

ESCR-Justice

Monthly Caselaw Update



ESCR-NET CASELAW DATABASE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
RELATED JURISPRUDENCE, CASES AND OTHER DECISIONS

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Colombian Constitutional Court takes Innovative Approach to Ensure Sustainability of Health System and Health as a Fundamental Right

THEMATIC FOCUS:

RIGHT TO HEALTH; DOMESTIC APPLICATION OF INTERNATIONAL LAW; OBLIGATION TO DEVISE POLICIES AND PROGRAMS ON ESCR

Decision T-760 of 2008, Colombian Constitutional Court, July 31, 2008

In decision T-760 of July 31st, 2008, the Colombian Constitutional Court joined 22 *tutela** cases brought in relation to the violation of the constitutional right to health. However, the Court did not limit itself to reviewing and resolving these individual cases. Instead, the Court concluded that more than isolated problems, particular to certain users of the health system, these 22 cases were representative of recurrent violations that result from structural problems at various levels of the Colombian public health system, generated mainly by regulatory faults.

The Court clearly distinguished between the legal issues and orders rendered regarding the 22 particular cases and the general system-wide flaws. The general legal issue addressed by the Court was whether the regulatory failures detected in the 22 cases represented a violation of the competent authorities' constitutional obligations to respect, protect and fulfill the right to health. The Court determined that the authorities violated their constitutional duties and orders accordingly. In its decision, the Court reaffirmed the right to health as fundamental and examined the international legal obligations of the State regarding the right to health, especially in light of General Comment No. 14 of the UN Committee on Social Economic and Cultural Rights on the right to the highest attainable standard of health.

The Court ordered remedies for the 22 individual cases and compelled the authorities, including the Ministry of Social Protection and the health supervision and regulation agencies, to modify regulations that cause structural problems within the system. Central among these orders were the update, clarification and unification of the health coverage plans (known as Plan Obligatorio de Salud). Additionally, the Court ordered that resources be expedited into the system and that supervision and evaluation of the private companies which supply sanitary services be enhanced.

The decision is significant for numerous reasons. First, the decision deters the health system from becoming unsustainable and corrects structural flaws that harm users' access to health services. Second, it serves as crucial reaffirmation that the right to health is fundamental. Third, the Court was innovative in its approach because the remedial orders are more similar to public policies than to standard Court holdings and they also include follow up mechanisms. The decision has had three effects: the 22 individuals received a remedy for their particular violations; the Ministry of health and other government agencies are slowly introducing the structural changes ordered by the Court; and the decision has sparked wide political and academic debate over the healthcare system, especially over sustainability issues and the protection of the right to health.

*A *tutela* action is a constitutional action in which a citizen may directly request protection of fundamental rights when violated by a state agent or individual to which the person is subordinated, when there is no other legal action that can effectively be used to prevent the violation from continuing.

For a **full case summary** and information on the enforcement and other outcomes of this decision, visit the **Caselaw Database** on our **website**. There you will also find information on groups involved, case documents and secondary literature.

ESCR Justice is a monthly case law update from the ESCR-Net Caselaw Database. Each month we will share an important case or decision from the field of economic, social and cultural rights. We hope that this monthly update will generate discussion and exchange of information in the ESCR-Net Adjudication of ESCR discussion group.

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