

4/26/2011

FIRST PANEL

**REG. APPEAL IN INTERLOCUTORY APPEAL 797,349 RIO GRANDE DO SUL**

<b>REPORTING JUDGE</b>	<b>:JUDGE CARMEN LUCIA</b>
<b>APPELLANT (S)</b>	<b>:MUNICIPALITY OF CAXIAS DO SUL</b>
<b>ATTORNEY(S)</b>	<b>:ATTORNEY-GENERAL IN THE MUNICIPALITY OF CAXIAS DO SUL</b>
<b>APPELLEE (S)</b>	<b>:VINICIUS CARPEGGIANI</b>
<b>ATTORNEY(S)</b>	<b>:GENERAL PUBLIC DEFENDER OF THE STATE OF RIO GRANDE DO SUL</b>
<b>NOTIFIED(S)</b>	<b>:STATE OF RIO GRANDE DO SUL</b>
<b>ATTORNEY</b>	<b>:GENERAL PUBLIC DEFENDER OF THE STATE OF RIO GRANDE DO SUL</b>

**ABSTRACT:** REGULATORY APPEAL IN THE INTERLOCUTORY APPEAL. CONSTITUTIONAL. SUPPLY OF MEDICINE. JOINT LIABILITY OF FEDERATIVE ENTITIES. PRECEDENTS. REGULATORY APPEAL DISMISSED.

**J U D G M E N T**

After reviewing, reporting on and discussing the case records, the Judges of the Supreme Federal Court agree, in First Panel, under the chairmanship of Judge Carmen Lucia, according to the minutes of judgments and shorthand notes, **to dismiss provision to the regulatory appeal on the interlocutory appeal**, in accordance with the Rapporteur's vote.

Brasilia, April 26, 2011.

Judge CARMEN LUCIA - Rapporteur

[Stamp: Supreme Federal Court - Department of Judgment Reports]

4/26/2011

FIRST PANEL

**REG. APPEAL IN INTERLOCUTORY APPEAL 797,349 RIO GRANDE DO SUL**

**REPORTING JUDGE** :JUDGE CARMEN LUCIA  
**APPELLANT (S)** :MUNICIPALITY OF CAXIAS DO SUL  
**ATTORNEY(S)** :ATTORNEY-GENERAL IN THE MUNICIPALITY OF CAXIAS DO SUL  
**APPELLEE (S)** :VINICIUS CARPEGGIANI  
**ATTORNEY(S)** :GENERAL PUBLIC DEFENDER OF THE STATE OF RIO GRANDE DO SUL  
**NOTIFIED(S)** :STATE OF RIO GRANDE DO SUL  
**ATTORNEY** :GENERAL PUBLIC DEFENDER OF THE STATE OF RIO GRANDE DO SUL

**REPORT**

**JUDGE CARMEN LUCIA - (Rapporteur)**

1. In December 9, 2010, I dismissed the interlocutory appeal interposed by the city of Caxias do Sul/RS against decision which did not grant the extraordinary appeal against the judgment of the Court of Justice of Rio Grande do Sul. The appeal recognized the joint and several liability of federative entities in supplying medicine. The reviewed ruling had the following legal basis:

*“5. Legal grounds have no merit on the Appellant.*

*6. The judgment under appeal does not diverge from the jurisprudence of the Supreme Federal Court regarding the obligation of the Public Authorities (Federal, State and Municipal) to provide, free of charge, to poor people, suffering from serious illnesses, medicine intended to ensure conditions for the right of the continuity of life and the preservation of health.*

