The *Amparo*: Analysis of the Process for Adjudicating Constitutional Claims to Healthcare in the Republic of Costa Rica

Eduardo J. Benatuil
The *Amparo*: Analysis of the Process for Adjudicating Constitutional Claims to Healthcare in the Republic of Costa Rica

*Eduardo J. Benatuil*

I. **INTRODUCTION**.................................................................57

II. **STRUCTURE OF THE SUPREME COURT OF JUSTICE OF COSTA RICA AND THE CONSTITUTIONAL CHAMBER** ......................................................... 60

III. **THE AMPARO PROCESS FOR CONSTITUTIONAL ADJUDICATION** ..........................................................64

   A. **Overview of the Amparo Process** ......................... 64
     B. **The Amparo Today: A Brief Numerical Case Study** .......................................................... 69

IV. **THE HEALTH AMPARO – PROTECTION OF INDIVIDUAL RIGHTS WITHIN THE COSTA RICAN PUBLIC HEALTH SYSTEM** .............................................. 70

V. **ANALYSIS OF THE AMPARO AND THE CONSTITUTIONAL CHAMBER’S ROLE IN THE ADJUDICATION OF THE CONSTITUTIONAL RIGHT TO HEALTH** .......................................................... 76

   A. **Benefits**........................................................................ 76
     B. **Criticisms**.................................................................. 77

VI. **CONCLUSION**..................................................................79

VII. **AFTERWORD**................................................................. 79

I. **INTRODUCTION**

   In the United States, healthcare plays a central role in the nation’s economy, with healthcare spending reaching approximately $3.2 trillion in 2015 and accounting for 17.8% of the United States...
While the legislature and the executive branch have wrangled in recent years to reform the healthcare system, the judicial branch, and, more importantly, the United States Supreme Court, has assumed the role of interpreting legislative actions and deliberating on the constitutionality of questions related to healthcare. The Supreme Court has also weighed in on several important constitutional questions surrounding individual healthcare rights, such as the right to end one’s life and access to physician-assisted suicide.

Adjudication for constitutional matters in the American legal system is a lengthy and time-consuming process, requiring multiple levels of appellate review before a final decision can be rendered by a court. In Cruzan v. Missouri Department of Health, the legal guardians of Nancy Cruzan, a patient in a persistent vegetative state, brought a declaratory judgment action with a Missouri state court, seeking to remove Ms. Cruzan’s artificial hydration and nutrition support measures. The initial action was filed in July 1988, and required two appeals prior to its resolution by the United States Supreme Court: one by the Missouri Department of Health to the state supreme court in 1988 and another, by the petitioning guardians, in 1989, when the Supreme Court granted certiorari. After the Supreme Court rendered a decision in 1990, the case was remanded to a state court, where a probate court judge entered an order granting the petitioning guardians’ request for the removal of Ms. Cruzan’s life-sustaining feeding tube on December 14, 1990. Ms. Cruzan passed away on December 26, 1990. In total, the end-

---

2. *Id.*
5. *See, e.g., Cruzan v. Dir., Mo. Dept’ of Health, 497 U.S. 261 (1990) (concluding that a state may apply a clear and convincing evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state).*
6. *See, e.g., Wash. v. Glucksberg, 521 U.S. 702 (1997) (affirming Washington state’s ban on physician-assisted suicide as reasonably related to the promotion and protection of the medical profession and in conformity with the Fourteenth Amendment of the Constitution).*
7. *Cruzan, 497 U.S. at 266.*
8. *Id. at 267-68.*
9. *Id.*
10. *Id. at 265.*
12. *Id.*
to-end process of resolving Ms. Cruzan’s constitutional question, from its initial filing in July 1988, to the rendering of a final verdict by a probate court judge in December 1990, lasted approximately two-and-a-half years.

Similarly, in Washington v. Glucksberg, the petitioning parties, comprised of three terminally ill patients, four physicians, and a nonprofit organization, brought a declaratory judgment action against the State of Washington seeking a declaration that the state’s ban on physician-assisted suicide violated the Due Process Clause of the Fourteenth Amendment. The initial action was filed in January 1994, and required two appeals before it reached its resolution with the United States Supreme Court: one by the State of Washington to the United States Court of Appeals for the Ninth Circuit in 1994, which was not decided until 1996, and another one by the petitioning parties to the Supreme Court in 1997. In total, the constitutional question raised by the petitioning parties took three years to reach its resolution, beginning with the petitioning parties’ initial filing in January 1994 to the rendering of a final decision by the Supreme Court in June 1997.

As these two cases demonstrate, timeliness is an important factor in resolving cases involving the constitutionality of an adverse action taken by a government agency against a patient-plaintiff. Rapid resolution to these types of constitutional questions is critical, especially when the litigating patient is faced with circumstances where his or her medical condition could worsen throughout the course of ongoing litigation, and a verdict in his or her favor could provide the necessary relief to treat or abate the condition. More importantly, the failure to address a constitutional question in a timely manner burdens an individual’s exercise of his or her rights, and it extends the constitutional injury until a final decision can be rendered by the highest levels of judicial review.

The Supreme Court of Costa Rica, by and through the operation of the Constitutional Chamber and the constitutional writ of amparo, provides an alternative approach in the adjudication of constitutional questions related to an individual citizen’s healthcare claims against an adverse government agency. The Supreme Court of Costa Rica achieves this by having a dedicated judicial

---

14. Id. at 707-08 (citing Compassion in Dying v. Washington, 850 F. Supp. 1454 (W.D. Wash. 1994)).
15. Id. at 709.
16. Id.
body solely tasked with reviewing and deliberating constitutional questions,\(^\text{18}\) and acting as the first, and final, judicial entity reviewing these issues; this thus eliminates a protracted judicial appeals process, which would otherwise delay, burden and lengthen an individual’s constitutional rights.\(^\text{19}\)

The purpose of this article is to describe the constitutional adjudication process for healthcare questions in Costa Rica, the constitutional writ of *amparo*—which allows citizens to bring claims to the Constitutional Chamber of the Supreme Court—and the benefits and limitations of this constitutional adjudication process. Part II will provide a brief history of the Supreme Court of Costa Rica, the Constitutional Chamber, its general operation, and the different constitutional writs that can be submitted by Costa Rican citizens in the defense of their individual rights and liberties. Part III will describe the writ of *amparo* and its operation within the system of constitutional adjudication in Costa Rica. Part IV will highlight some of the key features of the Costa Rican health system, and it will explain how the Constitutional Chamber’s jurisprudence on the matter of the right to health developed in response to individual requests for the preservation of those rights within the health system. Part V will analyze the impact that the constitutional adjudication process has on the Costa Rican public health and social security systems, as well as its conceptual and practical benefits and limitations.

