

JUDICIARY  
CHILE

Santiago, 9 October, two thousand one.

Views:

Appellate judgment is reproduced, except their motives sixth to fifteenth, inclusive, are eliminated;

And it is in place and also this:

- 1) That the application for protection of constitutional guarantees established in Article 20 of the Constitution of the Republic, constitutes, legally, an action filed as a precautionary measure, designed to protect the free exercise of existing rights and guarantees, enumerated in this case, available through the adoption of protective measures that should be taken before an arbitrary or unlawful act which would prevent, feint or disturb that exercise;
- 2) That in the instant case the appellants have requested constitutional protection by this manner to obtain, as we read in the petition at page 11, an order that the appellee provide XXXX medicines which are indispensable to survival, according to their particular medical condition and in accordance with effective parameters sufficient to manage their disease and protect their right to life in full, to order the appellee to provide the relevant medical examinations to assess the health status of the appellant, and to order the appellee to carry out minimum, regular and continuous monitoring of their health status, in order to tailor treatment according to the development of their disease. Such requests are repeated in the libels on pages 91 regarding XXX and pages 164 regarding gift XXXXX. The three resources are directed against the Metropolitan Health Services East and the Ministry of Health, represented by the Minister of Health Mrs. Michelle Bachelet, estimating threatened the right to life and disturbed the right to equality before the law, because in their capacity as carriers of human immunodeficiency virus in order to control and treat the development of Acquired Immunodeficiency Syndrome, have requested to be delivered the medicines needed for their survival, which have been denied in all instances which have come, in a way they consider illegal and arbitrary.
- 3 °) That corresponds to elucidate, as a preliminary question to the analysis of the constitutional guarantees that have been considered violated, if the allegations are indeed the character of arbitrary or illegal, as has been proposed by the writ and resolved by the trial judges. It should be noted, for this, that in accordance with Article 11 of Law 18,469 that "regulates the exercise of constitutional right on the protection of health and creates a Health Delivery System," according to its title, such benefits must be granted by the Services and Institutions that depend on the Mystery of Health, according to Decree Law 2,763 and they will be awarded by these agencies through their institutions, with the physical and human resources available. Paragraph 3 establishes that the Ministry of Health shall establish rules of access, quality and timeliness of benefits to beneficiaries. It

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follows that the proposed corresponds to a public health problem, whose policies must be defined and applied by the relevant authorities of the Ministry, which constitute qualified personnel for setting the rules for access to benefits, as in this case is intended, given that in granting it must be taken into account various parameters, among others, as is evident, relative to the costs they involve and the funds are available for it.

4 °) That recorded above allows this Court to conclude that in all three cases raised the orders had no illegality in the conduct of the respondents, as there is a law which regulates precisely the granting of the required performance, as expressed by what is within their power to decide on granting what is asked and there has been no arbitrariness in the same procedure, taking into account reported by the respondents, since the application of a particular procedure in this case leads precisely to avoid the arbitrariness that could produce the preferred result, eventually, to other patients or patients in better health and to the detriment of those who are in worse shape;

5 °) That the decision of the judgment would mean the exact opposite of what the law intends, as it leads to arbitrary terms to provide the benefits claimed by the appellants, in order to prefer for themselves by the mere fact of going to seek constitutional protection by this way, and that to establish the proper approach in the provision is necessary to keep an eye on not only the background to those seeking protection in this process, but all the patients of serious harm to these concerns and who are unable to be dealt with in this particular way, questions that only the health sector authorities can and should manage, except certainly a case where there is clearly undue preferences, which does not occur in the instant case.

6 °) That, under such conditions, protection resources cannot succeed for any of the appellants, because no budgets are given on arbitrariness and illegality that allow their placement, as stated, it concerns the health authorities to put into practice health policies planned and implemented by the State Administration in accordance with the means available to them and other parameters that cannot be elucidated in this way;

7 °) That, on the other hand, the state health protection is provided as a constitutional guarantee in Article 19 N° 9 and from this, the only thing included in the application for protection is the final section, referencing that each person has the right to choose the health care system that one wants, either state or private, which is not [relevant to] the instant case;

8 °) That the above resource orders should be dismissed.

Accordingly, also available with Article 20 of the Constitution of the Republic and the ruling of this Court, regarding the processing and failure of the recourse of protection of constitutional guarantee, reverses the original ruling of the 28<sup>th</sup> of the previous August, written on pages 265 and states the rejection of the protection recourse deducted in the main presentations of fixed 11, 91 and 166.

Register and refunded, with its added

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Writing by the Minister Mr. Alvarez Hernández  
Role No. 3.599-2001-10-16

Delivered by Ministers Mr. Ricardo Galvez B, Orlando Alvarez H, S and Humberto Yurac Sunday Mirror Z and Attorney Mr. Arnaldo Gorziglia B.