

### Monocratic Decisions

AI 559055 / RS – RIO GRANDE DO SUL

**AGRAVO DE INSTRUMENTO [INTERLOCUTORY APPEAL]**

**Author: Min. CARMEN LUCIA**

**Judgment: 06/11/2007**

#### **Citation**

DJ 02/08/2007 PP-00099

#### **Parties**

APPELLANT: MUNICIPALITY OF CAXIAS DO SUL

ATTORNEY: ADIVANDRO RECH

APPELLEE: MARTHA RATH BOHRER

ATTORNEY: DIONISIO WILTUSCHNIG

#### **Decision**

DECISION UNDER APPEAL. PROVISION OF FREE MEDICATION. PERSON DIAGNOSED WITH SERIOUS ILLNESS. JOINT LIABILITY AMONG FEDERAL ENTITIES. RIGHT TO LIFE AND HEALTH. STATE'S CONSTITUTIONAL DUTY. MOTION DENIED. Summary 1. Interlocutory appeal filed against the decision that denied the *recurso extraordinario [extraordinary appeal]* claimed under article 102, III, line a, of the Constitution of the Republic. 2. According to the ruling issued by the Justice Tribunal of Rio Grande do Sul, the denied motion had the following objective: "CIVIL APPEAL. PUBLIC RIGHT UNSPECIFIED. HEALTH. PROVISION OF MEDICATIONS. PATIENT DIAGNOSED WITH CARCINOMA OF THE THYROID. LEGAL CLAIM AGAINST THE MUNICIPALITY OF CAXIAS DO SUL. PUBLIC POLICY OF SUS. JOINT LIABILITY AMONG FEDERAL ENTITIES WITH REGARDS TO THE DUTY TO PROVIDE HEALTH SERVICES TO THOSE IN NEED. IT IS THE STATE'S DUTY ("LATO SENSU") TO PROVIDE HEALTH SERVICES, MEDICATION, MEDICAL EXAMS AND SPECIALIZED MEDICAL TREATMENT, IN SERIOUS AND EXCEPTIONAL SITUATIONS, WHERE THERE IS A THREAT TO LIFE OR TO THE HEALTH OF A HUMAN PERSON – ARTICLES 196 AND 198 OF THE FEDERAL CONSTITUTION. APPEAL FILED BY THE MUNICIPALITY OF CAXIAS DO SUL DENIED. REQUEST FOR REVIEW NOT ACKNOWLEDGED. CODE OF CIVIL PROCEDURE, ARTICLE 475, SECTION 2" (p. 66). 3. The municipality alleges that the decision under review contradicts articles 196, 197, 198, 199 and 200 of the Constitution of the Republic. It further affirms that the aforementioned articles state that providing health related public services is a responsibility that has been divided among the Union, the States and the Municipalities. Additionally, it affirms that the constitutional guarantee to life is a programmatic norm that should depend on infra-constitutional regulations in order to apply to the network system. For this reason, Law 8.080/90, which established the Union's authority to manage such issues (national management of SUS) was edited to define and coordinate the highly complex integrated network system (line a, subparagraph III of article 16). The States' were given the authority (state management of SUS) to identify reference hospitals and to manage the highly complex public system, in the state and regional levels (subparagraph IX of article 17). Afterwards, Law Portaria GM 3.535/98 was edited by the Department of Health, which provides that public hospitals should provide SUS oncology services, to

include that public hospitals are obligated to provide integral specialized assistance to those diagnosed with cancer. In this manner, the General Hospital, managed by the State, is the one responsible for providing this service to the municipalities within Caxias do Sul. The “provision of treatment and services to those diagnosed with cancer is the responsibility of the State Entity, in this case, the State of Rio Grande do Sul, requiring this claim to be equally applied to this governing body – the State Government...” (p. 82). Upon review of the issue, it is DECIDED. 4. Reason does not rest with the Appellant. No legal divergence has been demonstrated in the judgment under review when compared to the dominating jurisprudence in the Supreme Federal Tribunal. The reasoning adopted by the first instance Court does not diverge from the Supreme Federal Tribunal’s jurisprudence regarding the Public Authority’s (the Union, the States and the Municipalities) duty to provide free medication to those in need, diagnosed with a serious illness, in order to secure conditions that allow such people to continue living a life with dignity and to preserve their health. In this sense: “S U M M A R Y: PATIENTS DIAGNOSED WITH SCHITZOPHRENIA PARANOIA AND CHRONIC MANIC DEPRESSION WITH EPISODES OF SUICIDE ATTEMPTS – PEOPLE WHO ARE FINANCIALLY DESTITUTE – THE RIGHT TO LIFE AND TO HEALTH – SUPERIOR NECESSITY TO PRESERVE, FOR ETHICAL JUDICIAL CHARATER REASONS, THE INTEGRITY OF THIS ESSENTIAL RIGHT – PROVISION OF FREE MEDICATION THAT IS INDISPENSABLE IN FAVOR OF THOSE WHO ARE NEEDY – CONSTITUTIONAL DUTY OF THE STATE (FEDERAL CONSTITUTION, ARTICLE 5, “HEADER” AND 196) – PRECEDENTS (SUPREME FEDERAL TRBUNAL) – ABUSE OF THE RIGHT TO APPEAL – APPLICATION OF A FINE – INTERLOCUTORY APPEAL DENIED. THE RIGHT TO HEALTH REPRESENTS AN UNDENIABLE CONSTITUTIONAL CONSEQUENCE OF THE RIGHT TO LIFE. The subjective right to health represents the undeniable judicial prerogative guaranteed to the general public by the Constitution of the Republic (article 196). This translates as a constitutionally mandated right, and by such authority proscribes that, in a responsible manner, the Public Authority, whomever constitutes such position and has the power to implement appropriate social and economic policies must provide and guarantee its citizens universal and equal access to pharmaceutical assistance and medical-hospital access. In addition to qualifying as a fundamental right applicable to all people, the right to health represents an undeniable constitutional consequence of the right to life. The Public Authority, whichever institution is deemed responsible for such role in the Brazilian federal system, must not show itself indifferent to such public health problems, so as to avoid the risk of adopting, even if by censurable omission, unconstitutional behavior. THE NEW INTITUTIONALIZED LAW’S INTERPRETATION MUST NOT BECOME AN UNENFORCED CONSTITUTIONAL PROMISE. The institutionalized nature of the rule described in article 196 of the Political Letter – that applies to all political institutional entities that compose the Brazilian federalist scheme, must not become an unenforced constitutional promise. Such principle is important in order to avoid the risk that the Public Authority will defraud the people’s fair expectations and illegitimately substitute compliance with this non-delegable chore by way of an irresponsible act of government infidelity that violates the very principles that govern the Fundamental Laws of this Nation. FREE DISTRIBUTION OF MEDICINES