*To this end:*

**A B S T R A C T : PATIENTS WITH SCHIZOPHRENIA**

IA 797,349 RA/RS

*PARANOID AND CHRONIC MANIC-DEPRESSIVE DISEASE, WITH EPISODES OF ATTEMPTED SUICIDE - PEOPLE DEPRIVED OF FINANCIAL RESOURCES - RIGHT TO LIFE AND HEALTH - URGENT NEED TO PRESERVE, FOR REASONS OF ETHICAL AND LEGAL NATURE, THE INTEGRITY OF THIS ESSENTIAL RIGHT - FREE SUPPLY OF ESSENTIAL MEDICINES IN FAVOR OF POOR PEOPLE - A STATE CONSTITUTIONAL DUTY (FC., ARTS. 5, "Introduction", and 196) - PRECEDENTS (SFC) - ABUSE OF THE RIGHT TO APPEAL - IMPOSITION OF FINE - INTERLOCUTORY APPEAL NOT GRANTED. THE RIGHT TO HEALTH REPRESENTS CONSTITUTIONAL IMPLICATION INSEPARABLE FROM THE RIGHT TO LIFE. - The public law subjective to health represents unavailable legal prerogative secured to the generality of people by the Constitution of the Republic (art. 196). Translates constitutionally protected legal interest, and the Public Power must ensure its integrity, in a responsible manner. The same institution shall be responsible for formulating - and implementing - appropriate social and economic policies that aim to secure, to citizens, universal and egalitarian access to pharmaceutical and medical-hospital assistance. - The right to health - in addition to qualify itself as a fundamental right which assists all people - represents constitutional implication inseparable from the right to life. The Public Power, whatever the institutional sphere of its activities in the Brazilian federal organizational level, cannot be indifferent to the population's health issues, under penalty to incur, even for objectionable omission, in serious unconstitutional conduct. THE INTERPRETATION OF THE PROGRAMMATIC REGULATION CANNOT TURN IT INTO CONSTITUTIONAL INCONSEQUENT PROMISE. - The programmatic character of the regulation pursuant to art. 196 of the Political Charter - which addresses all political entities that comprise, at institutional level, the*

IA 797,349 RA/RS

*federative organization of the Brazilian State - cannot turn into an inconsequent constitutional promise, under penalty of the Public Power, defrauding justifiable expectations trusted on it by the community, replace, illegitimately, the fulfillment of its peremptory duty, by an irresponsible gesture of governmental infidelity that determines the Fundamental Law of the State itself. FREE DISTRIBUTION, TO POOR PEOPLE, OF ESSENTIAL MEDICINES TO THE PRESERVATION OF THEIR LIFE AND/OR HEALTH: A CONSTITUTIONAL DUTY THAT THE STATE CANNOT FAIL TO MEET. - The judicial recognition of the legal validity of programs of free distribution of medicine to poor people makes the fundamental precepts of the Constitution of the Republic effective (arts. 5, "introduction", and 196) and represents, in the concretion of its approach, a reverent and supportive gesture of appreciation for people's lives and health, especially those who do not have or own anything, apart from the consciousness of their own humanity and essential dignity. Supreme Federal Court Precedents. FINE AND ABUSIVE EXERCISE OF THE RIGHT TO APPEAL. - The abuse of the right to appeal - since it is an incompatible practice with the ethical and legal postulate of procedural loyalty - is also an act of malicious litigation repelled by the law, especially in cases where the party lodges an appeal with obvious dilatory intention, hypothesis in which legitimate the imposition of fines. The fine referred to in art. 557, paragraph 2, of the CPC has restraining function, because it aims to prevent the abusive exercise of the right to appeal and to impede the improper use of the case as an instrument for delay of jurisdictional solution of conflict of interest. Precedents") (EA 393.195-RA, Rapporteur Celso de Mello, Second Panel, JG 2.2.2007).*

*And, also: IA 817,241/RS, Rapporteur Joaquim Barbosa, JG 10.14.2010; IA 553,712-RA/RS, Rapporteur Ricardo Lewandowski,*

**IA 797,349 RA/RS**

*First Panel, JG 6.5.2009; IA 616,551-RA, Rapporteur Eros Grau, Second Panel, JG 11.30.2007; IA 648,971-RA/RS, Rapporteur Eros Grau, Second Panel, JG 9.27.2009; IA 559,055/RS, of my report, JG 2.8.2007; IA 604,949-RA, Rapporteur Eros Grau, JG 11.24.2006; IA 486,816-RA, Rapporteur Carlos Velloso, Second Panel, JG 5.6.2005; EA 242,859-RA, Rapporteur Ilmar Galvão, First Panel, JG 9.17.1999; and EA 509,569, Rapporteur Celso de Mello, JG 3.14.2007.5*

7. *Furthermore, the right to life includes the right to health, in order to make it possible to give concreteness to the principle of worth living. The Constitution of the Republic ensures the right to human dignity (art. 1, section III) and, as indicated therein, all means of access to factors and conditions that allow its execution. This principle is, in the current constitutional system, one of the most significant fundamentals on which the Democratic State of Law is established (art. 1, section III, of the Constitution of the Republic).*

*Everyone's right to health, guaranteed by social and economic policies that aim at reducing the risk of disease and other aggravations, and to the universal and equal access to social projects and services for its promotion, protection and recovery, in accordance with art. 196 of the Constitution of the Republic, also compatible with the constitutional principle of equality, hence the ensuring constitutional regulation of equal universal access to all available resources in order to ensure adequate health conditions.*

*The Constitution does not exclude any of the federal entities of the responsibility for this obligation, as set forth in the jurisprudence of the Supreme Court.*

*Therefore, there is nothing to accrue in regards to the Appellant's allegations.*

8. *In view of the foregoing, I deny the interlocutory appeal (art. 557, introduction, of the Code of Civil Procedure and art. 21, paragraph 1, of the Supreme Federal Court)" (pp. 84-89).*

**IA 797,349 RA/RS**

2. Decision published on 1.4.2011 (p. 90), the city of Caxias do Sul/RS, then Appellant, interposes, on 1.12.2011, timely, a regulatory appeal (pp. 95-97).

