

CONSTITUTIONAL CHAMBER, Judge: Jesús Eduardo Cabrera Romero

By means of document presented to the First Court of the Contentious-Administrative in November, 28 of 1997, the lawyers Edgar Carrasco, Víctor Marte Cróquer y Luz Patricia Mejía Guerrero, acting on behalf of the citizens Glenda López, Diana Irazábal, Sandra Acosta, Maira Perdomo, Onésimo Guillermo Núñez, Jesús Andrade, Henry Sánchez, Alejandro Figueroa, Humberto Ferrer, Baldomín Contreras, Antonio Hernández, Gustavo Ortega, Marco Teixeira, Sabas Hernández, José Escalona, Nelson Contreras, Joao de Ascensao, José Luis López, Jesús Jiménez, Yamil Salomón Mujica, Juan Manuel Silva, Shely Maldonado, Miguel Ángel Coronel, Betzaida Barrio, Ramón Anselmi, Olga Gutiérrez, Ricardo Brunstein, Eduardo Hilzinger y Sandro Cristian Pernía; holders of the identity document numbers 10.280.284, 6.900.138, 6.319.208, 10.317.650, 4.432.134, 9.542.309, 7.713.838, 9.811.161, 5.936.166, 5.4446.376, 5.222.113, 3.559.486, 81.088.122, 9.610.075, 3.876.798, 14.300.207, 11.934.663, 6.019.117, 6.182.336, 7.716.693, 15.204.738, 11.471.822, 4.975.321, 8.475.763, 3.975.514, 9.117.852, 10.871.323, 10.526.333 and 11.491.316, respectively; presented an *amparo* claim against the Venezuelan Institute of Social Security [Instituto Venezolano de los Seguros Sociales] (VISS).

By means of decision of November 19, 1997, the aforementioned Court admitted the claim filed, and ordered service on the allegedly tortious entity, in order to present the report established by article 23 of the Organic Law of *Amparo* of the Constitutional Rights and Warranties. In the same way, it was agreed on the same date to the private management of the file, prohibiting any publicity, account or relation of the process' acts to the parties and third parties, under the sanction of a fine or detention.

On December 10, 1997, the attorney Héctor Peña Torrelles, acting on behalf of the citizens Rafael Arreaza Padilla, holder of citizenship card No. 5.565.351, and Coromoto Coronel Gratero, holder of citizenship card No. 4.103.917, as President (mandated) of the allegedly tortious entity and Director of Pharmacotherapy of the same entity, respectively, presented a report on the constitutional violations alleged by the Claimants.

In December 15, 1997, the constitutional hearing took place, and the attorney of the complainant did not attend, at which time the attorney Héctor Peña Torrelles presented a Conclusions Paper, noting which of the complainants had asked the IVSS for medicines for the treatment of AIDS and those which have not.

By decision of 18 December 1997, the First Court of the Contentious-Administrative dismissed the *amparo* claim initiated by several of the alleged injured parties, and declared partially in place others, freeing the respective claim of *amparo* in favour of these.

On January 16, 1998, the legal representative of the allegedly tortious entity filed an appeal of the earlier decision, an appeal heard by the First Court of the Contentious-Administrative, ordering the corresponding remission of certified copies that the parties deem relevant, as well as the judgment appealed to the Political Administrative Chamber of the former Supreme Court for the purposes of deciding the filed appeal.

On June 18, 1998, the Attorney Edgar Carrasco, proceeding as judicial representative of several citizens identified in the case, was denied the claim of *amparo* in the decision of the first instance, to which it was filed claim ten to request the dismissal of the arguments that declared out of place the *amparo* claim in the judgment appealed on appeal by the driven part.

By decision of 21 March 2000, the Political-Administrative Chamber of the High Court declined jurisdiction to hear the *amparo* appeal exercised by the legal representative of the IVSS in the Constitutional Court, realizing it on April, 14 of the same year.

On the same date the reporting judge was appointed who, with such character makes the present ruling. Performed the analysis of the file, passes this Chamber to decide, subject to the following considerations:

The *amparo* Claim

In their written statements, the attorneys of the alleged injured parties persons argued their claim of constitutional *amparo* based on the following arguments:

I

1. That the Claimants are people living with the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), which has placed them in a situation of disadvantage and misfortunes that extend to physical, mental, social, family and work environments; this is a result of the collective belief that such disease (HIV/AIDS) is the product of improper and deceitful behavior.

