Supreme Court

N.R.V. vs. Eastern Metropolitan Health Service and the Ministry of Health.

Writ of Amparo

October 9, 2001

APPEAL BROUGHT: Appeal filed by the appellees against the ruling of the First Court of Appeals of Santiago, which recognizes the writ of amparo filed to obtain suitable treatment for a disease and the provision of the medication required by the affected parties from the State.

DOCTRINE: In the view of the Supreme Court, the appellant's request for medication and the suitable treatment of his/her disease relates to a matter of public health, the policy of which must be defined and enforced by authorities belonging to the above mentioned Ministry, formed by the personnel best suited to the establishment of regulations concerning access to health benefits and taking into account that the granting thereof must take various parameters into consideration such as the costs involved and available funds.

It adds that no illegality has been committed by the appellees in their actions, given that Law 18,469 specifically regulates how required benefits should be granted, and it is thus within their powers to decide whether or not to grant the assistance requested. Nor were their actions arbitrary, since the enforcement of any such procedure is intended to prevent any such arbitrariness that could lead to preference being given to other patients in a better state of health to the detriment of those in a worse condition.

The judgment made in the contested ruling runs counter to the provisions of the Law, since it leads to the arbitrary granting of the benefits claimed by the appellants, insofar as preference is given for the sole reason that a writ of amparo was sought.

Article 19, Subsection 9 of the Constitution guarantees the protection of health, although only the final paragraph of this section is included in the writ of amparo, which relates to the right of each individual to choose whether to attend a state or private healthcare system, which is not the matter at hand in this case.

Santiago, October ninth of the year two thousand one.

Whereas:

The appeal judgment is hereby reproduced, with the exception of the sixth to fifteenth grounds, which are eliminated;

And inserted, in lieu thereof, the following:

1º) The writ of amparo in relation to constitutional guarantees, established in Article 20 of the Political Constitution of the Republic, is an inherently provisional remedy in law intended to protect the free exercise of the guarantees and rights stipulated in the Constitution through the adoption of safeguard measures that must be taken on account of any arbitrary or illegal act that may prevent, threaten or upset said exercise;

2) In the case before us, the appellants have sought constitutional protection through this legal avenue with the intention that - as stated in the claim on page 11 - it be ordered that Mrs. N.O.R.V. be provided with all medication essential for her survival in consideration of her particular health circumstances and pursuant to appropriate parameters, in order to control her disease and fully protect her right to life; it be ordered that she undergo all medical examinations necessary to evaluate her state of health; and that the appellees be ordered to conduct a basic, regular and ongoing check on her state of health in order to adapt treatment

according to the progression of her disease. These petitions are repeated in the complaints on p. 91 in relation to Mr. O.F.D. and on p. 164 in relation to Mr. J.P.A.C. All three appeals are filed against the Southern and Eastern Metropolitan Health Services and the Ministry of Health, represented by the Minister of Health, Michelle Bachelet, alleging a threat to the right to life and a disruption of the right to equality before the law. Therefore, in their capacity as carriers of the human immunodeficiency virus and for the purposes of controlling and treating the progression of the acquired immune deficiency syndrome, they requested that they be provided the medication necessary for their survival, which was denied to them at all legal instances to which they resorted, which they believe to be illegal and arbitrary in nature;

3) It is necessary to disclose, prior to the analysis of the constitutional guarantees considered as violated, whether the facts alleged are indeed of an arbitrary or illegal nature, as alleged in the appeals and ruled by the trial judges. In respect thereof, it is worth stating that, in conformance with Article 11 of Law 18,469 “Regulating the exercise of the Constitutional Right to the protection of health and creating a Health Benefit Plan”, as per its title, such benefits must be granted by dependent services and institutions of the Ministry of Health, pursuant to Decree-Law 2,763, and provided by these bodies through their facilities using the physical and human resources they have available. Subsection 3 stipulates that the Ministry of Health shall establish the rules of access, quality and opportunity in relation to benefits for beneficiaries. The above suggests that the appellant’s request relates to a matter of public health, the policy of which must be defined and enforced by authorities belonging to the above mentioned Ministry, formed by the personnel best suited to the establishment of regulations concerning access to the benefits demanded in the case at hand, taking into account that the granting thereof must take various parameters into consideration, which must evidently include the costs involved and available funds.

4) From the above, this Court can conclude that, in all three cases at hand, there has been no

illegality committed through the actions of the appellees, since a law is in place specifically regulating how the benefits required should be granted, as stated above, and it is therefore within their powers to decide whether or not to grant the benefits requested. Nor were these actions arbitrary, as is evident having considered the statements of the appellees, since the enforcement of any such procedure in this case is intended to prevent any arbitrariness that could lead to preference being given to other patients in a better state of health to the detriment of those in a worse condition;

5) The judgment made in the contested ruling runs counter to the provisions of the Law, since it leads to the arbitrary granting of the benefits claimed by the appellants, insofar as preference is given for the sole reason that a writ of amparo was sought through this avenue, and because in order to establish suitable criteria for the decision over whether to grant the above, not only is it necessary to examine the premises of those seeking protection in this case; it is also necessary to examine those of all seriously ill parties that this ruling may affect, who are unable to afford private treatment. These issues can and must only be addressed by the health sector authorities, except, of course, in cases where undue preference is clearly given, which is not the case here.

6) Under these circumstances, writs of amparo cannot be deemed admissible for any of the appellees, since the premises of arbitrariness and illegality that would permit the application of such a legal remedy are not found to exist, as we have seen above. This is on the basis that it is incumbent upon the health authorities to put into practice the health policies designed and implemented by State Agencies according to the means it has available and other parameters that do not require discussion here.

7) On the other hand, Article 19, Subsection 9 of the Constitution guarantees the protection of health by the state, only the final paragraph of which is included in the writ of amparo,

relating to the right of each individual to choose whether to attend a state or private system of healthcare, which is not the matter at hand in this case;

8) In view of the foregoing, the appeals before us must be dismissed. Furthermore, pursuant to the provisions of Article 20 of the Political Constitution of the Republic and the General Provision of this Court regarding the Proceeding and Judgment of Writs of Amparo in relation to Constitutional Guarantees, the contested ruling of August twenty-eighth of this year, inserted on p. 265, is hereby revoked, and it is hereby declared that the writs of amparo filed on pp. 11, 91 and 166 are hereby dismissed. It is ordered that it be recorded and returned, with exhibit attached.

Judgment drafted by Justice Alvarez Hernández.

Roll No. 3,599-2001

Judgment of Justices Ricardo Gálvez B., Orlando Álvarez H., Domingo Yurac S. and Humberto Espejo Z., and member attorney Arnaldo Gorziglia B.