II. STRUCTURE OF THE SUPREME COURT OF JUSTICE OF COSTA RICA AND THE CONSTITUTIONAL CHAMBER

The Supreme Court of Justice of Costa Rica ("Corte Suprema") is the highest court within the Costa Rican judicial branch of government.\(^\text{20}\) The Corte Suprema consists of three specialized chambers, which are created by statute, and have cassation\(^\text{21}\) jurisdiction to strictly review questions of law and jurisprudence from lower courts across different fields of law.\(^\text{22}\) The first chamber, known as the Sala Primera, possesses cassation jurisdiction over civil and

---

19. Id.
21. See Cassation, *Black’s Law Dictionary* (10th ed. 2014) (defining "cassation" as a quashing or the power given to a court to quash decrees from inferior courts).
commercial matters, with exception to issues concerning family law. The second chamber, the Sala Segunda, has cassation jurisdiction in matters related to family law, successions and bankruptcy. The third chamber, known as the Sala Tercera, or the Sala de Casación Penal, has cassation jurisdiction in adult and juvenile criminal matters. These three chambers are each composed of five magistrates, who are elected by a two-thirds majority of the Legislative Assembly of Costa Rica for eight-year terms.

In 1989, a fourth, specialized chamber, known as the Sala Cuarta or Sala Constitucional (“Constitutional Chamber”), was created with exclusive and nonreviewable jurisdiction over constitutional matters. The Constitutional Chamber reviews constitutional writs filed by individual citizens, resolves jurisdictional conflicts between the Costa Rican branches of government, including the Supreme Electoral Tribunal, and provides consultations on constitutional amendment bills and ratifications of international agreements, treaties, or other legislative bills, as provided by law. The Constitutional Chamber is composed of seven magistrates, who are subject to the same terms as the magistrates from the three chambers of cassation jurisdiction.

The Constitutional Chamber reviews six types of petitions: the habeas corpus, the amparo, the action of unconstitutionality, the legislative consultation, the judicial consultation, and the resolution of intragovernmental conflicts. The habeas corpus and the amparo can be submitted by individual citizens to the Supreme Court in an effort to exercise their individual rights against an adverse government action. The habeas corpus petition seeks to protect a constitutional right of personal liberty and freedom of move-
ment in scenarios where a government authority imposes an unlawful detention or restriction on either one of the aforementioned rights.\(^{35}\) Similarly, the *amparo* seeks to protect all other individual fundamental rights that are not covered by the *habeas corpus* petition, and it can be brought forth in cases where there is an administrative action or omission carried out by a public government entity or officer which violates or threatens to violate an individual’s fundamental rights.\(^{36}\)

The action of unconstitutionality consists of a review of the constitutionality of laws that violate, either by action or omission, any constitutional principles or norms, or whenever the process of adopting laws or legislative agreements violates internal procedures or the Costa Rican legislature.\(^{37}\) This writ can only be introduced when there is a pending judicial matter, such as a writ of *habeas corpus* or an *amparo*, in which the unconstitutionality of a law or norm is brought forth as a reasonable method of adjudicating the injured right or interest.\(^{38}\)

The legislative consultation allows the Constitutional Chamber to provide consultative opinions on pending proposals to constitutional amendments, treaties and conventions, and amendments to the Law of Constitutional Jurisdiction.\(^{39}\) Legislative consultations exist in two forms: first, in the context of a judicial consultation and, second, in the presence of a constitutional question or conflict between two or more governmental agencies.\(^{40}\) The judicial consultation allows judges to consult the Constitutional Chamber about the constitutionality of norms, actions, or omissions requiring application in a judicial proceeding.\(^{41}\) The writ of resolution of intergovernmental conflicts allows the Constitutional Chamber to resolve conflicts of competency and authority between the branches of the Costa Rican government—including the Supreme Tribunal of Elections, the Office of the Comptroller General, decentralized entities, municipalities, and other government agencies—where the conflict arises as a result of a constitutional grant of authority.\(^{42}\)

\(^{35}\) *Id.* art. 15.

\(^{36}\) *Id.*

\(^{37}\) *Id.* art. 73.

\(^{38}\) *Id.* art. 75.

\(^{39}\) *Id.* art. 96.

\(^{40}\) *Id.*

\(^{41}\) *Id.* art. 102.

\(^{42}\) *Id.* art. 109.
Prior to the creation of the Constitutional Chamber in 1989, the Costa Rican Constitution of 1949 governed the judicial review process.\textsuperscript{43} The pre-1989 constitutional adjudication process contained a series of inefficiencies:

The system of constitutional adjudication was said to be illogical in that judicial review was neither concentrated nor diffuse, but haphazardly allocated... \emph{Habeas corpus} cases were within the exclusive jurisdiction of the full Supreme Court, but \emph{amparo} cases were either within the exclusive jurisdiction of the First Chamber of the Supreme Court or within the original jurisdiction of a district judge and subject to review by the Third Chamber of the Supreme Court. Statutes and decrees declared unconstitutional by a two-thirds majority of the Supreme Court became “absolutely null” by virtue of the express language of Article 10 of the Constitution, but decisions in \emph{habeas corpus} and \emph{amparo} cases, in keeping with general principles of the Civil Law, bound only the parties.\textsuperscript{44}

