

## APPEAL OF SENTENCE IN PROTECTION ACTION

### FILE 4111-2009

**CONSTITUTIONAL COURT:** Guatemala, January 28, 2010.

On appeal and considering the prior procedural instances of the case, the Court will examine the sentence handed down on October 2, 2009, by the Second Chamber of the Court of Appeals for Labor and Social Security, acting as a Protection Tribunal, in the constitutional action brought by the Public Defender for Human Rights on behalf of Maritza Ninnette Cuellar Morales against the Board of Directors of the Social Security Administration of Guatemala. The claimant is represented by attorney José Guillermo Rodríguez Arévalo.

### PROCEDURAL HISTORY

#### I. THE PROTECTION ACTION

**A) Presentation and jurisdiction:** Presented on June 17, 2009, before the Center for Auxiliary Services of Judicial Administration, and later remitted to the Second Chamber of the Court of Appeals for Labor and Social Security. **B) Act that is the subject of the protection action:** *“The failure of the respondent authority, the Guatemalan Institute of Social Security to provide Ms. Maritza Ninnette Cuellar Morales medical attention for her spinal cord, and the corresponding economic benefits as a result of her temporary disability, due to the Institution’s allegation that she is not affiliated therewith.”* **C) Violation claimed:** the rights to life, health, physical integrity and social security. **D) Facts underlying the protection action:** The claimant’s argument is summarized as follows: **D.1) Occurrence of the act complained of:** **a)** Maritza Ninnette Cuellar Morales is employed by the entity Corporación González y Mendoza, Sociedad Anónima, and is affiliated with the Guatemalan Institute of Social Security with identification number two – sixty-three – zero two thousand eight hundred and thirty – zero (2-63-02830-0); **b)** she suffers from serious problems with her spinal cord, which resulted in the Social Security Institute putting her on disability leave from her job; **c)** the Assistant Manager of Economic Health Benefits of the aforementioned Institute, by way of resolution one thousand six hundred nineteen/two thousand eight (1619/2008), dated May 20 of that year, declared that Maritza Ninnette Cuellar Morales was not affiliated with the Social Security Administration, and therefore denied her coverage, and, particularly, the continuing medical attention that she needed, as well as the corresponding payments for disability as a result of the medical leave to which she was subject—the act complained of; and **d)** the claimant brought an appeal against this decision before the Assistant Manager of Economic Health Benefits of the Guatemalan Institute of Social Security, arguing that the case had not been decided by the respective administrative authority. **D.2) Damages caused as a result of the act complained of:** the claimant alleges that the Guatemalan Institute of Social Security, by denying Maritza Ninnette Cuellar Morales the medical treatment she needs and the economic benefits that are due to her as a result of the medical leave to which she is subject, put her life and health at risk. In addition, the decision that declares that the worker is not affiliated with the social security administration, and on which the Institution’s denial of her treatment was based, is not final, given that her appeal against such decision has not yet been

resolved. **D.3) Petition:** the claimant requests that the protection action be granted, and as a result, that the respondent authority be ordered to guarantee medical treatment to Maritza Ninnette Cuellar Morales and the corresponding economic benefits due to her for medical leave. **E) Use of resources:** none. **F) Applicable law:** The claimant cites to paragraphs a) and b) of Article 10 of the Law of the Protection Action, Personal Liberties and Constitutionality. **G) Laws violated:** The claimant cites to Articles 1, 2, 3, 93, 94, 95 and 100 of the Political Constitution of the Republic of Guatemala.

