

CONSTITUTIONAL RULING 0074/2010-R  
Sucre, May 3, 2010

Case File: 2007-16833-34-RHC

District: Santa Cruz

Writing for the Court: Dr. Ligia Monica Velasquez Castaños

The Court rules on the appeal brought in respect of Resolution 47/2007, dated October 9, 2007, appearing at page 16 of the record of the proceedings, handed down by the Second Civil Chamber of the Superior Court of the Judicial District of Santa Cruz, regarding the petition for a writ of habeas corpus, now an action for release, brought by Eusebio Alejandro Soto against Marcelo Cuellar Crespo, director of the “San Juan de Dios” Municipal University Hospital, arguing the violation of his freedom of movement as guaranteed by Art. 7, paragraph g), and Art. 9 of the repealed State Political Constitution (CPEabrg, for its initials in Spanish), and now corresponding to Arts. 8.II and 23.III of the State Political Constitution currently in force (CPE, for its initials in Spanish).

## I. RELEVANT LEGAL BACKGROUND

### I.1. The claim

#### I.1.1. Facts of the case

In a brief presented on October 8, 2007, which appears at pages 11 and 12 of the record, the claimant stated that he was the victim of a traffic accident on August 26, 2007, due to which he suffered serious injuries, and for which he was hospitalized at “San Juan de Dios” hospital. He continues to receive medical treatment to date.

The claimant stated that while hospitalized, and finding himself without economic resources, he was subjected to harassment and humiliation due to his inability to pay his medical and doctors’ bills, in violation of his dignity and his humanity.

The claimant stated that his situation worsened when the hospital demanded payment of Bs. 10,159.05 (ten thousand one hundred and fifty-nine and 05/100 *Bolivianos*) [Bs. or Bolivianos, the Bolivian currency], of which, with great difficulty, he paid Bs. 5,200 (five thousand two hundred *Bolivianos*). However, even upon making this payment, the hospital would not release him, despite the fact that he had been formally discharged. Instead, the hospital detained him, depriving him of his freedom of movement and of any food. The claimant therefore brought an action in respect of crimes of deprivation of liberty, duress and harassment, as provided and sanctioned under Arts 292, 294 and 295 of the Penal Code (CP, for its initials in Spanish).

#### I.1.2. Right alleged to have been violated

The claimant alleged a violation of his right to freedom of movement, as guaranteed by Art. 7, paragraph g), and Art. 9 of the CPEabrg, now corresponding to Arts. 8.II and 23.III of the CPE.

#### I.1.3. Institutional Respondent (now respondent and appellee)

On these facts, the claimant brought a petition for a writ of habeas corpus against Marcelo Cuellar Crespo, director of “San Juan de Dios” Municipal University Hospital, requesting that the action be admitted and that the court order his immediate release.

### I.2. Hearing and Court Order on the Petition for a Writ of Habeas Corpus

On October 9, 2007, a public hearing was held, as per the minutes of the hearing appearing at pages 14 to 16 of the record of the proceedings, and during which the following took place:

#### I.2.1. Ratification of the claim

The claimant, through his attorney, ratified the terms of his claim, alleging that although he had been discharged from the hospital, he had not been permitted to return to his home until he paid the sum owed to the hospital.

#### I.2.2. Respondent's brief

In its brief presented during the hearing, the respondent stated the following: a) The act in question would not have occurred if the party responsible for the accident had complied with its duty to cover the victim's hospital and medical expenses; b) As the hospitalized party was not insured, he was required to pay personally, given that he was not identified as an indigent patient, but as a victim of a traffic accident, and therefore was responsible for the costs of his treatment, so as not to cause economic damages to the public hospital, which requires revenue to function; c) The patient was never removed from his bed, but was kept on the unit on which he had been hospitalized; and d) The claimant tacitly recognized the debt by paying 50% of it.