The 1989 reforms, along with the enactment of the Law of Constitutional Jurisdiction, strengthened individual constitutional adjudication process in several ways. First, the reforms expanded constitutional jurisdiction to include norms and principles of international human rights law through the expansion of constitutional jurisdiction, which now included norms and principles of international human rights laws in effect in Costa Rica.\textsuperscript{45} Next, the reforms gave sole jurisdiction of the writ of \emph{amparo} to the newly created Constitutional Chamber\textsuperscript{46} by repealing the Law of Amparo of 1950, which assigned jurisdiction of \emph{amparos} to the First and Third Chambers of the Supreme Court.\textsuperscript{47} Additionally, the reforms expanded the writ of \emph{amparo} to protect rights acquired under international law that were not protected by \emph{habeas corpus} and constitutional rights.\textsuperscript{48} Equally, the reforms to \emph{amparos} were also amended to include individual protections against adverse actions by private persons performing public functions.\textsuperscript{49}

\textsuperscript{44} Id. at 277-78 (emphasis added).
\textsuperscript{45} Id. at 279-80.
\textsuperscript{46} Id. at 280.
\textsuperscript{47} Id.
\textsuperscript{48} Id. (citing Law of Constitutional Jurisdiction, supra note 17, at art. 113 (Costa Rica)).
\textsuperscript{49} Id.
III. THE AMPARO PROCESS FOR CONSTITUTIONAL ADJUDICATION

A. Overview of the Amparo Process

Title III, Chapter 1 of the Law of Constitutional Jurisdiction defines the rights protected by an amparo. The amparo guarantees individual fundamental rights and liberties, except those which are not protected by the writ of habeas corpus, against actions or omissions taken by a government entity or officer. The amparo also protects against actions and omissions founded on erroneously interpreted or improperly applied government norms or rules. The Political Constitution of Costa Rica also defines the scope of the amparo as an instrument that can be brought in order to “preserve the enjoyment of other rights established in the Constitution, as well as those fundamental rights established in international human rights instruments applicable to the Republic of Costa Rica.” As a result, a number of human rights treaties that Costa Rica has signed are part of the Constitutional Chamber’s jurisprudence by and through the operation of the amparo process.

In addition to being an instrument that can be filed without any cost to the petitioner, the formal requirements for admitting an amparo are low. The Constitutional Chamber has held that, because any person can file an amparo, the absence of a power of attorney or the presentation of an invalid one will not nullify the petitioner’s standing. The writ must be directed against any and all public servants or heads of the government agencies that are acting as the presumed authors of the grievance. The Law of Constitutional Jurisdiction also allows a party with a “legitimate interest in the result of the writ” to participate and intervene as a correspondent alongside the presumed aggrieving party. Amparos can be submitted at any time as long as the violation, threat, or
restriction persists—and up to two months after the direct effects of the action have ceased—with respect to the aggrieved party.\textsuperscript{60}

In order for an \textit{amparo} to be admitted by the Constitutional Chamber, it must express the act or omission that motivates the action, the right that the proponent considers violated or threatened, the name of the public servant or government agency causing the violation or threat, and proof of the proposed injury or threat.\textsuperscript{61} The proponent does not need to cite the exact constitutional norm that is being injured, as long as the \textit{amparo} clearly expresses the threatened right.\textsuperscript{62} The only time an explicit right or violation must be cited is when the proponent requests aid under an international treaty or charter.\textsuperscript{63}

\textit{Amparos} must be presented in writing, either handwritten or typed, and its mode of presentation is not subject to any formalities.\textsuperscript{64} For example, the Constitutional Chamber has admitted petitions signed on bread and paper cartons and has upheld the acceptance of \textit{amparos} without the authentication of the claimant’s signature.\textsuperscript{65} A failure to meet the specificity requirements, as stated in by Article 38 of the Law of Constitutional Jurisdiction, will not result in the immediate dismissal of the writ; instead, the petitioner will be informed of the error and will be given three days to correct it.\textsuperscript{66} If corrections are not made within the proposed timeframe, the writ will be dismissed.\textsuperscript{67}

The filing of an \textit{amparo} will not suspend the effect of laws and other norms questioned within the writ, but it will suspend the application of those laws to the petitioner.\textsuperscript{68} Once an \textit{amparo} is admitted, depending on the circumstances, the Constitutional Chamber can order, and subsequently suspend, any preliminary injunctions or temporary restraining orders it considers prudent against the continued exercise of the adverse act or practice.\textsuperscript{69} In making its determination regarding whether to implement a restraint or

\begin{itemize}
\item \textsuperscript{60} \textit{Id.} art. 35.
\item \textsuperscript{61} \textit{Id.} art. 38.
\item \textsuperscript{62} \textit{Id.}
\item \textsuperscript{63} \textit{Id.}
\item \textsuperscript{64} \textit{Id.}
\item \textsuperscript{65} \textit{See} Rodriguez, \textit{supra} note 18, at 260 (citing BRUCE M. WILSON, ENFORCING RIGHTS AND EXERCISING AN ACCOUNTABILITY FUNCTION: COSTA RICA’S CONSTITUTIONAL COURT 60 (Gretchen Helmke & Julio Ríos-Figueroa eds. 2011)); Law of Constitutional Jurisdiction, \textit{supra} note 17, at art. 18 (Costa Rica).
\item \textsuperscript{66} Law of Constitutional Jurisdiction, \textit{supra} note 17, at art. 42 (Costa Rica).
\item \textsuperscript{67} \textit{Id.}
\item \textsuperscript{68} \textit{Id.} art. 41.
\item \textsuperscript{69} \textit{Id.}
\end{itemize}
injunction, the Constitutional Chamber must balance the prejudi-
cial effect that the suspension of adverse laws and actions might
have on public interests against the effect the continuation of the
laws and actions might have on the petitioner.\footnote{70}{Id.}