## **II. PROCEDURE OF THE PROTECTION ACTION**

**A) Interim protective measures:** Granted. **B) Interested third parties:** none. **C) Respondent's evidence:** The respondent authority stated that: **a)** Maritza Ninnette Cuellar Morales was seen on November 9, 2007, in an out-patient facility, and was diagnosed with lumbago and sciatica on the left side of her body, and was put on medical leave from her job on the same day; **b)** on December 5, 2007, this individual was hospitalized, presenting with lumbar sciatica on the left side of her body, for which she was treated, and, later, discharged from the hospital while remaining on medical leave, after being diagnosed with lumbar sciatica on the left side of her body and a protrusion of the L five – S one (L5-S1) vertebral disc; **c)** the patient continued to be treated as an out-patient by the Unit Specializing in Spinal Surgery and Physical and Rehabilitative Medicine, and was treated on various occasions; however, on June 16, 2008, the case was closed, based on resolution one thousand six hundred and nineteen/two thousand eight (1619-2008), issued by the Assistant Manager of Economic Health Benefits, which declared that the patient was not affiliated with the Social Security Administration; and **d)** in light of the foregoing, the corresponding disability payments in respect of the patient's medical leave were not paid to her. **D) Evidence:** **a)** uncertified copies of the following: **i)** the complaint presented by Maritza Ninnette Cuellar Morales before an officer of the Auxiliary Department of the Public Defender for Human Rights of the Escuintla province, on May 26, 2008; **ii)** identity card number E - five (E-5) and register seventy-eight thousand eight hundred and six (78,806) issued by the Mayor of the Municipality of Escuintla, in the province of Escuintla, belonging to Maritza Ninnette Cuellar Morales; **iii)** social security card issued by the Guatemalan Institute of Social Security in the name of Maritza Ninnette Cuellar Morales; **iv)** out-patient clinic card belonging to Maritza Ninnette Cuellar Morales; **v)** employment contract entered into between Maritza Ninnette Cuellar Morales and the company "Parques de Agua" on January 15, 2005; **vi)** confirmation of employment in favor of Maritza Ninnette Cuellar Morales, provided by her employer; **vii)** resolution one thousand six hundred and nineteen/two thousand eight, issued by the Assistant Manager of Economic Health Benefits, declaring that Maritza Ninnette Cuellar Morales is not affiliated with the Social Security Administration, based on the report provided by the Investigative Division; **viii)** brief of the interested party appealing the previously described decision; **ix)** official letter number two thousand seven hundred and thirty-nine (2739), dated May 4, 2009, from the Assistant Manager of Economic Health Benefits of the Guatemalan Institute of Social Security, to the Auxiliary Department of

the Public Defender for Human Rights of the Escuintla province, indicating that the referenced appeal had not been resolved; **x)** receipts for payments made and roles of workers presented to the Guatemalan Institute of Social Security by the company González y Mendoza, Sociedad Anónima, for the year 2007, and the social security invoices presented by that company to the aforementioned Institute during the period in question; **xi)** official letter from HEDE [*Translator's Note: this acronym is not explained in the text.*] number three hundred and thirty-six – 2009 (HEDE 337-2009), dated June 26, 2009, from the Medical Director of the Hospital of the Guatemalan Institute of Social Security of Escuintla, to the Legal Department of said Institute, at its central offices, providing a clinical report in respect of patient Maritza Ninnette Cuellar Morales; **xii)** official letter one hundred and sixteen – two thousand nine (116-2009), dated February 19, 2009, from the Medical Director of the Hospital of the Guatemalan Institute of Social Security of Escuintla, to the Assistant Manager for Economic Health Benefits, indicating that Maritza Ninnette Cuellar Morales had been declared to be not affiliated, as per resolution one thousand six hundred and nineteen – two thousand eight (1619/2008); **xiii)** official letter five hundred and ten/two thousand eight (510/2008), dated June 5, 2008, from the Chief of Economic Benefits of the Guatemalan Institute of Social Security, to the Delegation of Escuintla, indicating that the corresponding economic benefits for medical leave had not been paid out to Maritza Ninnette Cuellar Morales, given that she had been declared to not be affiliated with the Social Security Administration; **xiv)** official letter from HEDE number four hundred and four – two thousand nine (HEDE 404-2009), dated July 30 of the same year, from the Medical Director of the Hospital of the Guatemalan Institute of Social Security of Escuintla, to the Legal Department of said Institute, at its central offices, providing a clinical report in respect of patient Maritza Ninnette Cuellar Morales, and in addition, indicating why the patient was declared to not be an affiliate of the Social Security Administration; and **b)** legal and human rights arguments. **E) Decision in the first instance:** Second Chamber of the Court of Appeals for Labor and Social Security, acting as a Protection Tribunal, **considered that:**“(…) *This Tribunal, after its review of the record, finds that Ms. **Maritza Ninnette Cuellar Morales** effectively demonstrated her affiliation with the **Guatemalan Institute of Social Security**, through the documentation provided as proof in the present case, consisting of a letter from her employer dated May 23, 2008, which appears on page 24 of the record, and various payments made to the **Guatemalan Institute of Social Security** by the company that provided this confirmation of the person in question's employment. This evidence was not rebutted as irrelevant or false, and accredits that the patient was not only an employee of the entity **Corporación González y Mendoza, Sociedad Anónima**, operating under the commercial name **Aqua Park**, but was also affiliated with said Institute. Therefore it must be understood that as an affiliate, it is the **Guatemalan Institute of Social Security's** responsibility not only to guarantee to the patient appropriate medical treatment through the provision of the medications she requires, in accordance with the principle of *lex artis*, for as long as necessary, but also to provide her with the economic benefits corresponding to her temporary disability. In respect of the foregoing, it is important to note that the benefit of health is a*