#### I.2.3. Resolution

The Second Civil Chamber of the Superior Court of the Legal District of Santa Cruz Resolution 47/2007, dated October 9, 2007, appearing at page 16 of the record of the proceedings, admitted the claim and ordered the claimant's immediate release, holding the following: 1) No public or private institution has the legal authority to detain a person for a monetary debt, even in the case of debt for medical or hospital costs. Detentions may be imposed solely and exclusively by those institutions authorized by law; 2) Art. 1282 of the Civil Code (CC) prohibits extra-legal remedies—all claims for any action considered to be illegal and that harms another individual or the assets of an institution must be brought through the appropriate legal channels; and 3) "San Juan de Dios" Municipal University Hospital is not authorized to detain a person for failure to pay hospital or medical bills.

#### I.3. Procedure before the Constitutional Court

Given the resignation of all judges, no resolution was issued in the case. Once new judges were appointed, legal proceedings recommenced on March 8, 2010, as ordered by Judicial Agreement 001/2010, and the case was assigned on April 5, 2010. As a result, the present decision is issued within the appropriate time period.

## II. CONCLUSIONS

Having reviewed the background of the case, the Court reaches the following conclusions:

II.1. Due to a traffic accident on August 26, 2007, Eusebio Alejandro Soto was admitted to "San Juan de Dios" Municipal University Hospital, and received medical treatment and hospitalization for which he was billed Bs. 10,159.05, of which he paid approximately 50%. The party responsible for the accident, Percy Borda Antoni, did not contribute to the victim's medical costs. It was not clearly established whether the vehicle in question in the accident was covered by Mandatory Traffic Accidents Insurance (SOAT, for its initials in Spanish) (pages 1 to 10 of the record of the proceedings).

II.2. On September 17, 2007, Margarita Santillana Gonzalez, representing her husband, Eusebio Alejandro Soto, requested that the Director of "San Juan de Dios" Municipal University Hospital allow her husband to leave the hospital, and that the hospital comply with Art. 22 of the SOAT

(pages 5 to 6 of the record of the proceedings). The Director's response to her request is not included in the record of the proceedings, at the bottom of the letter there is only a note, dated the 18<sup>th</sup> of the same month and year, in which attorney Medardo Flores Vaca indicated that the claimant's wife should provide confirmation that the vehicle was insured under the SOAT prior to the hospital's taking any action thereunder.

### III. LEGAL PRINCIPLES OF THE CASE

The claimant, now the appellant, stated that the Director of "San Juan de Dios" Municipal University Hospital violated his right to freedom of movement by detaining him within the hospital pending payment of his medical and hospital bills, despite the fact that he had been formally discharged. It is therefore the Court's duty, on appeal, to determine if the requested relief should be provided in this case.

#### III.1. Full effectiveness and force of the Constitution at the time

When a constitution is amended or replaced by a new constitution, such constitution itself retains its legal nature, as long as the fundamental and supreme laws of a State remain ontologically the same, and, precisely due to the constitution's extraordinary legal nature, its effectiveness in terms of entrance into force is distinct from that of ordinary laws. In this way, the State Political Constitution and its provisions, as of its passage on February 7, 2009, constitute the Magna Carta and are the foundation of the legal framework of the new State of Bolivia, and contain therein the community values and principles upon which a social and democratic rule of law state are established. As a result, all laws over which the Constitution prevails must be amended as necessary in order to be in keeping therewith (Art. 410.II of the CPE), including with retroactive effect, as the Constitution's position at the top of the hierarchy of laws requires that all other laws must conform to it, in order that its provisions take immediate effect in order to ensure the orderly enforcement of constitutional principles, except in the case that the Constitution itself orders a situation to the contrary.

In this respect, Art. 410.II of the CPE establishes the supremacy of the State Political Constitution, and Art. 6 of Law 003, dated February 13, 2010 (SUPREMACY OF THE CONSTITUTION AND ENTRANCE INTO FORCE OF THE LAW), provides that, "The powers and duties and the Supreme Court of Justice, the Constitutional Court, the Judicial Council, the National Agrarian Court and the Office of the Public Ombudsman shall be governed by the State Political Constitution and relevant law..."