TO PEOPLE IN NEED FOR THE PRESERVATION OF THEIR LIVES AND/OR HEALTH: A CONSTITUTIONAL DUTY THAT THE STATE MUST NOT FAIL TO COMPLETE. Judicially recognizing the legal validity of programs that distribute free medication to people in need validates the fundamental principles of the Constitution of the Republic (article 5, header, and 196). It also represents, to its maximum extent, an action taken in reverence and in solidarity with the peoples' right to life and to health, especially of people that possess little more than a consciousness of their own humanity and of their essential dignity. Precedents of the Supreme Federal Tribunal. FINE AND ABUSE OF THE RIGHT TO APPEAL – Abusing the right to appeal qualifies as a practice that is incompatible with the ethical judicial postulates of procedural values. It constitutes an act of malicious litigation, which is not authorized by the positive legal order, especially in the instances where the party poses a motion with the clear intent to delay a case. In such cases, it therefore becomes legitimate to assess a fine. The fine referenced in article 557, section 2 of the Code of Civil Procedure serves to inhibit such behavior, as it hopes to deter abusive behavior and to keep litigants from unnecessarily utilizing the legal system as a means to delay the due process of the conflict at issue. Precedents” (RE 393.195-AgR, Author Min. Celso de Mello, Second Section, DJ 2.2.2007). Additionally: AI 604.949-AgR, Author Min. Eros Grau, DJ 24.11.2006; AI 486.816-AgR, Author Min. Carlos Velloso, Second Section, DJ 6.5.2005; RE 242.859-AgR, Author Min. Ilmar Galvão, First Section, DJ 17.9.1999; and RE 509.569, Author Min. Celso de Mello, DJ 14.3.2007 5. Additionally, the right to life must include the right to health, in order for it to consecrate the principle of living with dignity. The Constitution of the Republic guarantees human beings the right to dignity (article 1, sub-paragraph III) and includes in its meaning all of the means to access the factors and conditions that permit its effectiveness. This principle constitutes, under the current constitutional system, one of the most expressive fundamentals that instruct the Democratic State of Law (Federal Constitution, article 1, III). The right to health, granted to all, “The right to health, granted to all “guaranteed through social and economic policies aim to reduce the risk of disease and other illnesses and to provide universal and equal access to the actions and services for the motion, protection and rehabilitation of its citizens”, as proscribed in article 196 of the Constitution of the Republic, is therefore compatible with the constitutional principle of equality, a norm that guarantees the universal and equal access to all resources available that foster healthy conditions. 6. Given the above, as there is no divergence in the appealed decision with what has already been affirmed by the jurisprudence of the Supreme Tribunal, I deny the request for interlocutory appeal (article 557, header, of the Code of Civil Procedure and article 21, section 1 of the Internal Code of the Federal Supreme Tribunal). To be published. Brasilia, June 11, 2007. Minister CARMEN LUCIA Author

### **Legislation**

LEEG-FED CF ANO-1988

ART-00001 INC-00003 ART-00005 "CAPUT"

ART-00102 INC-00003 LET-A ART-00196

ART-00197 ART-00198 ART-00199 ART-00200

CF-1988 CONSTITUIÇÃO FEDERAL

LEG-FED LEI-005869 ANO-1973

ART-00475 PAR-00002 ART-00557 PAR-00002  
CPC-1973 CÓDIGO DE PROCESSO CIVIL  
LEG-FED LEI-008080 ANO-1990  
ART-00016 INC-00003 LET-A ART-00017  
INC-00009  
LEI ORDINÁRIA  
LEG-FED RGI ANO-1980  
ART-00021 PAR-00001  
RISTF-1980 REGIMENTO INTERNO DO SUPREMO TRIBUNAL FEDERAL  
LEG-FED PRT-003535 ANO-1998  
PORTARIA DO MINISTÉRIO DA SAÚDE - MS

**Notes**

Legislation issued by : (PHL)

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