

46-2002

Constitutional Chamber of the Supreme Court of Justice: San Salvador, at sixteen hours of September 11, 2002.

This constitutional plea for a writ of fundamental protection (*amparo*) has been commenced via a complaint filed at 10:38 a.m. on the twenty-second of January of two-thousand and two, by Mr. Manuel Alexander Patiño Linares, of legal age, mechanic and residing at Soyapango, against acts carried out by the Ministry of Public Health and Social Assistance, that are considered to violate the right to health and the right to life, recognized by articles 2 and 65 of the Constitution.

I. – The plaintiff has founded his plea for *amparo* essentially on the fact that the Ministry of Public Health and Social Assistance has violated the right to life and to health, to his detriment, since, despite being infected with the human immunodeficiency virus, he has been denied the necessary antiretroviral treatment.

One of the treatments – he states – that enable lengthening the life of an infected person is the designated combined antiretroviral treatment, which has been scientifically proven to help patients destroy the viral load.

This situation – ongoing – violates his rights to life and health because the State has the obligation to protect the dignified life of persons, since it is such a fundamental right, from which the exercise of the rest depends.

He bases his above argument on articles 2 and 65 of the Constitution, arguing that the refusal to provide, in his case, the required therapy, should be deemed to contradict the obligations contracted by El Salvador with respect to the right to health, life and free medical assistance.

In this manner, he has requested, in his complaint, a declaration of the constitutional violation and timely compensation with the aim of further restoring his health.

By resolution issued at 10:11 a.m. on the twenty-eighth of January of two thousand and two, the complaint was admitted and the court ordered, as a precautionary measure, that the national health system authorities provide the plaintiff with adequate medication for the treatment of his illness, once the necessary tests were performed to evaluate the medical treatment applicable to his clinical situation. Further, a report was requested from the Ministry of Public Health and Social Assistance.

In accordance with article 23 of the Law of Constitutional Proceedings, the Court Prosecutor was sent to a hearing, but he did not apply this law and requested a new report from the defendant authority, that essentially stated that the facts attributed to it were false, since the plaintiff was currently receiving the treatment necessary to control his illness.

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The notices pursuant to article 27 of the Law of Constitutional Proceedings were forwarded to the Court Prosecutor and the plaintiff and the case was opened for discovery; a period during which defendant authority emphatically stated that the claim made by the plaintiff was unreasonable, since, at that time, he was receiving the requested therapy. For purposes of evidence on this matter, the defendant attached documentation signed by the plaintiff, which proves that he consented to submit to the associated antiretroviral treatment on May third, two thousand and two, which is definitely the [treatment] that he argues will not be provided.

Finally, all the stages contemplated by the Law of Constitutional Proceedings were completed, with respect to the process of the request for fundamental writ for protection of human rights.

II) Having analyzed the plaintiff's claims and the defendant authority's defense, we must evaluate all that is related to the self-attribution of the purported violation of constitutional rights.

From a constitutional perspective, the factual and legal foundation of his declaration focuses on the failure of the Ministry of Public Health and Social Assistance to provide him with associated antiretroviral therapy, which is scientifically proven to help patients destroy the viral load and he does not know the reasons why it is being denied.

Nevertheless, having stated the above and prior to any analysis on the merits that must be performed on this matter, we must state the matters regarding the foundation of the defendant authority's defense, since, in addition to having denied the existence of the claimed act, it has stated and proven that the plaintiff is already being subjected to the referenced treatment.

In this manner, we must briefly review the facts, procedurally speaking, after the analysis that this Court performs on the decisive procedural status of any process of an *amparo*.

From a constitutional procedural perspective, we recognize that there are ways to end a process of *amparo*. By definition, these consist of dismissive judgments or judgments affirming. Each of these are conditioned on the existence of a claim – a social complaint – that satisfies the elements that are necessary for its admission and processing, in which case, through the defendant's claims, the terms of debate are set and this creates the possibility for the Court to hear the case regarding the purported constitutional violation. In this sense, any constitutional lawsuit that must be made, presupposes the existence of facts on which a legal analysis will apply; that is, certain facts that are disputed by the parties.