*fundamental right of all persons, without any discrimination whatsoever. The Political Constitution of the Republic of Guatemala in broad terms recognizes the right to health and the protection of such right as an inherent prerogative of all persons. This implies the right to access those services that allow for the maintenance or the restitution of good physical, mental and social health. This right, like others recognized by the Political Constitution of the Republic of Guatemala belongs to all persons, which leads to the conclusion that the State must take adequate measures for the protection of the individual or public health ... (Sentence of May 12, 1993, case file 335-92, Official Register 28). Given that Social Security has been implemented as a mechanism to protect human lives, with the fundamental purpose of providing medical and hospital services so as to preserve, protect or restore the health of the population, through medical treatment that covers the patient from his or her diagnosis to the application of the treatment that he or she requires to restore his or health (Official Register 64, case file 949-02, sentence of June 6, 2002). In relation to the **Guatemalan Institute of Social Security's** failure to rule on the appeal filed by **Maritza Ninnette Cuellar Morales**, this failure constitutes a violation of the right to petition set forth in Article 28 of the Political Constitution of the Republic of Guatemala, given that the Board of Directors of the Guatemalan Institute of Social Security have exceeded the time period to respond to such an appeal. Such response should also be in conformance with the aforementioned analysis of the law. In light of the foregoing, the Constitutional Action may proceed, and a prudent time period should be fixed for the handing down of the resolution to the patient's appeal (...) In protection proceedings, the Court is required to determine the payment of costs, although the losing party may be exempt from payment of costs if such party has acted in good faith. Although the Board of Directors of the Guatemalan Institute of Social Security have, through their posture in the case, put the life of a human being at risk, their actions sought to protect the interests of such Institute, by applying the Institute's internal regulations, although such regulations clearly may not prevail in the case of conflict with the constitutional principles set forth in the present decision. Therefore, the Guatemalan Institute of Social Security is exempt from the payment of costs." **The Court therefore resolved: "...I)** The protection action brought by the Public Defender for Human Rights in respect of the clear and imminent threat of the Guatemalan Institute of Social Security to suspend the provision of necessary medical treatment and the payment of economic benefits for medical leave from her job to Maritza Ninnette Cuellar Morales, is hereby granted. **II)** As a result of the foregoing, the Guatemalan Institute of Social Security is hereby ordered to take the necessary actions to ensure that Maritza Ninnette Cuellar Morales is able to fully enjoy her constitutional rights, guaranteeing her the appropriate medical treatment that corresponds to her condition, to include consultations, hospitalizations, medicine, and any other service tending to preserve her health and well-being, and which actions shall be evaluated based on the studies undertaken by professional experts on the subject; and to authorize the payment of the corresponding economic benefits as a result of the patient's medical leave. **III)** The Guatemalan Institute of Social Security is also ordered to definitely resolve the appeal brought before it by Maritza Ninnette Cuellar Morales, which resolution shall*

*conform to the legal principles set forth herein.***IV) The respondent authority is not ordered to pay costs. So notified."**

### **III. APPEAL**

The respondent authority appealed.

