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**PROTECTION OF CONSTITUTIONAL WARRANTIES PRESENTED BY DR. RICARDO LACHMAN ON BEHALF OF THE FOUNDATION PRO BIENESTAR AND DIGNITY OF THE PEOPLE LIVING WITH HIV/AIDS (PROBIDSIDA) AND JORGE NELSON MORAN, AGAINST THE ORDERS OF NOT DOING OF THE DIRECTOR OF THE SOCIAL SECURITY FUND. JUSTICE: EDGARDO MOLINA MOLA. PANAMÁ, DECEMBER 31<sup>ST</sup> 1998.**

**SUPREME COURT OF JUSTICE**

SEEN:

Doctor RICARDO LACHMAN, acting on behalf of THE FOUNDATION PRO BIENESTAR AND DIGNITY OF THE PEOPLE AFFECTED BY HIV/AIDS (PROBIDSIDA) and JORGE NELSON MORAN has petitioned a protection of constitutional warranties against the alleged restraining orders handed down by the Social Security Fund.

I. THE CONTESTED ACT

The so-called restraining orders or "refusals" contested relate to the alleged refusal of the Social Security Fund to dispense descriptions No. 0808408, 0807653 and 0807654 issued in favor of JORGE MORAN. According to the petitioner, this action violates articles 17, 105, 106 and 107 of the Constitution.

Past records reveal that the respective medical prescriptions were shown at the Social Security Fund Pharmacy and given back with a stamp that read: "Return to your doctor, medicine outside the official list."

II. REVIEW OF THE PROTECTION TRIBUNAL

This tribunal, when proceeding to examine the libel in order to determine if it complies with the requirements of the law, warns that the petitioner has not complied with some of the legal requirements that determine the admissibility of these processes.

First off, it warns that the so-called restraining orders contested are in reality refusals of the Social Security Fund to dispense certain medicines to an insured person. Obviously, we do not find ourselves facing "an order not to do something" directed toward the petitioner but against the refusal of rendering a service, on the part of the Social Security entity.

In this context it follows that the Writ of Protection does not comply with what is set out in article 2606 numeral 2 of the Judicial Code, which conditions the presentation of these kind of writs on the exhaustion of the ordinary remedies that are set out in the law.

Thus, the Court observes that one of the medical benefits that the Social Security Fund offers is the risk of disease, which includes among other benefits, pharmaceutical care. As foreseen by the Medical Benefits Regulation, only pharmaceutical prescriptions of products included in the existing Medical Form of the Social Security Fund will be dispensed.

The refusal of the fund to dispense the requested medicines is based on the fact that, as can be seen in JORGE MORAN's prescriptions, the requested medicine is not included in the official list of medicines.

This shows that we are before a claim for medical benefits, highlighting the essentially administrative characteristic of the matter, which allows for a challenge by any of the remedies contemplated in the so-called government channels and in the contentious-administrative jurisdiction, and there is no record that the petitioner has tried to use administrative remedies to remedy the legal violation that he challenges.

And, if the charges turn out to be true, they would become objections that can be discussed in the administrative and legal field, but that have no signs of constitutional vices, especially when the rules whose constitutionality is challenged dictate guidelines or policies of Panamanian State particularly with respect to the health, security and social assistance sector, so they enjoy programmatic content.

In these circumstances, the appropriate course is to deny the action filed, knowing that this Judicial Corporation has reiterated the requirement of exhausting all remedies provided by law, suitable to solve the controverted matter at hand, with preference to the utilization of constitutional means.

The aforementioned defect is enough to deny the viability of the writ. However, this Court also finds a failure to direct the libel to the Justice President of the Supreme Court of Justice as is foreseen by article 102 of the Judicial Code, as well as the lack of direct legitimacy of THE FOUNDATION PRO BIENESTAR AND DIGNITY OF THE PEOPLE LIVING WITH HIV/AIDS (PROBIDSIDA), who contribute to the process because of their interest in the matter but who have not had an order issued against them.

Accordingly, the Supreme Court, administering justice on behalf of the Republic and with the law's authority, DOES NOT ADMIT, the protection of constitutional warranties presented by Doctor RICARDO LACHMAN, on behalf of THE FOUNDATION PRO BIENESTAR AND DIGNITY OF THE PEOPLE LIVING WITH HIV/AIDS (PROBIDSIDA) and JORGE NELSON MORAN.

Notify.

(fdo.) EDGARDO MOLINO MOLA  
(fdo.) ELIGIO A. SALAS  
(fdo.) JOSE A. TROYANO  
(fdo.) GRACIELA J. DIXON  
(fdo.) FABIAN A. ECHEVERS  
(fdo.) ROGELIO FABREGA ZARAK  
(fdo.) HUMBERTO A. COLLADO  
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(fdo.) ARTURO HOYOS

(fdo.) CARLOS H. CUESTAS G.  
Secretario General