Therefore, taking into account that the new Constitution has replaced the State Political Constitution of 1967 and its amendments, and that the Final Disposition thereof provides that: "This Constitution, approved by referendum by the Bolivian people, shall enter into force as of the day of its publication in the Official Gazette," and keeping in mind the supremacy of the Constitution, this Resolution, issued while the new Magna Carta is in force, will decide the case at hand in keeping with current constitutional provisions, without leaving out those provisions invoked by the claimant at the moment that the action was brought before the court.

#### III.2. Harmonization of terms of art in respect of the present claim

Art. 125 of the State Political Constitution provides for the petition for a writ of habeas corpus among those actions in defense of fundamental rights. In respect of the procedure of the action, Art. 126.I provides that, "The judicial authority shall immediately set a date and time for the public hearing, which shall take place within 24 hours of the presentation of the action, and the Court shall determine whether the claimant shall attend the hearing in court or from the place of his or her detention. The respondent institution or individual shall be notified in person or by writ of the Court's disposition, and such respondent institution or individual, as well as the responsible parties of prisons or detention centers, shall be required to obey such order without comment or

justification.” In addition, Art. 89.II of the LTC [acronym is not defined in the text] in force provides that, “If the respondent institution is a part of the judicial branch, the action shall be brought before a judge or court of equal or higher authority...” As a result, the term of art to be used in respect of the person bringing the action in question is “claimant,” and in respect of the person or institution against whom the claim is brought, the term is “respondent” or “defendant,” which may be used interchangeably. In addition, regarding the term of art referring to the ruling on the case, Art. 126.II sets forth the procedure to be followed, providing that, “...the decision may order the protection of a life, the restitution of the right to freedom, the reparation of legal wrongs, the cessation of unlawful persecution or the remission of the case to the competent tribunal.” In order to be consistent with the foregoing, when a court orders the protection of a right, the term to be used is “grant”—and, in the opposite case, “deny”—protection.

### III.3. Regarding the scope of the petition for a writ of habeas corpus in respect of public and private hospitals

The current State Political Constitution allows us to differentiate between fundamental rights, judicial guarantees and defensive actions. In order to clarify the issue in question, we must refer to Art. 23.I of the CPE, which guarantees the fundamental right to liberty, and which is supported by Arts. 3 and 9 of the Universal Declaration on Human Rights (UDHR), an instrument recognized by the Constitution, as well as by Art. 7.I of the American Convention on Human Rights (the Pact of San Jose, Costa Rica). Within this framework, it can be seen that the petition for a writ of habeas corpus, as recognized by the Constitution, is the appropriate action for the effective protection of fundamental rights, including the right to freedom.

SC 0023/2010-R [Constitutional Ruling, for its initials in Spanish], dated April 13, establishes the difference between personal or physical freedom and the freedom to circulate or freedom of movement, noting that the Constitution recognizes both rights as independent of each other: “The former is to be understood as the right of individuals to self-determination, to have freedom over their own decisions and to act thereon, without the interference of the State or third parties through unlawful or arbitrary privations of an individual’s freedom (...).

The right to freedom of movement, on the other hand, is to be understood as the right of persons to circulate freely, to move from one place to another, to move throughout the national territory, and including to leave it, without the interference of any unlawful or arbitrary impediment (...).

In addition, the right to freedom of movement is derived from or is an extension of the right to physical freedom, given that the right to freely circulate may only be exercised if one enjoys the right to physical or personal freedom; herein lies the specific connection between these two rights.

(...)

As a result, based on the principles of favorability and progressive interpretation, the petition for a writ of habeas corpus encompasses the right to freedom of movement guaranteed by Art. 125 *et seq.* of the CPE, as per the aforementioned citations. Therefore, any restriction on the freedom of movement or circulation, in keeping with the aforementioned citations, may be remedied through a petition for a writ of habeas corpus.”