### **IV. ARGUMENTS BEFORE THE COURT.**

**A) The claimant** stated that the lower court's decision on the protection action in question is in keeping with the law and procedural issues, given that it protects the life and health of Maritza Ninnette Cuellar Morales. The claimant requests that the lower court's sentence be upheld, and the constitutional protection requested be definitively ordered. **B) The respondent authority** stated that: **a)** the protection action brought against it is completely inadmissible, given that Maritza Ninnette Cuellar Morales has no standing to take advantage of the services provided by the Guatemalan Institute of Social Security, nor to the payment of the economic benefits she seeks. On the contrary, it has been determined that such person does not provide the material and/or intellectual services to the business Corporación González y Mendoza, Sociedad Anónima, which led to her having been declared not affiliated with the Social Security Administration, by way of resolution one thousand six hundred and nineteen/two thousand eight (1619/2008), issued by the Assistant Manager for Economic Health Benefits. This decision was adopted in exercise of the powers conferred to the Institute by the Political Constitution of the Republic of Guatemala, and supported by the internal agreements that govern its administration. In this respect, the Constitutional Court in its decision in case file three hundred and seventy-two – two thousand eight (372-2008) held that when an affiliate who has requested program coverage does not meet the requirements and such failure to meet requirements is not remedied, the Institute's denial of coverage cannot be interpreted as a violation of fundamental rights; **b)** in the present case the Institute's actions did not result in a clear and imminent threat to Maritza Ninnette Cuellar Morales, given that every affiliated person who is covered by the Social Security Administration must comply with the requirements set forth in the Institute's internal regulations. To allow a person who did not comply with such requirements to access coverage would be favoring one affiliated person, but to the detriment of others. Viewed in this light, upholding the sentence of the lower court granting the protection action would create a dangerous present that would put the Institute's autonomy at risk, in addition to creating an economic and administrative crisis; and **c)** the lower court acting as a Protection Tribunal held that Maritza Ninnette Cuellar Morales alleged that she was an affiliate of the Guatemalan Institute of Social Security, and based on this declaration, the documents she provided as proof of her claim were given full evidentiary value, and in the court's view were not rebutted as irrelevant or false. However, the aforementioned Court did not take into account the fact that the relevant administrative investigation was made of these documents, in order to prevent harm to the Institute, and which investigation is noted in resolution one thousand six hundred and nineteen/two thousand eight (1619/2008), dated May 2,

2008, which declared that the person in question was not an affiliate of the Social Security Administration. This decision was issued in order to protect the Institute from the abuses of unscrupulous individuals, who issue employment certificates in order to benefit persons who do not in fact work at their companies, which is the case in this instance. The respondent authority requests that the appeal be granted, and as a consequence, the lower court's decision be overturned, and the protection action in consequence be denied. **C) The Public Ombudsman** stated that it agrees with the Protection Tribunal's decision in the first instance, given that having reviewed the evidence presented by the claimant and the respondent authority, it is clear that Maritza Ninnette Cuellar Morales has the right of the matter, given that the Guatemalan Institute of Social Security is required to provide medical service and pay economic benefits to those who have a right to them as a result of medical leave, and given that no judicial decision has been issued to the contrary, nor has the authority in question in the present case issued a final decision to the contrary in response to the appeal presented by Maritza Ninnette Cuellar Morales in respect of the decision declaring that she was not an affiliate of the Social Security Administration. It is then clear that the respondent authority's actions are arbitrary. The Ombudsman requested that the appeal be dismissed, and as a result, that the lower court's decision be upheld.

#### WHEREAS

- I -

The protection action is a constitutional instrument designed to protect fundamental human rights, whether to ensure that such rights are enforced and respected, or to act as a remedy in the case of a threat of violation of such rights.

- II -

In the case at hand, the Public Defender for Human Rights appears in the protection action, indicating that the act complained of is the following: *"The failure of the respondent authority, the Guatemalan Institute of Social Security to provide Ms. Maritza Ninnette Cuellar Morales medical attention for her spinal cord, and the corresponding economic benefits as a result of her temporary disability, due to the Institution's allegation that she is not affiliated therewith."*

The claimant argues that the Guatemalan Institute of Social Security, by denying Maritza Ninnette Cuellar Morales the medical attention that she requires and the economic benefits due to her as a result of the medical leave that she was subject to, put her life and health at risk. In addition, the decision declaring that the patient was not an affiliate of the Social Security Administration, on which the Institute's denial of medical coverage and economic benefits was based, is not final, given that the appeal presented by Maritza Ninnette Cuellar Morales against such decision has yet to be resolved.

