

**APPEAL OF A JUDGMENT FOR A WRIT FOR PROTECTION OF
FUNDAMENTAL RIGHTS (“AMPARO”)**

CASE FILE 4053 – 2009

CONSTITUTIONAL COURT: Guatemala, January 6, 2010

In light of the appeal filed and its factual background, the judgment issued on October 2, 2009 by the Second Chamber of the Court of Appeals of Labor and Social Order Matters is hereby under review, when it constituted itself into a Tribunal to determine Writs of Protection of Fundamental Rights (hereinafter, an “*Amparo*”), and decided the constitutional action filed by the Human Rights Ombudsman, acting in favor of minor Julio Cesar Bravo Villalta, against the Board of Directors of the Guatemalan Social Security Institute. The applicant acted under the sponsorship of attorneys José Guillermo Rodríguez Arévalo and Ovidio Ottoniel Orellana Marroquín.

I. The Amparo

A) **Submission and authority:** filed on the sixteenth of June of two-thousand and nine, at the Center for Auxiliary Services of Administration of Justice and subsequently sent to the Second Chamber of the Court of Appeals of Labor and Social Order Matters. B) **Claimed act:** certain and determined threat to suspending the medical services of minor Julio Cesar Bravo Villalta, who suffers from cerebral paralysis and needs various treatments and a medicament called phenobarbital, among others. C) **Violations claimed:** rights to life, health and physical integrity. D) **Facts that underlie the *amparo*:** the matters set forth by the claimant and the matters stated in the summarized background: D.1) **Causation of the claimed act:** a) Julio César Bravo Villalta, a minor, is a beneficiary of the Guatemalan Social Security Institute, with member number one hundred eight million four-hundred eighty six thousand one hundred and seven (180486177); b) the minor suffers from cerebral paralysis as a result of a respiratory arrest at the time of his birth, which implies that said illness is congenital in nature; c) the parents of the patient were informed at the General Hospital of Illnesses of the Guatemalan Social Security Institute that once the minor turned five years of age, his treatment would be suspended; d) having received said notice, they requested the extension of said treatment and medical assistance, but they were told that according to official letter four-hundred and eighty eight- two thousand and nine, dated May thirteen two thousand and nine, said medical assistance could not be extended because of the Institute’s regulations, and it could only be provided until the child turned five years of age. D.2) **Harm imputed to the claimed act:** the claimant believes that the refusal to extend medical treatment and assistance necessary to sustain the minor’s health, who suffers from cerebral paralysis, threatens the beneficiary’s health and therefore, his life. This represents a certain and determined threat to his protection in accordance with the constitutional case law that has already been settled in this regard. The challenged Institute, in order to enforce its internal regulations, undermines the supreme guarantee provided by the Political Constitution of the Republic of Guatemala for the health of its inhabitants and its respective preference to protect life as the primary right, which imposes protection via an *amparo*. D.3) **claim:** I request that the *amparo* be granted and the challenged authority be ordered to continue providing medical assistance and medication until the patient ceases to need these. E) **Use of its resources:** none. F) **Relevant cases:** I invoke the contents of subparagraphs a) and b) of article 10 of the Law of *Amparo*, Habeas Corpus and Constitutionality. G) **Violated laws:** I reference articles

3, 28, 93, 94 and 95 of the Political Constitution of the Republic of Guatemala; 25 and 25 of the Convention on the Rights of the Child.