2. Additionally, each of the alleged injured parties affiliated with the IVSS stated that, since they have been diagnosed as carriers of HIV/AIDS, they have been prescribed medications by specialists assigned to the Directorate of services of Immunology and infectious diseases of the Domingo Luciani Hospital of the IVSS, medications which are known as antiretroviral inhibitors of reverse transcriptase and protease inhibitors, such as: AZT or Zidovudine, DDI or Didanosine, DDC or Zalcitabine and others.

3. The attorneys of the complainants stated that “*Transcriptase Inhibitors aim to control the aggressiveness of HIV in immune system cells, because they alter the function of an enzyme called transcriptase inverse which is the virus in order to change its chemical message, allowing it to easily be inserted within the nucleus of the non-infected cell to reproduce. On the other hand, the advance of science in the field of HIV/AIDS has managed to develop the medications known as third generation or inhibitors of the protease (Crixivan, Norvir and Saquinavir) which have the effect of avoiding the protease enzymes that possess cells of HIV and is necessary for their reproduction, is cut into small pieces, which prevents the creation of new copies of HIV or if they are created, are defective.*”

4. The attorneys point out that, given the characteristics of HIV, treatments that fight it should be given on a regular basis, in combined therapies (in the form of "cocktail"), and for life. Otherwise, there would be viral resistance to the drug, which brings about the rapid emergence of opportunistic infections (calls as well as common diseases that rage violently against the immunosuppressed, given the ineptitude of their systems to counter them, such as pneumonia, shingles, and others) and with them the death of people infected by the mentioned virus.

5. With regard to the particular situation that affects the alleged injured parties, their attorneys indicated that having been prescribed combined anti-retroviral medications (inhibitors of transcriptase and protease, together in the form of "cocktail") on behalf of their constituents, the pharmaceutical Division of the IVSS has omitted the delivery of such medicines and has not established regularity as prescribed by the Domingo Luciani Hospital specialists, or delivered transcriptase inhibitors alone, which – they add - has had an adverse effect on the treatment of the disease by causing viral resistance. The attorneys added that the medicines prescribed by specialists to the alleged injured parties, are available in the Venezuelan market thanks to the presence in this territory of international laboratories which manufacture them and that, in spite of this, the IVSS has refrained from making efforts aimed at ensuring access to such treatments all the referral Institute members who have HIV/AIDS virus on equal terms.

6. They also stated that in such a situation, the alleged injured parties have had urgent need to seek temporary alternatives, such as community-based programs for free distribution, exchange of medicaments, and donations from abroad to obtain adequate treatment, whereas such mechanisms are insufficient to meet the requirements of the Venezuelan population affected and the regularity of delivery.

On the other hand, the alleged injured parties’ representative argued that most of the plaintiffs are at rest, or processing a medical disability before the IVSS, which has diminished their economic capacity and, therefore, their ability to acquire the medicine needed for the proper treatment of the disease, whose cost was (at the date of filing of the

present *amparo*) between eighty thousand (80,000 Bs.) and two hundred fifteen thousand bolivars (215,000) per month each, considering that they should take in a combination of two and three medicines, which in turn should be treated simultaneously with the opportunistic infections that may manifest.

7. Finally, the attorneys pointed out, the IVSS has breached the obligation to cancel pension disability, to which the some of the alleged injured parties have a right, which has resulted in a high degree of anxiety, with negative effects on the immune system of those infected with HIV, taking into account at the same time that many of these patients are the primary economic livelihood source for their families, whose members, at times, are also infected. In the same way, attorneys said the IVSS has refrained from costs of laboratory testing specialist (lymphocyte count and viral load, among others), whose costs vary (at the date of filing of the claim subject of these decisions) between the sum of forty-seven thousand (Bs.47,000) and ninety thousand bolívares (Bs.90,000) each, and which are fundamental to the application of treatments combined as described.

II

In relation to the rights denounced as violated, the attorneys of the alleged injured parties noted:

1. The right to life, under articles 58 of the Constitution of 1961; 3 of the Universal Declaration of human rights; 6 of the International Convention on Civil and Political Rights; and 11 of the International Convention on Economic, Social and Cultural rights. In this regard, they noted that the lack of regular supply of treatment by the IVSS causes an inexorable destruction of the immune system, as well as the already explained viral resistance, with the consequent emergence of opportunistic infections and death.

