

Jurisprudential Gazette No. 31 – Writs for protection of fundamental rights in sole instance (*Amparo*)

Case Record No. 430 – 93

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AMPARO IN SOLE INSTANCE

CONSTITUTIONAL COURT CONSTITUTED INTO AN EXTRAORDINARY *AMPARO* TRIBUNAL

Guatemala, nineteenth of January, nineteen ninety-four

We hereby review, in order to issue our judgment, the *amparo* in sole instance, filed against the President of the Republic by Julio Isaac Melgar Camargo and the Attorney Sergio Mangredo Beltetón de León. The petitioners acted with the sponsorship of the latter.

BACKGROUND

I. THE *AMPARO*

- A) Filing and authority: it was filed with this Court on the sixteenth of September of nineteen ninety three
- B) Claimed act: the issuance by the challenged authority of Government Agreements 118-93 and 120 – 93, both dated August fourth nineteen ninety three, through which, the transfer of forty million quetzales was ordered belonging to the budget of the Ministry of Public Health and Social Assistance to effect payment of an external debt of the State of Guatemala.
- C) Violation claimed: the right to health
- D) Facts that underlie the *amparo*: The matters set forth by the petitioners is summarized: a) through the press publications, they found out that the challenged authority issued Governmental Agreements 118-93 and 120-93, via which the Ministry of Public Health and Social Assistance is stripped of a part of its budget, in order to pay part of the Nation's external debt, which harms the majority of the country's poor population and violates articles 93, 94 and 95 of the Constitution; b) further, issuance of the referenced Governmental Agreements violates the Budget of Inflows and Outflows of the Nation, that, through these, has changed the destination of funds of a Ministry to an unspecified destination, and this Decree does not contemplate the transfer of payment for bonuses or other payments to third parties; c) the petitioners resort to request the *amparo* in order to restore the sum that was subject to the transfer to the Ministry of Public Health and Social Assistance, by virtue of the fact that the country faces a serious crisis, both in its hospital system such as the general health and it is not possible for the state to have, as a priority,

payment of external debt instead of the health of the population, as established by the Constitution.

- E) Use of resources: none
- F) Preceding cases: invoked the contents of subparagraphs a) and b) of article 10 of the Law of *Amparo*, Habeas Corpus and Constitutionality.
- G) Violated laws: the petitioners cited articles 93, 94 and 95 of the Political Constitution of the Republic.

II. *AMPARO* PROCEEDINGS

- A) The provisional *amparo*: was not granted
- B) Interested third-parties: Ministry of Public Finances, Ministry of Public Health and Social Assistance, Congress of the Republic and Human Rights Ombudsman
- C) Circumstantial report: the challenged authority informed: a) the issuance of Governmental Agreements 118-93 and 120 - 93 was performed in the exercise of the functions contained in subparagraphs 3) and q) of article 183 of the Constitution; their preparation was effected within the guidelines of the budgetary policy applied for the second semester, of nineteen ninety three; b) the criteria used to effect the readjustment of assignments to the Ministry of Public Health and Social Assistance were the result of an analysis performed by officers of the General Secretariat of Economic Planning, the Ministry of Public Finances and the Ministry of Health itself; they performed priority projects and works according to the state of their implementation and schedule of disbursement for external resources, foreseeing the necessary assignment for the implementation of the scheduled programs and jobs by the investment budget of the Ministry of Public Health and Social Assistance for the second semester of this year. This establishes that, with the transfer that was performed, these programs were not affected; c) the specific reasons that influenced the issuance of the referenced Agreements were: during the first semester of the year, additional resources were assigned to the Ministry of Public Health and Social Assistance, which were temporarily transferred to resources for the payment program of the public debt, and those which should be restored in order to fulfill the commitments acquired with the loaning agencies. The progress of the projects of the referenced Ministry was evaluated, establishing that there was one level under implementation; there was a need to increase the assignment contemplated in the public debt budget of the health sector for nineteen ninety three, in order to fulfill commitments acquired by the Government of the Republic in loan agreements signed with foreign institutions; d) the investment amounts to be executed in the health area were not affected by the issuance of the Governmental Agreements subject to the *amparo*, in the second semester of the referenced year, since the government acted within its legal powers without lack of concern for the obligations that constitutionally correspond to the President of the Republic, in particular, in matters of public health.
- D) Evidence: None was submitted.