II. PROCEEDINGS OF THE AMPARO.

A. Provisional amparo: granted. **B) Third interested party:** None. **C) Circumstantial report:** the challenged authority informed that the minor had been born at the Hospital of Gynecological-obstetrics of this institution, and that he suffered perinatal asphyxiation and neonatal pneumonia and that he was timely given the respective treatment; he was referred to an external consult for follow-up, where he has been treated since the age of one month and has had referrals to various specialty doctors due to his illness; given that the patient is close to turning five years of age, a report was requested regarding the source of the illness and, the pediatric neurology specialist informed that his illness was not considered congenital. **D) Submission of background:** None. **E) Evidence:** a) documents that have been added to the record that were enclosed with the alleged legal and human claims. **F) First instance judgment:** the Second Chamber of the Court of Appeals of Matters of Labor and Social Order, constituted into a Tribunal for Amparos **considered:** *“This Tribunal, in performing the review of the actions, establishes that the child Julio Cesar Bravo Villalta, suffers from Cerebral Paralysis and as a result, the Guatemalan Social Security Institute must guarantee him a treatment that consists of physical therapy, speech therapy, psychology, dental treatment, general medicine, neurology and pulmonology, phenobarbital medications and other medications according to the law, that are necessary for the child’s treatment and recovery. Broadly, the Political Constitution of the Republic of Guatemala recognizes the right to health and its protection, as a right that is inherent to every human being; this implies having access to the service that allows maintenance or recovery of physical, mental and social wellbeing; this right, as well as others recognized by the Political Constitution of the Republic of Guatemala, belongs to all of the inhabitants and implies that the State must take adequate measures to protect the individual or collective health. Social Security has been instituted as a mechanism to protect life; and it seeks, as its fundamental reason, to provide hospital medical services that lead to preserving, preventing or restoring the health of its inhabitants, through a medical analysis that spans from diagnosis to the application of treatment required for the patient to recover. That, in amparo proceedings, the judgment of damages is mandatory, and they can be exempted when there is evidence of good faith. That, notwithstanding the above, the Board of Directors of the Guatemalan Social Security Institute, with its actions, creates risk to the life of a person, and its actions are also geared towards protecting the interests of the Institute, applying internal institutional laws, which evidently, cannot prevail over the constitutional principles articulated in the first judgment, and thus, it is exempt from its respective damages...”* **And resolved:** *“To grant the amparo filed by the Human Rights Ombudsman, against the certain and determined threat caused by the Guatemalan Social Security Institute regarding suspension of adequate medical treatment for minor Julio Cesar Bravo Villalta, in his full enjoyment of his constitutional rights, ensuring the corresponding medical treatment for the referenced patient as a consequence of the illness that he suffers, providing physical therapy, speech therapy, psychology, dental treatment, general medicine, neurology and pulmonology, phenobarbital medications as well as other medications according to the law, that are necessary for the child’s development and recovery. III. There is no judgment of damages. Service is hereby ordered...”*

III. APPEAL

The challenged authority appealed.

IV. ARGUMENTS ON THE DATE OF THE HEARING

A. **The claimant** stated that the lower court's judgment complies with the law and procedural rules, and thus requested that the judgment be affirmed, thus definitively granting the *amparo*. B) **The Guatemalan Social Security Institute**, challenged authority, stated that the *amparo* is inadmissible given that it is addressed against an authority that does not govern that institution, and thus, although the Board of Directors is the highest body of the *Guatemalan Social Security Institute*, it is also true that its management must exercise legal and administrative representation and management of this entity; thus, for the purposes of the *amparo*, it does not meet the requirements for standing and it must be suspended definitively. In any case, the *amparo* is inadmissible because at no time has there been a violation of the rights of the minor, given that the Institute is an autonomous entity, with legal personality and its own capital in accordance with the matters regulated by article 100 of the Political Constitution of the Republic of Guatemala. It has not performed any acts that constitute certain and determined threat against the health and life of the minor because, in issuing the respective regulations that govern events set forth in the development of the duty of social security, it does so based on specialized studies, foreseeing the financial regime's capacity, as well as the capacity to grant benefits to its members; for this reason, if it fails to abide by its internal regulations, it would be favoring one member, but it would be leaving others unprotected as a result of the financial and administrative disorganization caused by granting one member more than what the respective agreements that regulate covered risks contemplate. Further, the issued judgment would violate the internal planning of the institution, because it disregards that the referenced Institute is currently under an economic and administrative crisis. For this reason, it cannot grant the requested medical services. Finally, the *amparo* also lacks definiteness, given that at no time has the patient ceased to be treated. The claimant requested that the appeal be admitted, that the appealed judgment be revoked and the *amparo* be denied. C) **The Public Ministry** stated that it shares the theory espoused by the Tribunal of *amparo* in first instance whereby it granted the merited protection, as the actions of the challenged authority certainly and definitively affect the life of minor Julio César Bravo Villalta, who suffers from cerebral paralysis as a result of a respiratory arrest at birth, and this is considered a congenital illness. There is abundant case law regarding the protection required for terminal illnesses, which bears a strong relationship to the contents of the Convention on the Rights of the Child; the latter states, in its article 3: "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*" and these laws are picked up by our legal framework in article 5 of the Law for the Comprehensive Protection of Children and Adolescents which provides: "*The best interests of the child is a guarantee that shall be applied in every decision adopted with respect to children and adolescents, that must ensure the exercise and enjoyment of their rights...*" (...), "*In no case can their application decrease, misinterpret or restrict the rights and guarantees recognized in the Political Constitution of the Republic, treaties and Conventions in matters of human rights accepted and ratified by Guatemala and this law.*" The above regulatory framework imposes senior protection for the rights of the child and, in this sense, the first instance judgment that protected him, is issued pursuant to the law. I request that the appeal be dismissed and that the first instance judgment be affirmed.