2. Right to health, provided for in article 76 of the Constitution of 1961; articles 12 and 25 of the Universal Declaration of Human Rights; While the IVSS, through the Division of Pharmacotherapy, "*has suspended and continues suspending the enjoyment of our right to health, as a result of the continuous neglect and omission, compared to its obligation to provide drugs that we request monthly for the treatment of HIV/AIDS, as well as all resulting opportunistic infections.*"

3. Right to personal liberty and security, provided in article 60 of the abrogated Constitution of 1961; in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. In this sense, attorneys argued that the abstention of the regular supply of treatment against HIV/AIDS, "*produces a State of anguish and anxiety that can be equated the torture used against prisoners of war in the*

worst periods in the history of humanity" generating in bringing states of stress that can be deadly.

4. Right to non-discrimination, enshrined in article 61 of the Constitution of 1961; articles 24 and 26 of the Covenant on Civil and Political Rights; 3 of the Covenant on Economic, Social and Cultural rights; 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (in relation to infected women); and 24 of the International Convention on the Rights of the Children, insofar as it is applicable; given that the plaintiffs - allege their parents - enjoy the same rights of others living with HIV, who have received treatment and medication from the IVSS, in compliance with an *amparo* decision taken on 28 May, 1997 by the First Court of the Contentious-Administrative.

5. Right to social security, established in articles 94 of the Constitution of 1961; 22 of the Universal Declaration of Human Rights; 9 of the Convention on Economic, Social and Cultural rights; as the Division of Pharmacotherapy and the center of medical specialties of the IVSS, bodies responsible for the distribution of medications for the treatment of diseases of its members, do not comply with such duty, being that Complainants are currently affiliated with the national social security system.

6. Right to the benefits of science and technology, which is indicated by the attorneys as a right inherent to the human person not expressly referred in the text of the Constitution of 1961; enshrined in article 15 of the International Convention on Economic, Social and Cultural Rights, which establish that "*the States parties to the present Convention, recognize the right of everyone: (omissis) b) to enjoy the benefits of scientific progress and its applications.*" Thus, the attorneys of the alleged injured parties expressed that they are entitled to enjoy science in terms of treatments for HIV/AIDS, since there are suitable treatments in the Venezuelan market (transcriptase and protease inhibitors), able to reduce the impact of the virus up to a ninety-nine percent (99%). On the other hand, the Complainant's attorneys argued that the IVSS has refrained from including in the treatment of HIV/AIDS specialized medical examinations (viral load, *Lifocitario* count, platelet count and others), which are essential for the proper treatment of the disease in question, however, Complainants' attorneys argued, the IVSS does not possess the necessary technology and refused to their coverage, including basic tests such as the count of platelets, ELISA, Western Blot, and others, as well as the examinations intended to treat opportunistic infections.

III

Lastly, the plaintiffs' attorneys, requested:

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1. An order that the Pharmaceutical Division of the IVSS deliver in a regular and periodic way the medications transcriptase inhibitors and protease inhibitors such as AZT or Zidovudine, DDI, DDC or Didanozine, Zalcitabine and others, according to mandatory requirements provided by the specialists of the service of Immunology and infectious diseases of the Domingo Luciani Hospital.
2. An order that the IVSS realize or cover the specialized tests needed to gain access to the combined treatments of the transcriptase inhibitors and protease inhibitors.
3. An order that the IVSS to develop a policy of information, treatment, and comprehensive medical care, both for the alleged injured parties, and as to all persons living with HIV/AIDS-affiliated with Social Security.
4. An order that the IVSS supply all the necessary medications for the treatment of opportunistic infections, such as antibiotics, antifungal, anti-diarrheal, chemotherapy, radiation treatments, cryotherapy and all those that are fundamental for such treatment.