If the \textit{amparo} is not rejected or resolved prior to its admission,
the Constitutional Chamber will request an informative report from
the public servant or government agency that is listed on the \textit{amparo}
as the alleged author of the injury, threat, or omission.\footnote{71}{Id. art. 43.} When
requesting the report, the Constitutional Chamber can also request
any administrative files or documentation related to the claims
made in the \textit{amparo}.\footnote{72}{Id.} The deadline to provide this report will be
one to three days and will be determined by certain factors, such as
the nature of the claims set forth in the \textit{amparo}, the distance be-
tween the parties, and the speed of communications between the
court and the parties.\footnote{73}{Id. art. 44.} Reports submitted to the Supreme Court
are considered to be rendered under oath; as such, any errors or
falsehoods will result in perjury and false testimony charges
against the government officer tendering the report, based on the
nature of the inaccuracies in the report.\footnote{74}{Id.}

If the report is not rendered within the established deadline, the
Constitutional Chamber will take the facts set forth in the \textit{amparo}
as true and could proceed to admit and resolve the writ without any
further action, unless the Constitutional Chamber deems that a
preliminary investigation is required.\footnote{75}{Id. art. 45.} If a report is rendered, and
the charges set forth in the \textit{amparo} are confirmed by the report, the
Constitutional Chamber will admit the writ.\footnote{76}{Id. art. 46.} Alternatively, if the
petitioner’s factual allegations are unconfirmed by the report, the
Constitutional Chamber may order a request for additional and es-
sential information, which will be rendered within three days by
the petitioner and respondent at a hearing in front of the Constitu-
tional Chamber.\footnote{77}{Id. art. 47.} Prior to reaching a verdict, and in support of its
deliberation on the matter addressed in the \textit{amparo}, the Constitu-
tional Chamber can order other investigations or requests.\footnote{78}{Id. art. 48.}

If the Constitutional Chamber considers that the contested ac-
tions or omissions are reasonably founded on constitutional laws or

\begin{itemize}
  \item \footnote{70}{Id.}
  \item \footnote{71}{Id. art. 43.}
  \item \footnote{72}{Id.}
  \item \footnote{73}{Id. art. 44.}
  \item \footnote{74}{Id.}
  \item \footnote{75}{Id. art. 45.}
  \item \footnote{76}{Id. art. 46.}
  \item \footnote{77}{Id.}
  \item \footnote{78}{Id. art. 47.}
\end{itemize}
rules that are in force and that the constitutionality of the laws is also being challenged for violations to the petitioner’s individual rights or liberties, the Constitutional Chamber will admit the \textit{amparo} and suspend the writ.\textsuperscript{79} Once this takes place, the petitioner will be directed by the Constitutional Chamber to file an action of unconstitutionality within fifteen days.\textsuperscript{80} If the \textit{amparo} contests an affirmative act by a government agency or public, the relief provided by the \textit{amparo} must guarantee the aggrieved party his or her ability to enjoy the threatened right, and, whenever possible, to make the petitioner whole by restoring him or her to the same state enjoyed prior to the violation or aggravating act.\textsuperscript{81} If the \textit{amparo} was introduced to have a governmental authority regulate, execute, or apply a law or disposition, the \textit{amparo} will require the governmental authority to carry out the requested action within a two-month period.\textsuperscript{82} Similarly, if the \textit{amparo} requests the nonperformance of the action or omission, the \textit{amparo} will require the proposed action to take place within a time period defined by the court, with prejudice toward the governmental agency if there is no action.\textsuperscript{83} If the constitutional injury is in the form of conduct, material action, or a threat, the \textit{amparo} will require a case of the activity, so as to prevent any new violations, threats, disturbances, or restrictions.\textsuperscript{84}

If an \textit{amparo} is granted and the contested adverse action has ceased, but the adverse action has run its course to the point where it would not be possible for the petitioner to enjoy the threatened fundamental right, the \textit{amparo} will contain an order forbidding the government agency or public servant from engaging in the adverse action listed in the petitioner’s filing.\textsuperscript{85} If the order is disobeyed, the offending party will have committed a crime, which is punishable by fines or imprisonment under Article 71 of the Law of Constitutional Jurisdiction.\textsuperscript{86}

Indemnification of damages and costs associated with the filing of an \textit{amparo} are also set forth by the Law of Constitutional Jurisdiction.\textsuperscript{87} A granted \textit{amparo} will include an indemnification order, where the offending government agency will pay damages for harm.

\textsuperscript{79} Id. art. 48.
\textsuperscript{80} Id.
\textsuperscript{81} Id. art. 49.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id. art. 50.
\textsuperscript{86} Id.
\textsuperscript{87} Id. art. 51.
incurred by the petitioner resulting from the adverse action, in addition to the costs associated with the resolution of the *amparo*.\textsuperscript{88} However, if the *amparo* is withdrawn by the petitioner, or rejected by the Constitutional Chamber, the petitioner will be ordered to pay the costs associated with the resolution of the *amparo* with a finding by the Constitutional Chamber that the petitioner was reckless in filing the writ.\textsuperscript{89} If an administrative or judicial order revokes, stops, or suspends the alleged adverse action while the *amparo* is still pending resolution, the Constitutional Chamber will approve the *amparo* strictly for indemnification purposes.\textsuperscript{90} Under this circumstance, the petitioner can cease any further action on the *amparo*, at which point the Constitutional Chamber can archive the case file for the *amparo*; however, the case file may be reopened if the administrative or judicial order is not obeyed.\textsuperscript{91}

When an *amparo* is granted by the Constitutional Chamber, the aggrieving government agency or public servant must comply with the orders contained within the *amparo* without delay.\textsuperscript{92} If the offending party does not carry out the order within forty-eight hours following the entry of the order, the Constitutional Chamber can direct a supervising entity to carry out the order and to initiate a disciplinary order against the noncompliant party.\textsuperscript{93} Additionally, the Constitutional Chamber can file a judicial action against the aggrieving party or parties, and, following a forty-eight-hour period, against the supervising entity that did not carry out the signed judicial order.\textsuperscript{94} If the aggrieving party or supervising entity is subject to governmental immunity, the Constitutional Chamber will send the case to the Public Ministry of Costa Rica,\textsuperscript{95} an agency housed in the Judicial Branch. If the aggrieving government agency or public servant carries out the order set forth in the *amparo* after the Constitutional Chamber initiates a judicial proceeding for noncompliance by the aggrieving party, the proceeding may continue against the agency, if its acts or omissions constitute a crime, at which point the Constitutional Chamber will forward the case to the Public Ministry.\textsuperscript{96}