WHEREAS

This Court has considered that the *amparo* operates as a constitutional instrument that can ensure the efficacy of fundamental human rights, whether to ensure their validity and respect or to restore their enjoyment when there is a threat to a violation or a violation properly attributed to improper decisions or acts; as, what is sought by an *amparo*, is the timely protection of a fundamental right; this acquires supreme relevance when it refers to the protection of the right to life, considered of greatest importance in the scale of fundamental rights, since all other rights turn with respect to it. Thus, the right to health cannot be the exception, as it is only justified as a mechanism for protection of life. These are two priority rights and, as such, are subject to state protection, excepting illegitimate actions. The State has the duty to protect, through all means available, because guaranteeing the enjoyment of an adequate quality of life must constitute one of its main objectives.

II.

The Human Rights Ombudsman, acting on behalf of Julio César Bravo Villalto filed an *amparo* against the Board of Directors of the Guatemalan Social Security Institute and claims, as aggravating factor, the certain and determined threat of the suspension of medical services to the referenced minor, who suffers from cerebral paralysis and needs a variety of treatments and the medication called phenobarbital, among others.

The claimant considers that the refusal to extend medical treatment and assistance that is necessary for sustaining the minor's health, who suffers from cerebral paralysis, threatens the beneficiary's health and thus, his life. This represents a certain and determined threat that requires protection in accordance with the constitutional case law that has been settled in this subject. The claimant states that the challenged Institute seeks to uphold its internal regulations over the supreme guarantee that the Political Constitution of the Republic of Guatemala prescribes for the health of its inhabitants and its corresponding priority for the protection of life, which implies protection via an *amparo*.

III.

This tribunal believes that the following considerations are relevant as a legal foundation for the declaratory portion of this ruling:

A) The supreme text contemplates the right to life and health that every person is entitled to as a fundamental State obligation; the Constitution's preamble itself highlights the primacy of the person as a subject and the objective of the social order, as well as the fact that the mother law also contemplates that the Guatemalan State must organize itself to protect the human person and must therefore guarantee life and comprehensive development to the inhabitants of the Republic (among other aspects). Thus, this right constitutes its supreme objective and, as such, justifies its protection. The right to health entails, in this case, the real possibility of a person receiving timely and effective medical treatment. Based on this, this right must be an object of protection, not only in the country's internal regulation (article 93 of the Constitution as a primary and directly applicable law) but in the conventional international human rights law as well (articles 12 of the International Covenant of Economic, Social and Cultural rights and XI of the American Declaration on the Rights and Duties of Man, to mention two examples). It is worth recalling (as illogical as it may seem), that if the right to health arises from the fundamental right to life, an affectation to it implies a

violation of the most fundamental of all human rights: life. Thus, the repeated case law of this Court has considered that this right – to health- is such “that every human may enjoy a biological and social balance that constitutes a state of wellbeing in relation to the medium that surrounds him or her; implies the power of access to services that permit maintenance or restoration of physical, mental and social wellbeing.” (Judgment of twelfth of May of nineteen ninety-three, accumulated records 355-92 and 359 – 92, Gazette 28 pages 19 and 20).

B) In turn, the right to Social Security has been set as a mechanism for the protection of life, that fundamentally seeks the provision of medical hospital services conducive to conserving, preventing or restore the health of inhabitants, via a medical assessment that necessarily covers from diagnosis to application of the treatment that the patient needs to recover. Thus, the Constitution, in its article 100 provides: “the right to social security for the benefit of the Nation’s inhabitants,” instituting its regime as a public and obligatory duty.

Without understanding this right in a limited or unequal fashion –all persons who are members of the security or social organization regime conferred on the Guatemalan Social Security Institute are entitled to it. According to the regulatory provisions and legal framework authorizing the Guatemalan Social Security Institute’s operation, the provision of services must cover general illnesses, according to articles 28, letter d) and 31 of its organic law and, in this order of ideas, to the members and the relatives to whom the benefit of the social security regime extend, the rights for the protection of illnesses and the provision of medical assistance at clinics and hospitals of the referenced Institute.

Without prejudice to the exercise of said power, it is worth considering that by elemental humanism, in such exceptional cases in which the preservation of the right to life is being threatened by a certain and imminent deprivation, due to the concurrence of a terminal illness or an unforeseeable case (traffic accidents, wounds caused by arms, to cite two examples of cases in which adequate emergency medical attention could be determinative to avoid death), the coverage of medical services cannot be suspended or denied when there is no judicial declaration that authorizes this. If it is suspended or denied based on the issuance of an (administrative) decision, it could be subsequently challenged, and this could lead to breach by the State of its main objectives.