5 That *“the recognized benefits extend to all (as) citizens members (as) to the IVSS living with HIV/AIDS, that require treatment prescribed by specialists, without being in the urgent need of constantly resorting to the track of constitutional protection.”*

The appealed judgment:

By decision of 18 December 1997, the First Court of Administrative Litigation declared the filed claim partially accepted, pointing out in the ruling the following:

“Such amparo claim shall be accorded to citizens Gustavo Enrique Ortega Falcon, Ascensão João de Freitas, Ramón Oscar Anselmi Ruiz and Sandra Acosta and not to the rest of the Complainants, since, as it appears on the lists endorsed by the Chief of the Service of Pharmacy of the Center of Medical Specialties of the Venezuelan Institute of Social Insurance, attached by the Respondent to its last written submission, only they requested the delivery of the medication needed for treatment from the Institute, and no writing by the Respondent entity contradicts this claim or demonstrates that efforts may have been made to do so, and it has denied the supply of medications. It is so decided.

Finally, with regard to the request that, once the present amparo is agreed to, the benefits be extended to all the members of the Venezuelan Institute of social insurance (I.V.S.S.) who are virus carriers of HIV/AIDS and require treatment prescribed by medical specialists, in order to not have the urgent need to constantly resort to the track of the amparo, this Court upholds the criteria set by the highest Court and this Court, according to which the claim of amparo has a very personal character, which can leads to the

warrant issued that can only work for the benefit of those who tried the action and not to all those who may be under the same course, which would mean granting the effects to everyone and thus distorting the fundamental object of returning to a subject's right to a legal warranty protected by the Constitution. Therefore the effects of this action cannot be extended to all members of the Venezuelan Institute of Social Insurance suffering from HIV/AIDS and requiring treatment.”

Competence of this Chamber:

For the purposes of determining the jurisdiction of this Court to hear the case *sub judice*, it is shown that the remission of these decisions is due to the appeal exercised by the Respondent against the decision issued by the First Court of the Contentious-Administrative, on December 18, 1997, acting as Constitutional Court of first instance. For this reason, reiterating the criteria set in judgments of January 20, 2000 (cases: Emery Mata Millán and Domingo Ramírez Monja), this Chamber is competent to hear the appeal subject to these decisions. It is thus declared.

Prior point:

Before analyzing the appealed decision, this Chamber shall preliminarily rule on the secrecy or private handling of the present file, requested by the Complainants and agreed by the Court *a quo*, in the time in which the claim for constitutional protection that is included in the decision was admitted. In this regard, it is observed that article 24 of the Code of Civil Procedure establishes the "principle of publicity" of the process, according to which all its acts will be public, unless the Court of the case orders the case to proceed behind closed doors for reasons of "public decency." Such an exception is only applicable in cases in which open airing of a particular cause, by its own content, goes against good morality, with the consequent social disorder that it generates, so that the procedural principle commented should be sacrificed in order to safeguard public order.

Now, this Chamber believes that the reserved treatment of the present file would lead to recognition by this Chamber of a hindrance to the Complainants' right to equality and non-discrimination, a hindrance that have been imposed by themselves. In this regard, the Political-Administrative Chamber of the former Supreme Court (vid. Decision of August 14, 1998), determined its position with respect to a similar case, and this court fully shares that opinion, establishing in the judgment as follows:

“Today statistics show that this is a virus whose spread is exposed to any person without distinction given the variety of modes of transmission (sexual contact, infected syringes or needles, childbirth, breastfeeding). So, the anonymity that originally guarded the privacy of these persons in their social context loses its sense, inasmuch as it is a disease of high risk

as any other and, to be understood in this way, it is necessary to withdraw the character of "censorship" that until now it has been given, because that will ultimately guarantee the right to equality and non-discrimination of those who suffer from this disease. This Chamber is aware that the efforts that are made by public authorities to guarantee the right to equality and non-discrimination depends on good social conscience that the community has about this disease, the collaboration of those affected by their families and loved ones, will be highly beneficial in the treatment of this topic. The guarantee of the right of non-discrimination will not be achieved if themselves - safeguarding in privacy – isolate themselves from their activities, hide their own suffering or feel guilty when in fact there is no reason to do so. (Emphasis added).

In the same vein, this Chamber considers that at the present stage of collective awareness of the impact of the Human Immunodeficiency Virus, a serious diseases that afflicts not only our nation but the entire world, and through global awareness-raising campaigns on the nature and duration of the illness, beliefs have largely vanished that HIV is the result of indignant behavior by certain at-risk groups, beliefs which unfortunately led carriers to protect their privacy, under penalty of being discriminated in the broader areas of human endeavor.

