies in order to act as a check on acts of the government.

II. In the first place it is necessary to note, as the lower court's decision correctly does, that, due to the fact that the provision of pharmaceutical drugs was discontinued for 12 patients suffering from AIDS who were being treated at the Center for Infectious Disease at the Dr. Leonidas Lucero Health Center, and for 22 patients being treated at the General Intensive Care Unit at the Dr. Jose Penna Inter Zonal Hospital, all by the Ministry of Health and Social Action of the Province of Buenos Aires, the situation cannot be remedied by the delivery to the patients of a prescription for certain drugs on a single occasion. The appellant has not understood that, in order for the treatment that the patients in question receive to be effective, the drugs that the patients are prescribed must be administered in the particular sequence that their specialists indicate, and it cannot be argued that if this omission occurs again, another protection action should be filed. This would violate not only the rights to health and physical, mental and moral health of the persons in question, but also their right to lead a life of dignity, and putting them at risk of losing their lives

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or aggravating their respective conditions. (See testimonial declarations at pages 55 – 58 of the record of the proceedings.)

As a result, the lower court's decision is not abstract, but, to the contrary, it concretely specified the manner in which the necessary drugs should be provided to the patients in question—that is, it provides for continuity of the treatment that such patients are receiving at their respective local health centers.

III. The honorable representative of the Office of the Attorney General of the Province of Buenos Aires, after agreeing that the protection action was brought in order to seek the continuity of treatment in respect of the provision of antiretroviral medications for patients suffering from HIV who are being treated at the Penna Hospital in Bahia Blanca, discussed the issue of jurisdiction between the national and provincial government in order to “facilitate an effective and efficacious performance of the highest purposes of the State”, and made reference to an agreement between both parties in which the national government had agreed to provide the required medications. This intervention on the part of the State as an interested third party was not admitted by the lower court, and, in the terms set forth above, was limited to “thema decidendum”. Given this argument presented by the appellant, which does not deny any of the facts presented in the claim, nor does it question the standing of the claimants, an attempt to dismiss the claim on such grounds is baseless (Doct. Art. 163, paragraph 6, of the Code of Civil Procedure). But in addition, the arguments set forth herein imply a contradiction with the lower court's own prior resolutions, which were duly deliberated, legally relevant and fully in effect, and which make it impossible to support this finding (SC Buenos Aires, Acs. 33.658, dated 20 Nov. 1984, and 33.672, dated 23 Dec. 1985). For the foregoing reasons and in accordance with Arts. 33, 43 and 75, paragraph 22, of the National Constitution, I vote in the affirmative.

Dr. Vazquez and Dr. Viglizzo, concurring with the above, also voted in the affirmative.

Second issue: Dr. Garcia Festa stated that:

In light of the result that has been arrived at in addressing the previous issue, it is proper to uphold the sentence before Court on appeal, appearing at pages 63 – 68 of the record of the proceedings. Without costs for cause. This is my decision.

Dr. Vazquez and Dr. Viglizzo, concurring with the above, vote in agreement.

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Whereas: In accordance with the foregoing, the Court finds that decision under appeal, appearing at pages 63 – 68 of the record of the proceedings, should be upheld.

In light of the Court's analysis and this finding, the decision under appeal, appearing at pages 63 – 68 of the record of the proceedings, is hereby upheld. Without costs for cause. Osvaldo Garcia Festa. Hilda S. Vazquez. Horacio C. Viglizzo.