C) This tribunal’s case law has considered the preventive effect of the *amparo* in that “the *amparo* covers two essential functions: a preventive and a restorative function. In order to establish its applicability, and when a violation of a right guaranteed by the Constitution and the laws occurs, the threat that one seeks to prevent must be imminent and must arise from an act of authority, so that the *amparo* is sure to prevent it” (Judgment dated May six nineteen ninety seven, Case 1351 – 96, Gazette 44, page 276). In this sense, the action is feasible in such cases where the deprivation of fundamental rights clearly and manifestly appears as well as the serious and irreparable harm that such a deprivation would cause. If in the situations such as the one under analysis, the review of the matter were to be forwarded to ordinary proceedings; the lack of the desired speed in light of the fact that it is an important event, could have negative effects, when the *amparo* actually provided an opportunity to prevent these. In exceptional cases, in those where a person seeks to preserve his or her life, and those that can be affected by deficiencies of the proper functioning of the judicial system, one must hear the merits of them matter, if applicable, to guarantee the adequate enjoyment of the fundamental right threatened to be violated through the expedited *amparo* route.

-IV-

Based on the above and having proven the threat that would be caused if the Guatemalan Social Security Institute were to suspend the treatment and cease to provide the medications to the minor, this Court concludes by analyzing the contents of article 128 of Agreement 466 of the Board of Directors of the Guatemalan Social Security Institute, which states: “...*When a child turns five years of age and is being treated by the Institute’s medical services, his right to services shall be terminated, unless he is in a state of emergency, in which case he will continue to be treated until said condition ends. – In the cases of children who, when they reach five years of age, need treatment due to anomalies and congenital illnesses, including their rehabilitation, the right to services shall be extended as necessary, though it may not exceed the age of fifteen years.*” The referenced legal framework used to support the refusal, contains three categories for its application, as follows: a) that the Institute must provide medical services to minors, until they turn five years of age; b) the Institute shall provide medical services to minors until they turn fifteen years of age, when they suffer from any anomaly and congenital illness; and c) when a minor is under a state of emergency, he or she shall continue to be treated until said condition ends. Taking into account the above referenced three categories, we determine that the illness that the minor suffers and that is subject to a claim for suspension of medical assistance and treatment is placed, in any case, in the second category and, in this sense, the Guatemalan Social Security Institute must provide adequate medications and treatment to preserve his health, since these cannot be denied or suspended without a final judicial resolution authorizing as much. Given the above, and considering that the refusal of the challenged authority threatens the rights that the supreme rule guarantees as well as the international law applicable to the child, we conclude that constitutional protection must be granted in order to prevent an eventual violation of said constitution and so that he can continue to receive the hospital medical services required by his illnesses (including coverage of the hospital medical treatment professional assistance, and, eventually, surgery, as relevant) and that must be provided by the coverage of the social security regime. For this reason, the *amparo* granted in first instance must be affirmed, but, for the reasons mentioned herein and with the modifications specified in the resolution section of this ruling.

APPLICABLE LAWS

Articles 93, 100, 265, 268 and 272, subparagraph c), of the CPR; 1°, 2°, 3°, 4°, 7°, 8°, 10, 11, 42, 43, 44, 45, 46, 47, 57, 149, 163, subparagraph c), 185 and 186 of the Law of *Amparo*, Habeas Corpus and Constitutionality and 17 of Agreement 4-89 of the Constitutional Court.

RESOLVES TO

The Constitutional Court, based on the matters considered above and the referenced laws, resolves to: **I) affirm** the judgment appealed as it granted the *amparo* requested by the Human Rights Ombudsman in favor of minor Julio Cesar Bravo Villalta and modify its resolution section, in the sense that the Guatemalan Social Security Institute must continue to provide the treatments and medications to the minor that are necessary in accordance with the state of the art law, during the time that he needs them, without restriction. **II) Order** the challenged authority to strictly comply with the matters ordered in this judgment, under penalty of imposing a fine of fourth thousand quetzals on each of the members of the Board of Directors and the Manager, without prejudice to the liabilities that they could incur in the event that they were to not abide by the matters resolved and, take all the measures that imply

immediate compliance. III). Service is hereby ordered and, with certification to the matters resolved, the file is remanded.