\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id. art. 52.
\textsuperscript{91} Id.
\textsuperscript{92} Id. art. 53.
\textsuperscript{93} Id.
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Id. art. 54.
B. The Amparo Today: A Brief Numerical Case Study

Amparos filed against government agencies for the protection of individual rights constitute a significant percentage of the cases that are brought forth to the Constitutional Chamber. Following the judicial reforms of 1989, which gave sole jurisdiction of amparos to the newly created Constitutional Chamber, this judicial body has handled a steadily increasing volume of writs of habeas corpus, amparo, and actions of unconstitutionality filed by individual citizens—beginning with 365 filings in 1989 and reaching a total of 19,476 items filed in 2014.97 Statistics published by the Constitutional Chamber show that, in 2016, the judicial body received 16,188 petitions for amparos, which represented 90.4% of petitions submitted to the court.98 In contrast, the individuals filed 1,474 habeas corpus petitions and 244 actions of unconstitutionality, which represented 8.2% and 1.4% of the submissions made to the Constitutional Chamber, respectively.99

A notable feature of the Constitutional Chamber is the average turnaround times for the three types of individually filed writs that are admitted for review and voted upon by the Constitutional Chamber. According to the Constitutional Chamber, in 2015, the average turnaround time for an amparo—from its admission into the Constitutional Chamber to its deliberation, vote, and final resolution by the judicial entity—was one month and two weeks.100 Moreover, in 2015, the average turnaround time for habeas corpus petitions was thirteen days, whereas the average time for actions of unconstitutionality was fifteen months.101 When comparing the habeas corpus and amparo petitions, the short turnaround of the former is attributed to the fact that the right asserted within the ha-

---


99. Id.


101. Id.
**beas corpus** petition is that of the deprivation of an individual’s liberty.\(^{102}\) As a result, **habeas corpus** petitions are reviewed on a priority basis over **amparos** and actions of unconstitutionality.\(^{103}\)

In 2016, the Constitutional Chamber adopted 4,475 **amparos** and **habeas corpus** petitions, conditionally approved 640, denied 5,981 requests, and dismissed 609 **amparos** and **habeas corpus** petitions.\(^{104}\) The Constitutional Chamber reviewed **amparo** petitions that ranged across a wide variety of subject areas, which included matters involving individual rights to labor, healthcare, education, transportation, social security, immigration, and minority rights.\(^{105}\) Notably, in 2016, there were 4,471 **amparos** that were reviewed and voted upon by the Constitutional Chamber involving the protection of the individual right to health, which was the second-most reviewed category of **amparos**, behind those related to labor rights.\(^{106}\)

**IV. THE HEALTH AMPARO – PROTECTION OF INDIVIDUAL RIGHTS WITHIN THE COSTA RICAN PUBLIC HEALTH SYSTEM**

In order to better understand the operation of the **amparo** in the context of the protection of individual health rights, it is necessary to examine the nature of the healthcare system in Costa Rica, as well as how the individual right to health became a part of constitutional practice. Costa Rica’s healthcare system is almost entirely publicly funded and administered, with a small, but growing, private healthcare component.\(^{107}\) Within the nation’s public healthcare system, the Costa Rican Social Security Fund (Caja Costarricense de Seguro Social, hereinafter **CCSS**), a government agency under the purview of the Ministry of Health, acts as the largest healthcare provider in the nation, employing over 90% of all registered physicians in the country.\(^{108}\) The **CCSS** is Costa Rica’s

---

105. *Id.* tbl.3.
106. *Id.*
largest insurer, providing universal coverage for 90% of the population of Costa Rica.\(^{109}\) The agency administers all of the public hospitals in the nation’s largest urban centers, as regional public clinical services centers, known as the Basic Teams for Integral Assistance in Health (Equipos Básicos de Atención Integral a la Salud, hereinafter EBAIS), which complement the services provided at the larger hospitals.\(^{110}\) The result is an integrated healthcare delivery model administered by the CCSS and funded by the central government—as well as mandatory salary taxes\(^{111}\) and contributions from employees, employers and the state.\(^{112}\)

The predominantly public health system has its practical limitations. Common challenges include the denial of procedures or medications due to budgetary limitations,\(^{113}\) long waiting times to receive medical attention and services,\(^{114}\) and instances of healthcare fraud and abuse, in the form of unnecessary or excessive prescriptions and examinations.\(^{115}\) In the face of these inefficient healthcare outcomes, individual citizens have sought to enforce their right to healthcare with the judicial branch.\(^{116}\)

The constitutional right to health was recognized by the Constitutional Chamber in 1997 when it reviewed an amparo filed by individuals with HIV/AIDS.\(^{117}\) The petitioners’ main claim was that the CCSS, in its capacity as a state-funded healthcare provider, had refused to grant their requests for life-sustaining medication to treat their disease, and the organization’s refusal threatened their right to life and social security.\(^{118}\) The Constitutional Chamber reversed the CCSS’ decision, and it ordered the entity to dispense medication not only to the petitioners but also to all people living with HIV/AIDS.\(^{119}\)

In reaching its conclusion, the Constitutional Chamber reviewed several bodies of law, including the Political Constitution of Costa Rica, as well as a series of human rights treaties and agreements