Thus, this Chamber considers inconvenient for the real and progressive understanding of the social impact of the Human Immunodeficiency Syndrome, to keep in reserve the present file, as he was treated by the Court *a quo*, and legitimate support for the right to equality and non-discrimination of the bringing, revokes private treatment of the present cause. It is thus declared.

Analysis of the situation:

First, this Chamber noted that article 35 of the Organic Law for the Protection of Rights and Constitutional Guarantees establishes a period of three (3) days from the date in which the decision was taken by the first instance of the *amparo*, to exercise appeal against it, and if the parties, the public prosecutor, or prosecutors do not make use of such remedy in the referred period, the competent Court will order the remission of a certified copy of the case to the Superior Court to pronounce, in consultation, in respect to the decision handed down.

In the present case it is shown that on 18 June 1998, the lawyer Edgar Carrasco, acting as legal representative of the alleged injured parties, filed a claim before the Political-Administrative Chamber of the former Supreme Court, formulating allegations with respect to the *amparo* claim exercised. Now, this Chamber observes that the aforementioned claim was handed over six months after the issued decision that was timely appealed by the Respondent, but not by the Complainant, a reason which this Chamber should completely

dismiss the arguments of the aforementioned claim and its respective annexes. It is thus declared.

Given the above, this Chamber proceeds to analyze the content of the contested decision of *amparo*, and to that end observes:

I

As for the alleged violation of the right to health, it is enshrined in article 83 of the Constitution of the Bolivarian Republic of Venezuela, the text of which reads as follows:

“Article 83. Health is a fundamental social right, an obligation of the State, which will be guaranteed as part of the right to life. The State will promote and develop policies aimed to raise the quality of life, the collective well-being and access to services. Everyone has the right to protection of health, as well as the duty to participate actively in its promotion and protection, and to comply with the health and sanitation measures established by law, in accordance with the international treaties and conventions signed and ratified by the Republic.” (emphasis added).

From the wording of the foregoing, it can be deduced that the right to health is an integral part of the right to life, has been enshrined in our Constitution as a fundamental social right (and not mere "status determinations of the State whose whose bodies develop their activity guided by the (progressive) elevation of the quality of life of citizens"), and, ultimately, to the collective well-being. This implies that the right to health is not satisfied by the simple physical care of a disease to a person, but that it extends to care suitable to safeguard the integrity of mental, social, environmental, etc., of persons and even communities as imperfect collective entities, insofar as they are not equipped with a special legal status that gives them status in their own right.

To fulfill this purpose, the State action should be instituted by a legislative structure capable of meeting the constitutional requirements outlined above. Thus, under the Social Security Act (published in the G.O. No. 4.322, dated October 3, 1991), the Venezuelan Institute of social insurance was created, functionally a decentralized public administration entity, in order to serve as head entity of social security, whose duties include - in the case sub examine-, providing medical care to its members.

II

In this case, the violation of the right to health and the threat to the right to life, as well as the violation of the right to the benefits of science and technology, consisted of the omission of regular and permanent delivery by the direction of Pharmacotherapy of the

Venezuelan Institute of Social Insurance, of medicines prescribed by specialists of the Domingo Luciani Hospital attached to the concerned Institute in favor of the *amparo* applicants, and the denial of coverage for practice medical, specialized examinations, intended to contribute to the effective treatment of HIV/AIDS. This fact was supported partially by the Respondent party, with respect to four of the applicants of the *amparo* (Gustavo Ortega, Sandra Acosta beautiful, João de Ascensão and Ramón Anselmi), pointing out that only these had requested delivery of medicines prescribed by specialists of the mentioned hospital, and as there does not exist any instrument produced by the Complainant aimed at countering such allegations from the Respondent part, they should be taken as certain.

Thus the Court *a quo* was right, by putting in place protection in favor of the aforementioned citizens, ordering the Venezuelan Institute of Social Insurance to cover and conduct medical examinations for the treatment of HIV/AIDS and opportunistic infections, as well as to regularly deliver medicines prescribed by specialists from the Hospital Domingo Luciani (nucleoside transcriptase inhibitors and protease inhibitors) for the treatment of HIV/AIDS and consequential opportunistic infections.