- III -

This Court, in respect of the rights that have been infringed by the decision previously mentioned, considers that a person's health is fundamental, given that it arises from the right to life, which is the most elemental and fundamental of all human rights, and the right from which all other human rights derive. In this respect, the Court

feels it relevant to mention such international law standards as, among others, Article 12 of the International Convention on Economic, Social and Cultural Rights, and Article XI of the American Declaration on the Rights and Duties of Man. However, apart from the protection that is provided at the international level of human rights law, the proper implementation of these rights includes a person's actual ability to receive timely and effective medical treatment simply for the fact of being human, a right that includes the prevention of illness and treatment and rehabilitation through the provision of hospital services or medical attention, all with the object of preserving the life of the person who is ill. The objective is to make the right to health a positive obligation of the State to protect all persons and to guarantee their lives and their comprehensive development, in accordance with Articles 1, 2 and 93 of the Political Constitution of the Republic of Guatemala. Article 94 of the Constitution refers to the State's obligation to protect the health of and to provide social assistance for all of its inhabitants, and to implement these rights through institutions—which include the Guatemalan Institute of Social Security—which are responsible for taking actions designed to prevent illness and to provide for the recovery and rehabilitation of those who are ill, in order to provide the nation's inhabitants with the most complete physical, mental and social well-being. This State obligation is implemented, in the case of workers in the private and public sectors, through the Social Security Administration, established by Article 100 of the Constitution, and whose fundamental purpose is to provide hospital and medical services intended to protect or recover the health of its affiliates and beneficiaries, from the moment of their diagnoses through the application of the treatment required for recovery. Therefore, the role in society that the Social Security Administration plays in order to preserve and maintain the population's health is undeniable and unquestionable, with the objective of protecting the health and safety of all persons and guaranteeing the effective enjoyment of all persons' right to life. This Court, in a sentence handed down on September 27, 2000 (Case File 459-2000), considered that: *"The right to life is fundamental, and, as such, is subject to State's protection. Unless the claim brought in this respect is found to be illegitimate, the State has the responsibility to guarantee such right, making use of all measures at its disposal, and this is one of the primary responsibilities of the State."*

Furthermore, in respect of the condition of the patient requesting medical assistance from the Guatemalan Institute of Social Security, it should be noted that the former argues that she is an affiliate of the Social Security Administration, and the latter denies it, which makes it relevant to refer to the law that governs this question. In Articles 11, 1 and 2 of Agreements 97, 1002 and 468 of the Board of Directors of the Guatemalan Institute of Social Security, respectively, "affiliate" is defined as an individual who, through contract or other work relationship, provides material and/or intellectual services in a formal manner, and who is registered with the Social Security Administration, and, in this respect, in accordance with Agreement 410 of the aforementioned Board of Directors, the Social Security Administration will therefore protect such person from illness, and will provide to such person medical assistance, in the out-patient facilities and hospitals of the aforementioned Institute, as well as those

economic benefits that correspond to such person in accordance with the Regulation for the Payment of Economic Benefits (the aforementioned Agreement 468). The Social Security Administration is administered by the Guatemalan Institute of Social Security, as per Decree 295 of the Congress of the Republic (Organic Law) and such corresponding regulations as issued in respect thereof. The law in question provides that the aforementioned Institute must provide protection from common illnesses (Articles 28, paragraph c), and 31); that the Institution shall have a tripartite financing system, of which one component shall be the payments contributed by employed persons (Article 39); that the Institute must monitor the population's health, which task to be carried out by inspections or social visits intended to monitor compliance with this requirement (Article 50); the management of the Institute has the exclusive authority to rule on appeals of its resolutions, as brought before the Board of Directors, and to defend such resolutions before the Courts for Labor and Social Security (Article 52); and all powers relative to order penalties and sanctions as a result of any infraction of the Institute's governing law and regulations (Articles 53, 54, 56 and 57).

