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N-280-92.-

CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF JUSTICE

San José, at nine o'clock on the seventh of February of nineteen ninety two.- Amparo claim filed by Jacobo Schifter Sikora as President of the Association of the Fight against AIDS, against the Costa Rican Social Security Institute ('Caja Costarricense del Seguro Social').

PRECEDENTS

I.-

The Complainant claims to have unproven information that the Respondent made the ungrounded decision not to supply the medication named AZT to AIDS patients, medication that provides an enormous benefit to sick persons. The Complainant appeals to the Chamber to order a positive answer to his petition in the sense of providing the medicine.

II.-

The insurance institution indicates in its report that the medicines known as Zidovudina (ZDV) or Azidotimidina (AZT), are not a curative medicine for the disease known as AIDS and have many adverse effects, so they must wait for the pertinent studies before making decisions. They also indicate that if this medicine was recommended, they would acquire it despite its extremely high price. With respect to the request made by the Association, they express it was duly answered through note 14.100 of the sixteenth of august of nineteen ninety two.

III.-

This decision is issued in accordance with the provisions of the third paragraph of article two of Law 7135 of October, 11 of 1989, and its amendment pursuant to Law N. 7209 of November 8, 1990. Decision by Judge Solano Carrera; and,

CONSIDERATIONS:

SOLE

The proceedings are brought against the refusal of the defendant entity to acquire the medicine named AZT to help AIDS patients. But from the report that has been submitted to the Chamber and the accompanying documentation, it appears that a technical-scientific expert opinion, submitted by the Drug Therapy Department of the Defendant that addresses this issue, is adverse to this possibility. On one side, it is claimed that the studies and analysis of the medicine are not conclusive and, to date, it cannot be assured that it heals, and on the contrary, there have been secondary effects identified that complicated the overall health condition of the patient. On the other side, a financial element can be added: the cost of acquisition of the medicine would have as a consequence a significant sacrifice to the social medicine, which does

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not have the appropriate budget for that purpose. For if it were to acquire a the necessary medicine and equipment for these patients, then why not do the same with the patients in a difficult or terminal situation? The Chamber considers that this aspect cannot go unnoticed: there are certain diseases for which there is no budget to counter it and from that perspective to require the Costa Rican Social Security Institute to disregard certain programs to take care of AIDS patients only, even if it is hard, is not reasonable, especially if, as the Chamber accepts, the scientific expert opinion that was submitted, indicated that AZT is not a cure for the patient, and it is just a certain and deteriorated extension of the life term. Finally, it should be noted that right to petition is not violated if the answer to an administrative action is negative, but if there is no answer, which is not this particular case. Therefore, the action must be dismissed.

IN CONSEQUENCE:

The judicial review is refused.

R.E. Piza E.  
Presidenta.i.  
Jorge Baudrit G.  
Luis Fernando Solano C.-Luis Paulino Mora M.  
Eduardo Sancho G.-José Luis Molina Q.  
Hernando Arias G. – Vernor Perera León  
Secretario a.i.  
Fbm.-