Indeed, this Chamber could not object that the negligent behavior of the Respondent endangered the mentioned health and even the lives of the victims, by (i) not regularly managing the medical treatment prescribed by specialists of the Domingo Luciani Hospital that was designed to safeguard the physical integrity of the patients, and by (ii) not including in the coverage medical examinations that improved the treatment, leading in turn to the violation of the right to social security, every time that a person is affiliated with the social security system; for these reasons, this Chamber should confirm the ruling challenged on appeal by the Venezuelan Institute of Social Insurance. It is thus declared.

Now, in relation to the alleged violation of the right to freedom and personal safety, reported by the Complainant as violated, noting that the negligent conduct of the Venezuelan Social Insurance Institute "[...] produces a State of anguish and distress that can be equated to the torture used against prisoners of war in the worst periods of the history of humanity", this Chamber must note, firstly, that the right to personal freedom, provided in article 43 of the current Constitution, is in essence a "right not to be detained" and that as such is a prohibition (negative provision) on physical detention of any person without a prior court order, in which case the negligent claim of the Venezuelan Institute of Social Insurance, is not subsumed under such complaint and must also be rejected, as did the First Court of Administrative Litigation, to know in the first instance the claim of *amparo*. It is so declared.

Secondly, the right to personal security, provided in Article 46 *eiusdem*, is also a "right to liberty," which is the prohibition of subjecting any person to inhuman or degrading

treatment that threatens the dignity of the human being. In this regard, this Chamber observes that the violation to the right to personal security is manifested with a malicious attitude directed to inflict on (a) person(s) physical or mental suffering of such intensity that it violates their dignity; this also falls within the negligent conduct assumed by the Respondent. It is so declared.

Similarly, regarding the right to equality and non-discrimination, consisting of the subjective right of every person to get treatment equivalent to that granted to any other person who is in the same situation, this Chamber didn't find how the omission of the Venezuelan Institute of Social Insurance served to deprive such rights, inasmuch as the alleged negligent conduct is not directed to classify or give priority to the treatment of certain diseases, least of some HIV-positive, but instead, it comes from the glaring deficiencies of the national social security system, which in any case could be confused with violations to the right to equality, or as discriminatory measures. It is so declared.

III

Moreover, this Chamber shall decide on the Defense given by the Respondent party, whose appeal is the subject of these decisions, and to the effect observes: the judicial representative of the Venezuelan Institute of Social Insurance, noted in the letter of findings (pages 26 to 32) that "*[...] the main and decisive limitations of the Venezuelan Institute of social insurance (I.V.S.S.) is of a financial nature, since to date it presents a budget deficit of 1.3 trillion bolivars, and from this amount it was approved - this year - by way of an additional credit, the amount of 170 billion bolivars, which means that the referred deficit - in the future - will accumulate which means the worsening of the financial situation of the Institute. Undoubtedly - otherwise - - the aforementioned deficit is mainly due to the high level of delinquent loans that employers in both the public sector and the private sector have to this Institute.*"

This Chamber deduces, from the allegations of the tortious entity, basically, two circumstances of a different kind adduced that -in its view - preclude the full satisfaction that the public service is intended to provide the Venezuelan Institute of Social Insurance, and generate an unsustainable budget deficit, namely (i) the high level of debt that employers, from both public and private sector, have to the Institute; and (ii) the insufficient quantity of financial resources acquired by way of additional credit.

This Chamber observes that the legal representation of the Institute did not demonstrate such claims in any way. However, the crisis of the social security system governed by Institute is a notorious fact, whose deficiencies have opened a broad national debate, to the same rethinking of the system, a reason by which it is deemed necessary to respond to the above arguments put forward by the Respondent entity.

Thus, with respect to the first issue, that is, the high degree of debt which the employers have incurred, this Chamber observes that article 51 of the Social Security Act (published in the G.O. No. 4,322 extraordinary, dated October 3, 1991) establishes the Venezuelan Institute of the Social Insurance Administration and control of all branches of Social insurance.

Similarly, with the regulations mentioned, it gives the Board of Directors of the Venezuelan Institute of the Social Insurance the widest powers of fundraising on the contributions of patrons and insured persons (Article 53 *eiusdem*), particularly in special circumstances that merit it. For this reason, this Chamber considers that is not enforceable against the beneficiaries of the social security system that governs the aforementioned Institute, the inadequacy of financial resources resulting from the breach of employers contributing to the social security system, regardless of its nature, as it is confined to the area of the Administration and management of the powered organ, whose inefficiency cannot justify in any way the breach of duty which has been entrusted to it by the law. It is thus declared.