In analyzing the case at hand, the following facts must be taken into account in respect of the analysis of the record of the proceedings: **a)** Maritza Ninnette Cuellar Morales was seen on November 9, 2007, in an out-patient facility of the Guatemalan Institute of Social Security, and was diagnosed with lumbago and sciatica on the left side of her body, and was put on medical leave from her job on the same day; **b)** on December 5, 2007, this individual was hospitalized, presenting with lumbar sciatica on the left side of her body, for which she was treated, **c)** the patient was discharged from the hospital after being diagnosed with lumbar sciatica on the left side of her body and a protrusion of the L five – S one (L5-S1) vertebral disc, and was ordered to remain on medical leave; **d)** Maritza Ninnette Cuellar Morales continued to be treated as an out-patient by the Unit Specializing in Spinal Surgery and Physical and Rehabilitative Medicine, and was treated on various occasions; however, on June 16, 2008, the case was closed, based on resolution one thousand six hundred and nineteen/two thousand eight (1619-2008), issued by the Assistant Manager of Economic Health Benefits, which declared that the patient was not affiliated with the Social Security Administration; and in addition, the corresponding disability payments in respect of the patient's medical leave were not paid to her; **e)** the claimant brought an appeal against this decision before the Assistant Manager of Economic Health Benefits of the Guatemalan Institute of Social Security, which appeal, according to information provide by the Center for Auxiliary Services of Escuintla of the Public Defender of Human Rights, had not been resolved as of May 4, 2009 (see official letter two thousand seven hundred and thirty-nine [2739], which appears as page 28 of the record of the protection action); **f)** the patient's sponsoring entity, Corporación González y Mendoza, Sociedad Anónima, has paid to the Guatemalan Institute of Social Security those monthly payments as a sponsoring entity and for its respective employees for each month during 2007, and reported that Maritza Ninnette Cuellar Morales was its employee (see documentation appearing as pages twenty-nine to fifty-two (29 to 52) of the record of the protection action); and **g)** the sponsoring entity informed the Public Defender of Human Rights of



Escuintla, through a note written on May 23, 2008, that Maritza Ninnette Cuellar Morales is and has been employed with the company since January 1, 2004 (see page twenty-four [24] of the record of the protection action).

It is relevant to note that the respondent authority does not object in any way to the registration of the patient's employer, nor does it complain that the patient's sponsoring employer was remiss in its payments or that any of the monthly payments remitted thereby to the Guatemalan Institute of Social Security was refused for any reason. On the contrary, the Guatemalan Institute of Social Security based its decision to declare that the patient in question was not its affiliate, and as a result, to suspend the medical treatment that it was providing to her and to fail to pay to her those economic benefits to which she was entitled as a result of having been placed on medical leave from her job, on the fact that, according to a report from personnel of the Division of Inspections, it was established that Maritza Ninnette Cuellar Morales does not supply material and/or intellectual services in respect of a contract or other employment arrangement with the entity Corporación González y Mendoza, Sociedad Anónima, on July 20, 2006, November 9, 2007, and the date on which the report of the aforementioned Division was issued, that is, on February 27, 2008.

This Court, as the highest authority on those rights established by the Constitution, believes that coverage for medical services and the payment of economic benefits corresponding to medical leave cannot be suspended based on the issuance of an (administrative) decision that is subject to appeal, given that this could lead to the State's failure to comply with its primordial responsibilities, among these, the preservation of the life of its inhabitants. Given that in the present case, the patient presented an appeal against resolution one thousand six hundred and nineteen/two thousand eight (1619/2008) issued by the Assistant Manager of Economic Health Benefits of the Guatemalan Institute of Social Security, which declared the patient not to be affiliated with the Social Security Administration, then the Social Security Administration must wait to take any action in respect of the patient's benefits until the Board of the Directors of the Institution has reviewed the Assistant Manager's actions and determined whether such actions are in keeping with the law. It is the responsibility of the aforementioned entity to resolve the administrative appeal, in accordance with Article 52 of the Organic Law governing the respondent authority. In the event that the decision of the lower authority of the Guatemalan Institute of Social Security is confirmed, there still remains to the patient the possibility of bringing the matter before the Courts for Labor and Social Security, given that Article 52 of the law previously referred to provides for this possibility, as does Article 100, final paragraph, of the Constitution. That is, until there is a final and definitive judicial resolution of the case that is not susceptible to appeal before any legal body as permitted by law, the respondent authority cannot suspend Maritza Ninnette Cuellar Morales' medical treatment, and must pay to her such economic benefits as correspond to her situation. (The proposition that the Guatemalan Institute of Social Security cannot deny medical treatment to a patient until there is a final and definitive resolution in respect of his or her claim, which is not subject to appeal, declaring the patient not affiliated with the

