

García Meza Azanca Alhelí vs. Peru's Health Ministry
Judgment of the Constitutional Court of Peru, EXP. N.º 2945-2003-AA/TC

Prepared by UNCTAD's Intellectual Property Unit

Summary

The Constitutional Court ordered the inclusion of the appellant in the group of patients who will receive comprehensive medical treatment against HIV/AIDS by the Ministry of Health, which includes the provision of medicines and relevant analysis, as required by the treating physicians and hospital. The State of Peru is encouraged to view the costs of the provision of medical treatment not as expenditure but as a priority investment. The hospital is obliged to report back to the court every six months. Given that there is a link between patent protection and higher prices for pharmaceuticals, and that the protection of intellectual property is important for the development of new medicines, the Court recommends the use of flexibilities contained in the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which will permit compliance with the national public health objectives.

The Constitution of Peru grants the protection of the right to health, the right to life and access to medical treatment for HIV/AIDS. It is mandatory for the Peruvian State to respect and promote these fundamental rights.

The facts

On August 13, 2002, the plaintiff brought a complaint against Peru's Health Ministry requesting to ensure that she receives the appropriate medical care for her condition as patient with HIV/AIDS. She alleged to lack enough financial resources to face the high cost of the treatment.

The attorney-general, in charge of judicial affairs at the Ministry of Health, responded to the complaint by requesting it to be declared inadmissible. He also argued that the Peruvian State is not obliged to provide health care or to provide free medicines to the population, given that the right to health is a progressive right.

The Forty-Third Special Civil Court of Lima ruled that the complaint was justified. This decision was appealed to the Third Civil Chamber of the Lima High Court, who revoked and declared the complaint was partly justified.

The legal issues

The key issue before the Constitutional Court was whether or not the appellant has the right to receive drugs and full medical treatment for HIV/AIDS, including permanent supply of drugs and periodical testing, as well as CD4 and viral load tests.

The Constitutional Court noted that physical and psychological manifestations of the disease can be reduced only through proper and continuous treatment. In many cases, the normal development of the patient's activities is not affected. But in cases where the patient is not receiving medical care, the dignity, liberty and autonomy of the person is affected as a result of deteriorating health. The life of the patient is at risk,

turning affected individuals into a sort of social outcasts, which in no way can be admitted from the constitutional point of view.

This decision is a key precedent for the enforceability of social rights in Peru, because the Constitutional Court ordered the realization of the right to health regardless of financial resources initially assigned to the sector. Furthermore, while acknowledging the progressive character of the State's obligation, the Court also noted that there are immediate obligations. The Constitutional Court encourages the use of TRIPS flexibilities to achieve the State's public health objectives.

The Constitutional Court said that social rights and public health cannot be demanded in the same way in all cases, and they do not guarantee specific benefits. Both depend on the State's budget. Otherwise it would mean that each individual could legally require a job or housing benefits at any time. Consequently, the legal requirement of a social right will depend on factors such as the severity of the case, its relationship or involvement with other rights and state budget availability. But specific actions have to be taken by the State in order to implement social policies. The actions can be progressive. But the principle of progressive realization of rights does not rule out setting reasonable timelines or the State's obligation to take concrete and permanent actions aimed at implementing public policies.

While the issue was not directly relevant, the Court considered it appropriate to rule on aspects of intellectual property rights recognized in international commitments; as well as the exceptions established and formally recognized in various international documents in the framework of the WTO, of which Peru is a member since 1995.

Indeed, when any difficulty is noticed in meeting national objectives relating to public health, with consequent impairment of the law itself and the lives of citizens, specifically in cases related to diseases such as HIV/AIDS, tuberculosis, malaria and other epidemics, it has been established by the Doha Ministerial Declaration of 14 November 2001, more specifically by the Doha Declaration on the TRIPS Agreement and Public Health that, while the protection of intellectual property rights is important for the development of new drugs, the concerns about their effect on prices cannot be ignored. The Doha Declaration accordingly states that agreements on intellectual property protection shall not prevent WTO members from taking steps to protect public health and, in particular, the promotion of medicines for all.

Given the difficulties in the provision of essential medicines for the treatment of diseases such as HIV/AIDS, the Constitutional Court recommended that the Peruvian State, in its health policy concerning the prevention and protection against AIDS, and as a subject of rights and duties flowing from its membership of the WTO, implement to the maximum the flexibility contained in the TRIPS Agreement for its implementation and interpretation in domestic law to meet Peru's public health obligations, within the boundaries provided by TRIPS and the Doha Declaration.

The Constitutional Court underlined that in the case of the provision of HIV drugs, the social and economic rights, such as the right to social security, public health, life, education and other public services, represent the social purposes of the state through which the individual can develop his or her full self-determination.

Points of significance

- Under Peruvian law, social rights should be interpreted as true guarantees that protect citizens, seeking to revalue the legal effectiveness of constitutional mandates and, therefore, the full force of the Constitution.
- The Court acknowledges that there is a link between patent protection and higher prices for pharmaceuticals that could have an impact on public health. However, the protection of intellectual property remains an important tool for the development of new medicines. Therefore, the Constitutional Court encourages the use of TRIPS flexibilities to reduce the prices of the medicines while achieving a balance with innovation incentives.

Key words

Doha Declaration on the TRIPS Agreement and Public Health, Human Rights, Right to life, Right to health, Economic, Social and Cultural Rights, HIV/AIDS, TRIPS Agreement, WTO, Medical treatment.

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