On the second issue, as it is the inadequacy of resources obtained by way of the additional credit, it should be noted that the Institute still had open the possibility of requesting new additional appropriations, in order to meet the public service provided. It is thus declared.

With regard to the allegation made by the legal representative of the Venezuelan Institute of Social Insurance with respect to lack of passive legitimacy of the President of the Institute, as well as Director of pharmacotherapy as active subjects of constitutional tort, this Chamber should note that this claim has not been brought personally against such citizens but against the institution they represent (Venezuelan Institute of the Social Insurance) one as President and legal representative of that institution in accordance with the respective law, and the other as an officer responsible for the administration of medications. In addition to this, it must be clarified that the informality that invests the *amparo* procedure, as noted by the lower court, allows the head of an entity that is directly responsible for the conduct allegedly harmful to be called to trial, although he is not - personally - the damaging agent. It is thus declared.

IV

Finally, this Chamber should make particular reference to the “personal character of the *amparo* claim,” which served as a basis for the Court for denying the request for extension of effects from the claim of *amparo* respective, to all those who remain beneficiaries of the social security system who have been diagnosed with Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome, and refused them the regular and permanent

delivery of the medicines needed for their respective treatment, as well as coverage of specialized medical examinations to optimize treatment.

In this regard, the First Court of Administrative Litigations pointed out in the judgment under appeal that the personal character of the *amparo* claim “leads to the conclusion that the judgment could only work for the benefit of those who tried the claim and not for all those who may be under the same assumption, which would mean granting to the *amparo* an *erga omnes* effect, distorting thus the fundamental object of the same, that is the return to a subject's right to a legal warranty protected by the Constitution.”

It is worth noting that the current positive law grants a constitutional basis to the request of the plaintiffs, in relation to the extension of the effects of the claim of *amparo*, to all persons who are in an identical situation to those on whose behalf it is agreed. Thus, the content of the right to effective judicial protection, contained in article 26 of the Constitution of the Bolivarian Republic of Venezuela, whose tenor establishes:

“Article 26. Everyone has the right of access to the organs of administration of Justice to enforce their rights and interests, including the collective or diffuse, to effective protection thereof and to obtain the corresponding decision promptly.”

The State shall guarantee justice that is free, accessible, fair, suitable, transparent, autonomous, independent, responsible, fair and expeditious, without undue delay, without formalities or unnecessary replacements» (emphasis added).

With respect to the content of the right to effective judicial protection, and in particular with reference to the collective or diffuse rights and interests, this Chamber held in decision of 30 June 2000 (case: advocacy of the people vs. National Legislative Commission) that:

“[The] right or diffuse interest refers to an asset that concerns everyone, people who in principle do not constitute an identifiable and individualized population sector, but it is a well assumed by citizens (plurality of subjects), that having no legal link among them, are still injured or threatened with injury. They are based on generic, contingent, accidental, or mutant facts affecting an unknown number of people and that emanate from subjects that owe a generic or indeterminate provision [...] That injury to the population, that affects more or less everyone, that is captured by the society according to the degree of awareness of the social group, which is different from the injury that it is located specifically in a group, determinable as such, although not quantified or individualized, as the inhabitants of an area of the country would be affected by an illegal construction that generates problems of utilities in the area. These specific interests, focused, are the collective, referred to a given population sector (although not quantified) and identifiable, although individually, within the group of people exists or can exist a legal bond that unites them.”

[...]

The interest of the residents of a housing estate or a neighborhood that is deteriorates in its public services for a building construction, for example, also responds to a suprapersonal legal right, but is determinable and localized in specific groups, and that is the interest that enables collective action. That is the collective interest; it gives rise to collective rights, and can refer to a particular legal object.

[...]

[The] Chamber considers that if Article 26 of the Constitution of the Bolivarian Republic of Venezuela includes, regardless of people's ability to access justice and to assert their rights and interests, including the collective and diffuse, such access must be interpreted broadly, despite the rejection elsewhere and in some Venezuelan law that is against the individual exercise of claims to defend diffuse interests or collective rights."