Social Security Administration, was promulgated by this Court in its sentence of October 1, 2008, in case file one thousand four hundred and thirty-six – two thousand eight [1436-2008].)

It is understood that when a controversy arises over whether or not a person is entitled to coverage, in cases such as the one at hand, the Guatemalan Institute of Social Security must proceed in the patient's favor. If later it is determined in judicial proceedings that the person in question is not entitled to benefits for having failed to abide by the laws or regulations of the Social Security Administration, nothing prevents the Guatemalan Institute of Social Security from, once the respective decision is final, from bringing a claim against such person for the costs the aforementioned Institute incurred in compliance with its obligations, in accordance with Article 54 of Decree 295 of the Congress of the Republic of Guatemala.

The arguments set forth herein allow us to arrive at the conclusion that the person sponsored by the claimant in the present case, as long as her situation as an affiliate of the Social Security Administration has not been definitively established, has the right to receive medical attention from the respondent authority and to receive such economic benefits as are owed to her for reasons of her medical leave from her employment. It is evident that a denial of medical treatment to her would put her health, and, as a consequence, her life, at risk. Given that the State's primary concern must be the protection of the life and health of its citizens, in accordance with the Political Constitution of the Republic of Guatemala, it is necessary to grant the constitutional protection action requested. It is not possible to deny the most elemental right that the Constitution recognizes.

The arguments set forth herein allow us to conclude that the protection action was correctly granted by the lower court, and therefore the decision under appeal is hereby confirmed, with the modifications as noted herein in respect of the scope of the constitutional protection available to the claimant.

#### **APPLICABLE LAW**

Articles 93, 100, 265, 268, and 272, paragraph c), of the Political Constitution of the Republic of Guatemala, Articles 1, 2, 3, 4, 7, 8, 42, 43, 44, 45, 46, 47, 57, 149, 163, paragraph c), and 185, of the Law of the Protection Action, Personal Liberties and Constitutionality; and Article 17 of Agreement 4-89 of the Constitutional Court.

#### **THEREFORE**

The Constitutional Court, in base of the foregoing and the cited legal provisions, orders that: **I)** The appealed sentence is hereby **confirmed**, with a modification in respect of the scope of the constitutional protection granted, in respect of the fact that, for purposes of the present decision, the respondent authority is ordered to, with the participation of the corresponding officials or employees, provide the necessary medical services required by Maritza Ninnette Cuellar Morales, with the understanding that such obligation includes the necessary medical services (consults and hospitalization as needed), medical treatment (provision of the necessary medicines that the aforementioned patient may require), and other services necessary to preserve the life and health of the patient, with the appropriate timeliness as the circumstances may

require; the patient is also to be granted such economic benefits as are due to her as a result of her suspension from work for medical leave, as long as there is no final resolution, not susceptible to review by any other legal or administrative entity as provided by law, which declares that the patient is not affiliated with the Social Security Administration. Failure to comply with this order will result in a fine of four thousand quetzals to be paid by each member of the Board of Directors of the Guatemalan Institute of Social Security, without prejudice to any other legal remedies that may be taken. II) So notified, case files to be returned by certified mail to the lower court.

**JUAN FRANCISCO FLORES JUÁREZ**  
**CHIEF JUSTICE**

**ROBERTO MOLINA BARRETO**  
**JUSTICE**

**ALEJANDRO MALDONADO AGUIRRE**  
**JUSTICE**

**MARIO PÉREZ GUERRA**  
**JUSTICE**

**GLADYS CHACÓN CORADO**  
**JUSTICE**

**AYLIN ORDOÑEZ REYNA**  
**CLERK OF THE COURT**