In light of the foregoing, we may conclude in respect of the case at hand that both public and private hospital facilities violate the rights to personal freedom and freedom of movement of their patients when, having formally discharged a patient, the hospital detains the patient within its facilities in order to force the patient to pay his or her bill for medical treatment or a hospital stay. In this case, it is appropriate to grant the protection action provided for under Art. 125 of the CPE, which is meant to protect any person who believes that he or she is being unlawfully detained or denied his or her

personal freedom and freedom of movement, as a result of the actions of public employees and/or of private persons.

#### III.4. Analysis of the case

In order to resolve the case before us, the Court must necessarily refer back to the principles, values and purposes of the State, beginning by acknowledging that human dignity is a value supported by the State (Art. 8.II of the CPE), and that safeguarding the public good and access of its citizens to health care is one of the State's principal purposes and functions (Arts. 9.2 and 5 of the CPE), given that the right to life is a fundamental right (Arts. 15 and 18.I of the CPE), in accordance with Art. 35.I of the CPE, "the State, at all levels, shall protect its citizens' right to health, by promoting public policies designed to improve its citizens' quality of life, collective wellbeing and free access to health services."

While the State implements public policies that are designed to ensure that access to healthcare is completely free of charge, we must also take into account that public and, particularly, private health centers, in fulfilling their purposes and objectives of providing health services to the public, incur costs. In the case of public hospitals, such costs must be covered by the budget assigned to each facility by the Ministry of Health and Leisure, as per Art. 37 of the CPE, which states that, "The State has an unavoidable obligation to guarantee and protect the right to health, which manifests in a primordial duty and first as a financial responsibility..." Private hospitals and health centers are funded specifically by charging for their services. In order for health services to be provided without interruption and in a manner that allows for the protection of the public's right to life and to health, which is one of the State's main duties, there must necessarily exist a balance between remuneration contributed by the patient or by the responsible party (the insurance companies) to hospitals and health centers for services rendered.

Art. 6 of the Law Abolishing Prison and Corporal Punishment for Debtors (LAPACOP, for its initials in Spanish) provides that, "Sanctions for debts are enforceable solely on the assets of the debtor or debtors..." In this respect, in SC 1304/2002-R, on October 28, the Constitutional Court found that, "(...) our legal framework contains no provision that permits the administrator of a health facility to detain a patient for failure to pay his or her bills for treatment. On the contrary, the law expressly prohibits a person's detention or deprivation of his or her physical liberty as a penalty for debt. See Arts. 7.7 of the American Convention on Human Rights, 6 of the LAPACOP and 1466 of the CC."

As a result, this Court holds that no public or private hospital or health center may detain a patient for failure to pay his or her bills for medical treatment. The law states that claims for debts are enforceable solely on the assets of the debtor, and therefore hospitals, through their legal departments, should put into place proper legal mechanisms that allow them to guarantee payment for services rendered, keeping in mind the situation of indigence or poverty of individual patients, as well as those benefits, discounts, and aid and other programs provided by the State. This does not mean that public and private health facilities may decline to admit and serve patients, under any justification, as this would result in significant harm to the fundamental right to life, by violating the right to health, which forms an essential part thereof.

In light of the foregoing, the Court finds that the lower court, having granted the action, ruled correctly on the case.

THEREFORE

The Constitutional Court, in exercise of the jurisdiction and authority conferred to it under Arts. 4 and 6 of Law 003, dated February 13, 2010, the Law regarding the Necessity to Transition to New Entities of the Judicial Branch and Office of the Public Ombudsman; and Arts. 7, paragraph 8), and 93 of the Law of the Constitutional Court, under revision; resolves to APPROVE Resolution 47/2007,

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dated October 9, appearing beginning on page 16 of the record of the proceedings, issued by the Second Civil Chamber of the Superior Court of the Judicial District of Santa Cruz; and a result, to GRANT the protection requested.

This resolution to be recorded and published in the Constitutional Gazette. So notified.

Dr. Juan Lanchipa Ponce  
PRESIDENT

Dr. Abigail Burgoa Ordoñez  
SENIOR JUDGE

Dr. Ernesto Felix Mur  
JUDGE

Dr. Ligia Monica Velasquez Castaños  
JUDGE

Dr. Marco Antonio Baldivieso Jines  
JUDGE