109. Jacob, supra note 107, at 80.
110. Id. at 79.
111. Id. at 80.
112. Rodriguez, supra note 18, at 267.
113. Id.
114. Jacob, supra note 107, at 81.
115. Id. at 81-82.
118. Id.
119. Id.
that the Costa Rican government had signed and ratified. The Con-
stitutional Chamber reasoned that the individual right to
healthcare was related to the right to protection of human life and
by the right to social security protection, which are set forth by Ar-
ticles 21 and 73 of the nation’s Constitution, respectively.120 Ad-
ditionally, the Constitutional Chamber indicated that the right to
health was protected by international treaties signed by Costa Rica,
such as the Universal Declaration of Human Rights, the Interna-
tional Pact of Civil and Political Rights, and the American Conven-
ion on Human Rights, which, under Article 48 of the Political Con-
stitution of Costa Rica, grants these treaties the same force of law
as the constitution.121

The constitutional right to health has been recognized as an in-
dependent122 and fundamental123 right extending from the right to
life, as well as to a social right that must be guaranteed by the gov-
ernment.124 The jurisprudential construction evolved over time into
an independent constitutional right to health, despite not being ex-
licitly described in the Constitution of Costa Rica.125 The Constitu-
tional Chamber derived the right to health from articles 21126 and

120. Id.
121. Id.
122. See Mag. Fernando Castillo Viquez, Derecho A La Salud. Recientes Evoluciones de la Jurisprudencia Constitucional [The Right to Health. Recent Evolution of Constitutional Ju-
risprudence], at 7 (2014), https://www.poder-judicial.go.cr/salaconstitucional/im-
geles/cefccar/Documentos/Derechoalasalud/CONFERENCIADERECHOALASALUD.pdf
(Costa Rica).
123. See Mag. Ana Virginia Calzada Miranda and Mag. Fernando Castillo Viquez, El De-
recho a la Salud bajo el Sistema de Justicia Constitucional Costarricense [The Right to Health
under the Costa Rican Constitutional Justice System], at 2 (2012), https://www.poder-judi-
cial.go.cr/salaconstitucional/index.php/documentos-de-interes?download=50483-el-deerecho-
a-la-salud-bajo-el-sistema-costarricense-magistrados-calzada-y-castillo (Costa Rica).
124. Id. at 7.
125. See BRUCE M. WILSON & OLMAN A. RODRIGUEZ, COSTA RICA: UNDERSTANDING
VARIATIONS, IN COMPLIANCE IN SOCIAL RIGHTS JUDGMENTS AND THE POLITICS OF
126. Id. (citing CONSTITUCIÓN POLÍTICA DE COSTA RICA [POLITICAL CONSTITUTION OF
COSTA RICA], Nov. 7, 1949, art. 21 (Costa Rica)) (defining human life as inviolable).
of the Constitution, as well as a number of human rights instruments, which have been given great weight by the Constitutional Chamber. As a result, the right to health was recognized as fundamental and independent by the Constitutional Chamber.

The Constitutional Chamber has upheld the right to health on several occasions, stating that:

[The] right to life, recognized in article 21 of the Constitution is the cornerstone upon which the rest of the fundamental rights of the inhabitants of the republic lay. Equally, within this article, the right to health finds its grip, given that life is inconceivable if a human being is not guaranteed the minimum conditions for an adequate and harmonic psychological, physical and environmental balance.

More importantly, the constitutional right to health is one that has been given a broad interpretation by the Constitutional Chamber’s jurisprudence, which has referred to the concept of health as:

One that extends beyond the dated notion of the “absence of health,” opting to understand it as the integral state of an individual from a spiritual, emotional, and physical perspective, following the concepts set forth by the World Health Organization (WHO), an organization that defines “health” within its own Constitution, as a complete state of physical, mental, spiritual, emotional and social wellbeing, and not just as the absence of afflictions or diseases.

127. Id. (citing CONSTITUCIÓN POLÍTICA DE COSTA RICA [POLITICAL CONSTITUTION OF COSTA RICA], Nov. 7, 1949, art. 73 (Costa Rica)) (establishing social security “for the benefit of manual and intellectual workers, regulated by a system of compulsory contributions by the State, employers and workers, to protect against risks of illness, disability, maternity, old age, death and other contingencies, as defined by law”).

128. Id. at 132 n.39-42 (enumerating the Universal Declaration of Human Rights, American Declaration of Rights and Duties of Man, the American Convention of Human Rights and the International Covenant on Civil and Political Rights as international instruments by which the constitutional right to health was developed by the Constitutional Chamber of Costa Rica).

129. Id. at 132 n.43 (treating the international instruments as having “an almost supra constitutional value”).

130. Id.


133. Id.
As a result of the jurisprudentially derived concept of the right to health and the characteristics of the public health system, the writ of *amparo* has taken on a role of prominence within the realm of constitutional adjudication in Costa Rica, allowing individuals to challenge adverse actions by government agencies in the context of violations of health rights.

There are three distinguishing features of the health *amparo*. First, a health *amparo* admitted for review by Constitutional Chamber is reviewed on a priority basis over all other types of *amparos* and cases filed with the court,\(^\text{134}\) given the sensitive nature of the request; however, as alluded to previously, *amparos*, including health *amparos*, will never be reviewed by the Constitutional Chamber over a *habeas corpus* petition.\(^\text{135}\) Second, a health *amparo* is usually filed against government institutions, such as the Ministry of Health, the CCSS, hospitals, EBAIS, and health centers that are administered by the government, as well as the administrators, physicians, and staff employed by the aforementioned agencies.\(^\text{136}\) Third, the *amparos* can be filed for a wide variety of subject areas concerning individual health rights, as a result of the broad interpretation that has been given to the Constitutional Chamber’s jurisprudentially-derived right to health.\(^\text{137}\) Throughout its review of health *amparos*, the Constitutional Chamber has reviewed and decided questions ranging from individual access to medication, medical devices, surgical procedures, and vaccines, to the rights of children, the elderly, and disabled individuals.\(^\text{138}\)

Two types of frequently filed health *amparos* that have been the subject of discussion by the Constitutional Chamber involve questions regarding timely access to treatment and access to medication. With regard to the issue of timely access to treatment, the Constitutional Chamber has held that:

> [I]n cases where the petitioner’s ailment is not of a grave nature, if there is an excessive delay in the provision of medical attention, the Constitutional Chamber has granted *amparos* for violations of individual health rights... because in cases

\(^{134}\) Rodriguez, *supra* note 18, at 267.