The case filed with this Court contains certain presumptions, which make it manifestly applicable, given the plaintiffs' self-attribution of the rights. Further, cases [do exist] where this Court has held for the plaintiff and orders the writ of *amparo* through an affirmative judgment. However, other cases do exist where,

notwithstanding the existence of the first element, but before the Court addresses the second [element] the effects of the claimed act cease. In this case, the law requires the case to be moot.

The essential idea of this matter is that the Court must judge the constitutional existence of the acts performed by certain authorities or private individuals, provided that they cause direct harmful effects on the legal sphere of justiciable parties. Thus, in addition to review whether the claim's defendant is legitimate, it observes whether the act of the authority causes harm and that there is causation. Thus, if at the time that the Court issues its final judgment it deems that the constitutional violation has ceased, it cannot make a relevant judgment on the merits, and thus, it is obligated to hold that the case is moot.

Specifically because there would be no sense whatsoever if, given the disappearance of the harm and constitutional violation, subjective parameters from hearing a constitutional claim, it were to continue with a case that specifically causes the disappearance of the continuity of the act subject to claims at the time of judgment. Thus, when the violating adverse effect ceases, the Court's jurisdictional review of the case must also cease through a dismissal.

III) In this case, specifically for the reasons in the record, the central element of the plaintiff's dissatisfaction lies in the denial by the Ministry of Public Health and Social Assistance of the application that he filed, in the sense of requesting provision of antiviral therapy – triple therapy or associated antiretroviral therapy.

Nonetheless, as stated previously, the record has shown that the plaintiff is currently receiving the therapy, as pages 177 and 178 of this case record contain the document that certifies [to this treatment]. Further, the [the record] shows the fact that the plaintiff, after filing the complaint, did not reappear in these proceedings, either to receive the notices conferred upon him under articles 27 and 30 of the Law of Constitutional Proceedings, or to file the evidence in the respective term.

In this sense, having proven that, as a result of the petition that the plaintiff made, he is receiving triple antiretroviral therapy, we must understand that the effects of the claimed act have ceased.

Now, on the other hand, we must note in this decision, that despite the fact that the effects of the claimed act have ceased and that this Court is precluded from proceeding to issue a judgment on the merits, this must not become an impediment to the defendant authority continuing to provide the treatment to the plaintiff, as necessary.

In this sense, as the Court noted in the judgment issued under *amparo* 348 – 99 dated April fourth, two-thousand and one “(...) if a person who must receive treatment in a certain way is denied the respective treatment, and this causes an undignified life and even death, [said person] is being subject to a frontal violation of the right to health protected by the Constitution and, further, life (...).” Moreover

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"(...) said obligation is general in the Constitution, in the sense that the tools for protection must be provided, that is, today, a mechanism may exist that is effective and ideal and another tomorrow; thus, there is always an obligation to renew, change or create [the mechanisms] that are constitutionally appropriate. In this case, these are associate antiretroviral therapy or triple therapy – cocktail- which shall not be an impediment for the fact that another therapy may be required (...)."

For this reason, this resolution, which constitutes an interlocution that puts an end to this case of *amparo*, which, in turn, does not allow judging on the merits of the matter discussed, must be evaluated from a strictly procedural perspective and not as an impediment for the defendant authority to continue providing triple therapy or associated antiretroviral therapy indefinitely to Mr. Manuel Alexander Patiño Linares, while it is suitable.

Having proven thus, that the plaintiff is receiving the medical treatment, the actions of the Ministry of Public Health and Social Assistance cannot be judged, as the material harmful effects of the possible alteration of the essential content of constitutional rights invoked upon as violated have ceased.

Thus, article 31, ordinal 5 of the Law of Constitutional Proceedings applies, that is, that this Chamber notes that, in the processing of this case regarding the request for a writ for protection of fundamental human rights, the effects of the acts claimed by the plaintiff against the Ministry of Public Health and Social Assistance have ceased.

Given the foregoing, this Chamber resolves: a) To dismiss this case as moot as the effects of the claimed act have ceased, pursuant to article 31, ordinal 5 of the Law of Constitutional Proceedings, and b) service is hereby ordered. ---A. G. CALDERON---R. HERNANDEZ VALIENTE---MARIO SOLANO---J. ENRIQUE ACOSTA---GOMEZ V. --ISSUED BY THE SIGNING JUDGES ---S. RIVAS DE AVENDAÑO---SEALED.