III. ARGUMENTS OF THE PARTIES

- A) The challenged authority repeated the content of the report provided at the petitioner time and argued that the absence of standing of the individuals who submitted the *amparo*, causes it to be inapplicable, without the need to make any declaration whatsoever regarding the factual arguments made by the petitioners and that, in the present case, in accordance with the matters resolved by this Court in cases two hundred fifteen hyphen ninety two and three hundred sixty hyphen ninety two, the *amparo* was submitted by subjects without any standing, since there is no personal and direct harm against the petitioners; they note, further, that the Court, on repeated occasions, has noted the absence of a collective action in the subject of *amparo*, and therefore requests that it be denied and, given its patent inadmissibility, requests that the petitioners be condemned and that a fine be imposed on the sponsoring attorney of one thousand quetzals.
- B) The interested third parties argued: B.1) The Ministry of Public Health and Social Assistance argued that the Government Agreements subject to the *amparo* were issued by the President of the Republic via the referendum of the Ministries of Finance and Public Health and Social Assistance, and that the support for its issuance is contained by subparagraphs e) and q) of article 183 of the Political Constitution of the Republic and articles 5 and 26 of the General State Income and Expense Budget for the fiscal year nineteen ninety three, and thus, given that they were issued by the competent authority, and that they are framed within the legal rules there is no legal violation in themselves and the *amparo* requested is evidently inadmissible. The respondent requested denial of the *amparo*, judgment of expenses against the petitioners and the imposition of a fine on the sponsoring Attorney. B.2.) the Ministry of Public Finance stated that the Governmental Agreements subject to the *amparo* had been approved based on the laws that are applicable on the subject and according to budgetary policies adopted by the Government of the Republic and adds that, on repeated occasions, the Court has issued an opinion in the sense that one of the essential requirements for an *amparo* to apply consists of establishing the existence of personal harm, as standing only corresponds to a person who has a direct interest in the matter; he considers that, in the present case, the *amparo* does not apply, since the petitioners did not demonstrate the harm to their private interests. He requested denial of the *amparo*, judgment of payment of costs and expenses against the petitioners and the imposition of a fine on the Sponsoring attorney.
- C) The Public Ministry determined that the petitioners did not suffer any personal or direct harm with the issuance of the Agreements subject to the *amparo* and that they are not representatives of the persons that, according to their opinion, have been affected, lacking, as a result, standing to intervene in this case. I request that you deny the *amparo*, judge the petitioners for the costs and expenses incurred, and impose a fine on the sponsoring Attorney.

WHEREAS

-I-

The Political Constitution of the Republic contemplates the *amparo* in order to protect persons against the threats of violations of their rights or to restore the rule of law to them when the violation has occurred. This constitutional medium of defense, due to its alternative and extraordinary nature, is subject to certain essential requirements to apply; therefore, in order to succeed in being granted the *amparo*, it is necessary, not only that the laws, resolutions, provisions or acts of authorities imply a violation of the rights that the Constitution and the laws guarantee, but that they cause a certain harm that violates or undermines the interests of the claimant and cannot be redressed through other legal means of defense. The harm, as it is a lesion that can be caused to the claimant's rights or interests, becomes an essential element for an *amparo* to apply and, without its concurrence, the protection that it implies cannot be granted.

-II-

In analyzing the procedural record, this Court determines that the petitioners have not proven that the issuance of the Agreements constitute a violation of law in any personal and direct form via the act of an authority subject to challenge here; and, having failed to prove that there is a threat of said violation, the existence of the harm to the petitioners, that can be redressed via an *amparo*, has not been demonstrated; given the foregoing, the attempted action is patently inadmissible and must be declared thus and the petitioner must be judged to payment of costs and expenses and further, a fine must be imposed on the Sponsoring attorney.

CITATION OF LAWS:

Articles 265, 268 and 272 subparagraph c) of the Political Constitution of the Republic; 1st, 2nd, 3rd, 4th, 7th, 8th, 42nd, 43rd, 44th, 46th, 57th, 149th, 163rd, subparagraph b) and 186 of the Law of *Amparo*, Habeas Corpus and Constitutionality; and 14 of Agreement 4-89 of the Constitutional Court.

THEREFORE:

The Constitutional Court, based on the foregoing and the referenced laws, resolves:

- I) Denies the *amparo* filed as it is patently inadmissible.
- II) Judge the petitioners to payment of costs and expenses.
- III) Impose on the sponsoring attorney, Sergio Manfredo Beltetón de León, the fine of five-hundred quetzals, that must be paid to the Treasury of this

Court within the five days following the date on which this ruling is firm; in the event of noncompliance, collection shall be made through the applicable legal means. IV) Service is hereby ordered. EPAMINONDAS GONZÁLEZ DUBÓN, PRESIDENT. ADOLFO GONZÁLEZ RODAS, MAGISTRATE. EDMUNDO VÁSQUEZ MARTÍNEZ, MAGISTRATE. JOSÉ ANTONIO MONZÓN JUÁREZ, MAGISTRATE. RAMIRO LÓPEZ NIMATUJ, MAGISTRATE. MANUEL ARTURO GARCÍA GÓMEZ, SECRETARY GENERAL.

Case Number: 430 - 93

Petitioner: Julio Isaac Melgar Camargo; Sergio Manfredo Beltetón de León

Challenged authority: President of the Republic

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