\(^{136}\) Id.

\(^{137}\) Wilson, *supra* note 117, at 468-469.

involving a delay in the delivery of healthcare, a patient’s clinical outlook is directly related with his or her “quality of life,” and, as a result, [the Constitutional Chamber] recognizes the indivisible relationship between health and quality of life.\textsuperscript{139}

Moreover, the Constitutional Chamber has indicated that the performance of medical tests, treatments, or procedures—whether diagnostic, medical or surgical in nature—must be performed within a reasonable timeframe.\textsuperscript{140}

The resolution of the issue of access to medication has been the subject of shifting jurisprudence for the Constitutional Chamber. The CCSS utilizes an approved list of medications (hereinafter LOM in Spanish) that must be used by medical professions when prescribing medication to patients in a public health setting.\textsuperscript{141} Issues frequently arise whenever a physician seeks to prescribe medication that is not in the LOM, and a CCSS pharmacotherapy committee rejects the doctor’s request—either because the committee finds that the LOM contains a drug with similar health properties as the non-approved medicine or concludes that the proposed medication will not aid the patient’s treatment.\textsuperscript{142} Previously, the Constitutional Chamber granted greater weight to the prescribing physician’s opinion, arguing that a doctor was in a better position to determine and prescribe the best treatment or medication, according to the patient’s prognosis and quality of life.\textsuperscript{143} The Constitutional Chamber’s stance on this subject has shifted, placing a requirement on the prescribing physician to provide objective reasons behind his or her prescription of a non-LOM medication.\textsuperscript{144}

More recently, for amparos related to the access to medication, the Constitutional Chamber has requested independent reports by the Department of Legal and Forensic Medicine, a government body

\textsuperscript{139} Calzada Miranda & Castillo Viquez, supra note 123, at 17-18 (citing Constitutional Chamber of the Supreme Court of Justice, Exp. 08-011347-0007-CO (2008) (Costa Rica)) (finding a public hospital’s 2008 scheduling of an initial specialist examination for October of 2012 to be unreasonable and a violation of the individual’s right to health).

\textsuperscript{140} Id. at 17 (citing Constitutional Chamber of the Supreme Court of Justice, Exp. No. 2007-14347-0007-CO (2007) (Costa Rica)) (ordering the CCSS and the Orthopedic Department of a state-run hospital to perform a hip replacement on an elderly patient whose procedure had been delayed for nine months).

\textsuperscript{141} Caja Costarricense de Seguro Social [Costa Rican Social Security Fund], Normativa de la Lista Oficial de Medicamentos (LOM) [Policies of the Official List of Medications], art. 1 (2016), http://www.ccss.sa.cr/lom (last visited Jan. 15, 2018) (click on the “Normativa” link to download the relevant ZIP file; refer to the “NORMATIVA – LOM” file).

\textsuperscript{142} Calzada Miranda & Castillo Viquez, supra note 123, at 14-15.

\textsuperscript{143} Id. at 15 (citing Constitutional Chamber of the Supreme Court of Justice, Exp. 04-20882-0007-CO (2004) (Costa Rica)).

\textsuperscript{144} Id. (citing Constitutional Chamber of the Supreme Court of Justice, Exp. 11-14898-0007-CO (2011) (Costa Rica)).
tied to the Judicial Power, to assist the Constitutional Chamber in deciding whether a violation of the right to health exists, as presented in the petitioner’s *amparo* request.\(^\text{145}\) In providing its report, the Department of Legal and Forensic Medicine utilizes evidence-based medical analyses and scientific evidence prepared by the Cochrane Database of Systematic Reviews,\(^\text{146}\) which helps establish the effectiveness of the requested medication and whether there are alternative medications that would be as effective at treating the petitioner’s ailment.\(^\text{147}\)

V. **ANALYSIS OF THE *AMPARO* AND THE CONSTITUTIONAL CHAMBER’S ROLE IN THE ADJUDICATION OF THE CONSTITUTIONAL RIGHT TO HEALTH**

A. **Benefits**

The health *amparo* has become a useful mechanism by which Costa Ricans have been able to challenge perceived violations of their right to health for several reasons. First, as noted previously,\(^\text{148}\) some of the key features of the *amparo*, such as the inexpensive nature of the writ, the low requirements for standing, and the high degree of informality involved with the actual filing of the *amparo*, have made it easier for these issues to be brought to the attention of the highest judicial authority in Costa Rica. More importantly, the *amparo* has effectively opened the judicial branch, allowing Costa Ricans to seek relief from the Constitutional Chamber, regardless of socioeconomic status or ability to procure legal assistance.\(^\text{149}\)

Second, the *amparo*, along with the operation of the Constitutional Chamber, has also provided a mechanism in which individuals could receive a timely review of any claims of improper actions by public agencies or servants, especially when an individual’s right

---

145. *See,* e.g., Constitutional Chamber of the Supreme Court of Justice, Exp. 14-4680-0007-CO (2014) (Costa Rica) (ordering the Department of Forensic Medicine to prepare a report on osteoporosis medication); Constitutional Chamber of the Supreme Court of Justice, Exp. 17-013037-0007-CO (2017) (Costa Rica) (requesting a medical report related to a petitioner’s *amparo* request for skin cancer medication); Constitutional Chamber of the Supreme Court of Justice, Exp. 17-004605-0007-CO (2017) (Costa Rica) (utilizing a report prepared by the Department of Legal and Forensic Medicine to grant an *amparo* for breast cancer medication).


149. *Id.*
to health is perceived to be threatened. As mentioned previously, healthcare *amparos* admitted for review by the Constitutional Chamber are examined and voted upon before those related to other subjects, and they have a rapid turnaround when compared to other individually-filed writs.\(^{150}\) The existence of the constitutional adjudication mechanism and a dedicated judicial body focused on reviewing these particular types of requests on an expedited basis is important in the context of health and healthcare questions, especially when there is a possibility of permanent bodily injury or death resulting from actions or omissions by a government agency.