3. The Appellant claims that "the division of powers thus aims to implement the constitutional rules aforementioned, and should be considered by the Judiciary" (p. 97).

States that "*the right claimed by the Applicant is not being denied. It is only requested the assignment of the right to the public entity responsible for the supply of the claimed medicinal product*" (p. 97).

Requires the granting of this appeal.

This is the report.

4/26/2011

FIRST PANEL

REG. APPEAL IN INTERLOCUTORY APPEAL 797,349 RIO GRANDE DO SUL

VOTE

**JUDGE CARMEN LUCIA - (Rapporteur)**

1. Legal grounds have no merit on the Appellant.
2. As stated in appealed ruling, the Lower Court decided the dispute in harmony with the jurisprudence of this Supreme Court, which, in the judgment of the Regulatory Appeal in the Suspension of Security no. 3,335, Rapporteur Gilmar Mendes, Electronic Judicial Gazette of 4.30.2010, established the joint and several liability of the Federation entities in health matters.

In this trial, the Reporting Judge stated that:

*"Union, States, Federal District and Municipalities are joint and severally responsible for the health of both the individual and the collective, and thus are legitimized liabilities in claims whose cause of action is negative, by the Brazilian Single Health System (either by the Municipal, State or Federal Manager), in the area of healthcare benefits.*

*The fact that the Brazilian Single Health System has decentralized services and conjugated the financial resources of the Federation entities, with the objective of increasing quality and access to health services, only reinforces the joint, several and subsidiary liability between them" (emphasis added).*

The First Panel of this Supreme Court reaffirmed this orientation:

*'REGULATORY APPEAL IN INTERLOCUTORY APPEAL. CONSTITUTIONAL. SUPPLY OF MEDICINE. STANDING TO BE SUED OF THE STATE OF RIO GRANDE DO SUL. JOINT AND SEVERAL LIABILITY BETWEEN FEDERATION ENTITIES IN REGARDS TO HEALTH ISSUES. INTERLOCUTORY APPEAL*

**IA 797,349 RA/RS**

*DISMISSED I - The Supreme Federal Court in its full composition, at the trial of the Suspension of Security 3,355-RA/RN, established understanding in a sense that the obligation of the Federation entities with respect to the fundamental duty of providing health care is supportive. II - Unlike alleged by the Appellee, the solidarity subject will not be discussed in ER 566,471-RG/RN, Reporting Judge Marco Aurelio. III - Dismissed regulatory appeal" (IA 808.059- RA, Rapporteur Ricardo Lewandowski, First Panel, JG 12.2.2010 - emphasis added).*

3. The Appellant arguments, insufficient to modify the reviewed ruling, demonstrate clearly discontentment and resistance to terminate processes to the detriment of efficient judicial provision.
  
4. For this reason, **I dismiss the regulatory appeal.**



IA 797,349 RA/RS

FIRST PANEL

SUMMARY OF MINUTES

**REGULATORY APPEAL IN INTERLOCUTORY APPEAL 797,349**

ORIGIN: RIO GRANDE DO SUL

**RAPPORTEUR: JUDGE CARMEN LUCIA**

AGENT(S): MUNICIPALITY OF CAXIAS DO SUL

ATTORNEY(S): ATTORNEY-GENERAL OF THE MUNICIPALITY OF CAXIAS DO SUL

APPELLEE(S): VINICIUS CARPEGGIANI

ATTORNEY(S): GENERAL PUBLIC DEFENDER OF THE STATE OF RIO GRANDE DO SUL

INTERESTED PARTY(S): STATE OF RIO GRANDE DO SUL

ATTORNEY(S): ATTORNEY-GENERAL OF THE STATE OF RIO GRANDE DO SUL

**Decision:** The Panel dismissed the regulatory appeal on the interlocutory appeal, pursuant to the Rapporteur's vote. Unanimous. Presidency of Judge Carmen Lucia. 1<sup>st</sup> Panel, 4.26.2011.

Presidency of Judge Carmen Lucia. Judges Marcus Aurelius, Ricardo Lewandowski, Dias Toffoli and Luiz Fux attended the Session.

Deputy-Attorney General of the Republic, Dr. Mathias Wagner.

Carmen Lilian  
Coordinator