JUAN FRANCISCO FLORES JUAREZ
PRESIDENT

ROBERTO MOLINA BARRETO
MAGISTRATE

ALEJANDRO MALDONADO
AGUIRRE
MAGISTRATE

MARIO PÉREZ GUERRA
MAGISTRATE

GLADYS CHACÓN CORADO
MAGISTRATE

AYLÍN ORDOÑEZ REYNA
SECRETARY GENERAL

CASE FILE 4053 – 2009

CONSTITUTIONAL COURT: GUATEMALA, January eighteenth, two-thousand and ten

We are hereby reviewing the requests for clarification and expansion of the judgment issued by this Court on the sixth of January of two thousand and ten, filed by Luis Alberto Reyes Mayén, in his capacity as President of the Board of Directors of the Guatemalan Social Security Institute, in the record created by the appeal of the judgment, in the constitutional action that the Human Rights Ombudsman filed against the claimant in favor of Julio César Bravo Villalta.

BACKGROUND

I) **REGARDING THE SUBMISSION OF THE AMPARO AND RESOLUTION IN FIRST INSTANCE:** In the constitutional proceedings within which the challenges are filed that are now being resolved, the Human Rights Ombudsman, acting in favor of Julio César Bravo Villalta, who suffers from cerebral paralysis and needs various treatments and medication called phenobarbital, among others, challenged the act of suspending medical services to the patient as a certain and determined threat. The *amparo* objects to the refusal to extend treatment and technical assistance essential to sustaining the health of the minor, who suffers from cerebral paralysis, threatening his health and therefore, his life; it claims that this represents a certain and determined threat against his protection pursuant to the constitutional case law that has been settled in this case. The challenged Institute seeks to uphold its internal regulations over the supreme guarantee that the Political Constitution of the Republic of Guatemala has contemplated for the health of inhabitants and its respective presence to protect life as the main right, which requires protection via *amparo*. The tribunal of *Amparo* in first instance granted the requested constitutional protection

II) **OF THE APPEAL FILED AND THE SECOND LEVEL RESOLUTION:** The challenged authority in the *amparo* appealed the referenced judgment. This Court, in a hearing, via writ of certiorari, resolved to confirm the appealed judgment and modified it declaring that: “*the Guatemalan Social Security Institute must continue to provide its treatments and medications that are necessary to the minor in accordance with the state of*

the art law, during the time that these are necessary, without restriction,” and ordered the challenged authority to strictly comply with the matters ordered under legal penalty and affirmed the appealed judgment in the manner set forth

III) OF THE ARGUMENTS OF CLARIFICATION AND EXPANSION: In the present case, the claimant considers that the judgment issued by this Tribunal must be clarified and expanded because, in its judgment, “*it contradicts the matters considered and the resolution section, by virtue of the fact that the judgment is based on the third category determined in the respective analysis and not the second category as stated in the resolution that is now being subject to clarification and expansion.*”

WHEREAS

-I-

Article 70 of the Law of *Amparo*, Habeas Corpus and Constitutionality establishes that when the concepts of a writ or judgment are obscure, ambiguous or contradictory, one can request a clarification. If resolving some of the point on which the *amparo* is set forth, the expansion may be requested

-II-

In the present case, the reading the brief filed regarding the correction requested and the analysis of the ruling that had been subject to an objection, this Court warns that the resolution that the claimant seeks is a modification of the merits of the matters decided in the referenced ruling, a matter that cannot be obtained via the remedies that were attempted; further, we confirmed that in the referenced provision, there are no obscure or ambiguous terms that must be clarified, nor has any point subject to the jurisdiction of the Tribunal been disregarded, and for this reason, the clarification and expansion requested must be declared inadmissible, due to its lack of foundation.

APPLICABLE LAWS

Cited article 268 and 272, subparagraph i) of the Political Constitution of the Republic of Guatemala, 71, 149, 163, subparagraph i) ad 185 of the Law of Amparo, Habeas Corpus and Constitutionality; 2st Agreement 1-2009 of the Court of Constitutionality.

RESOLVES TO

The Court of Constitutionality, based on the matters considered and referenced laws, resolves to: **I. Dismiss** the requests for clarification and expansion filed by Luis Alberto Reyes Mayén in his capacity as President of the Board of Directors of the Guatemalan Social Security Institute. **II.** Service is hereby ordered

JUAN FRANCISCO FLORES JUAREZ
PRESIDENT

ROBERTO MOLINA BARRETO
MAGISTRATE

ALEJANDRO MALDONADO
AGUIRRE
MAGISTRATE

MARIO PÉREZ GUERRA
MAGISTRATE

GLADYS CHACÓN CORADO

MAGISTRATE

AYLÍN ORDOÑEZ REYNA
SECRETARY GENERAL