Third, the Constitutional Chamber and constitutional adjudication process in Costa Rica have effectively served as an additional check on the executive branch and executive agencies. As noted in previous sections, most *amparos*, when granted by the Constitutional Chamber, include orders and injunctions that could result in financial penalties, administrative proceedings, and incarceration if the government agency or public servant fails to comply with the orders.\(^{151}\) As a result, the Constitutional Chamber and the *amparo* have become a method of ensuring accountability on the government and enhancing the rights of marginalized groups that would not be able to enjoy their constitutional rights in the face of institutional overreach.

### B. Criticisms

It is undeniable that the healthcare *amparo* and the constitutional adjudication process of these writs have brought positive changes for countless individuals and groups of people who have been subjected to unreasonable treatment or adverse actions by executive agencies and actors, including delays in the delivery of medical treatment, extending waiting lists and limited access to medication, among other issues.\(^{152}\) However, the constitutional adjudication process is not free of issues or its share of criticism, given the practical constraints present in the public health system in Costa Rica.

First, when the Constitutional Chamber grants *amparos* and issues orders to public agencies to deliver care—whether in the form of medical or surgical procedures or the provision of medication—the Constitutional Chamber substitutes the CCSS’ judgment regarding the allocation of resources for its own based on the claims

---

150. *See Promedio de Duración de los Votos de Fondo*, supra note 100.
brought forth by a petitioner. It is important to remember that the health system in Costa Rica is a predominantly public one: The government, by and through the CCSS, acts as the largest owner of medical facilities, the most prominent provider of medical services, and the largest insurer—covering 90% of Costa Ricans.153 In order to provide higher quality levels of healthcare to the population, the Ministry of Health and the CCSS must be able to properly allocate and distribute funds and resources throughout the entirety of the healthcare system. By entering an order against the CCSS, the Constitutional Chamber imposes a burden on the government agency’s ability to allocate financial and medical resources.

Similarly, the Constitutional Chamber’s entry of orders places a burden on hospital administrators, physicians and other professional staff involved in the delivery of care.154 CCSS-employed physicians and administrative staff frequently issue orders to their patients based on a professional medical opinion—subject to the economic realities and constraints of the public health system, most of which are beyond the control of the prescribing entity.155 However, as noted previously, amparos that are granted by the Constitutional Chamber are generally accompanied by judicial orders that will impose financial and criminal sanctions upon those actors who fail to comply with the orders. As a result, the physicians and administrators may be thrust into a difficult position in which they could be punished for acting or failing to act when there is a constrained ability to do so.

The Constitutional Chamber has addressed criticisms made about its intervention in the Costa Rican healthcare system by the rulings and orders issued from amparos.156 The Constitutional Chamber indicated that the rulings have moved the CCSS to better allocate its resources, both financial and medical, in order to better serve and reach the more vulnerable sections of the population.157 By way of example, the Constitutional Chamber cited a study performed by the University of Costa Rica, which indicated that the effect of the Constitutional Chamber’s sentences for health amparos related to the purchase of medication represented only 1% of the

155. Id.
156. Id. at 12.
157. Id. at 26-27.
yearly budget allocation for this expense. Similarly, within its jurisprudence, the Constitutional Chamber has recognized the importance of the CCSS’ duty to engage in preventative health measures and practices that would have long-term public health impacts and benefits, such as vaccination campaigns and programs that raise awareness regarding health risks of saturated and trans fats.

VI. CONCLUSION

The Costa Rican model of constitutional adjudication, as provided by the Constitutional Chamber of the Supreme Court of Costa Rica, by and through the operation of the writ of amparo, has provided a unique avenue through which individuals can adjudicate perceived violations of their constitutional rights, especially when their health and bodily integrity may be harmed if the adverse action endures. The existence of a specialized judicial body and a constitutional instrument allows for the effective resolution of issues with several options for relief, including protective orders and the granting of relief through the resolution of the constitutional question itself.

Even though the Constitutional Chamber’s deliberation of issues regarding individual access to health and healthcare might be criticized for acting as a form of judicial overreach, or for imposing burdens on an already burdened healthcare system, it is undeniable that the Constitutional Chamber’s rulings on these matters have addressed significant issues. Given the nature of the public health system in Costa Rica, the Constitutional Chamber and the health amparo will continue to play a part in preserving individual rights.

VII. AFTERWORD

Over the course of four weeks in May and June 2015, I had the privilege of visiting the Republic of Costa Rica and interning at the Constitutional Chamber of the Supreme Court of Costa Rica. Throughout the course of the internship, I met and worked closely with Supreme Court magistrates, law clerks, and administrative
staff, allowing me to gain firsthand insight into the Costa Rican constitutional adjudication process. This allowed me to witness and participate in the filing, initial review, deliberation, ruling, and final disposition of writs of *amparo* filed by Costa Rican citizens seeking relief from the highest court for claims related to medical treatment or care denied by Costa Rican government entities, such as public hospitals or the Costa Rican Social Security Administration. Additionally, I met with medical professionals and administrators of the Costa Rican College of Doctors and Surgeons, and I engaged in a discussion regarding the limitations and challenges faced by Costa Rican public medical professionals and organizations in the delivery of healthcare ordered by the Supreme Court of Costa Rica.

This article and the internship it was based on would not have been possible without the participation of several individuals. I would like to thank my advisor, Professor Robert S. Barker, for organizing this internship and allowing me to represent Duquesne University School of Law while in Costa Rica. Special thanks to the McGinley family and the McGinley Public Service Law Fellowship for providing me with the funding that made this wonderful experience possible. Lastly, I would like to thank Olman Rodríguez Loaiza, Xinia Flores Quesada, and all the law clerks, judicial staff, constitutional scholars, members of the Supreme Court of Costa Rica, and countless other individuals whom I met in San José, for their hospitality and warmth during my time in *La Suiza de Centroamérica*.