From the above, it emerges that the motion of the Complainants in this sense takes place in law, because the extension of the effects from the claim of *amparo* granted in its favour, to all those HIV positive beneficiaries of the social security system, leads to the protection of a relatively large segment of society, composed of individuals, which is forced to restore the enjoyment of their rights and constitutional guarantees.

The Chamber observes that, despite the fact that there was not a judicial claim or claim recognized in law to exercise rights and collective interests, the reason why it was not used directly in this case, it contains the request for protection of a collective right (that of the aggrieved), so this Chamber, on this aspect of the claim gives it the treatment of an *amparo* claim by collective interests, which is possible to initiate, in accordance with the aforementioned judgment of this Court of 30 June 2000.

It should be noted, that in cases in which the claim of *amparo* is filed based on a right or collective or diffuse interest, remember the commandment to favor a set of clearly identifiable individuals as members of a sector of the society, in the first case; or to a relevant group of indeterminate subjects *a priori*, but perfectly delimited based on the particular legal situation which holds and which has been violated specifically, in the second case. So, it is not true that the *amparo* is destined to protect such legal situations of multiple subjects, and have effects *erga omnes*, as it is declare by the a quo, since as it has been observed, their beneficiaries are susceptible to a perfect definition and the *amparo* protection is always concrete, and never in generic way.

As such, this Chamber must agree to the request in this regard and, accordingly, should order that the present *amparo* be granted to all persons who: (i) are enrolled at the Venezuelan Institute of Social Insurance, (ii) have been diagnosed with HIV/AIDS, (iii) meet the legal requirements to obtain the benefits of the social security system, and (iv)

have requested that the authorities of the aforementioned Institute deliver the drugs needed for the respective treatment, as well as for opportunistic infections. It is so declared.

Decision

For the reasons stated above, the Supreme Court of Justice, acting as Constitutional Court, administering justice on behalf of the Republic and by the authority of law:

1. Denies the appeal lodged by the legal counsel of the Venezuelan Institute of Social Insurance.
2. Partially confirms the ruling handed down by the First Court of Administrative Litigation on December 18, 1997, issued in this case.
3. Agrees to extend the effects of the aforementioned decision of December 18, 1997 to all those people who meet the following conditions: (i) are enrolled at the Venezuelan Institute for Social Insurance; (ii) have been diagnosed with the disease HIV/AIDS; (iii) satisfy the legal requirements to obtain the benefits of the social security system; and (iv) have applied for delivery of necessary medicines for the respective treatment, as well as for opportunistic infections, and coverage of medical examinations for the treatment from the same authorities of the aforementioned Institute. Therefore the present claim of *amparo* is declared in place to please all persons who meet the above requirements, and is ordered the Venezuelan Institute of Social Insurance to provide the following benefits for them:
 - 3.1. Regularly and periodically deliver the medications called transcriptase inhibitors and protease inhibitors such as Zidovudine or AZT, DDI, or Didanosine, DDC or Zalcitabine, D4t or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Inavirase and Norvir or Ritonavir, according to mandatory requirements provided by the specialists of the service of Immunology and infectious diseases of the Hospital Domingo Luciani;
 - 3.2. To conduct and provide coverage of the specialized tests needed to gain access to the combined treatments of the transcriptase inhibitors and protease inhibitors; such as viral load, Lymphocyte count, platelet count and all those that are rationally affordable in the country, both for the treatment of HIV/AIDS, as well as for opportunistic infections.
 - 3.3. Supply all necessary medicines for the treatment of opportunistic infections, such as antibiotics, antifungal, anti-diarrheal, chemotherapy, radiation treatments, cryotherapy and all those that are fundamental for such treatment.

Translation provided by the Lawyers Collective (New Delhi, India) and partners for the Global Health and Human Rights Database

Publish and register. Refer the dossier to the Court of origin. Be met as ordered. Given, signed and dated, in the Hall of audiences of Constitutional Chamber of the Supreme Court of Justice, on the 6 day of the month of April, 2001. Years: 190° from the independence and 142° from the Federation.

The President of the Chamber, Iván Rincón Urdaneta	
	The Vice-President - Rapporteur
	Jesús Eduardo Cabrera Romero
The Judges,	
Jose Manuel Delgado Ocando	Antonio José García García
The Secretary, José Leonardo Requena Cabello	

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