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of Health Sciences University of the Witwatersrand

& Health Law (Steve Biko Centre for Bioethics) Faculty

In partial fulfillment of the degree of MSc Med (Bioethics)

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Minister of Health (Kwa-Zulu Natal) 1997

Reflections on Thabang Soobramoney versus the

Diabetes Programmes in Public Hospitals in South Africa:

An Ethical and Legal Commentary on Access to Renal
Date: 03 March 2010

Signature

[Signature]

Declaration

degree or examination at this or any other University.

University of the Witwatersrand. It has not been submitted before for any
field of Bioethics and Health Law. Steve Biko Centre for Bioethics,
reference. It is being submitted for the degree of Master in Science in the
have used or quoted have been indicated and acknowledged by means of
Health (Xuma-Zulu Nzele) 1997 is my own work and that all sources that I

Africa: Reflections on Thugbelo Soobramoney versus the Minister of
on Access to Renal Dialysis Programmes in Public Hospitals in South

I, the undersigned, hereby declare that An Ethical and Legal Commentary
I love you all deeply.

whose belief in me has been the single most influential factor in my life.

Lastly, I dedicate this to my mother, Hlophelihle, and my father-in-law, Joe.

potentially in their own pursuits in life.

to me than can ever be imagined. I pray that they shall reach their full

To my two beautiful children Khensani and Thembiso who are more special

encouragement I would not have finished this work.

provided me with a constant source of support. Without her

studies, insight, encouragement, wisdom and commendous intellect have

graduously in every endeavour. Her own determination to excel in her

I dedicate this to my wife Makhosaz, who has always supported me so

Dedication
related quality of life extends the definition to include the way a person’s
individuals satisfaction with their own lives (Brown, 2007: 72). A health
life according to Brown as an overall sense of well-being. This includes an
In exploring this concept one would venture to offer a definition of quality of

on current South African protocols.
argument for increasing access to renal dialysis for those denied it based
(para 14). This report takes a different slant and looks at the quality of life
with the treatment in terms of s 27(3) read with s 11 of the Constitution
was argued by the applicant that the state had an obligation to provide him
allocation of resources and offering treatment on an emergency basis. It
The Soobramoney case was considered mainly on the basis of scarce

the criteria set for renal care.

basis of scarce resources and he did not qualify for care due to not meeting
resource. Mr. Soobramoney was denied access to renal dialysis on the
highlighted the ethical and legal implications of providing this scarce
resource. The case of Soobramoney at the Constitutional Court
public hospitals places great emphasis on the allocation of scarce

The current exclusion criteria for accessing renal dialysis in South Africa

Abstract
Finally, I rebel on some legal issues concemed with the Goodmamoney

live their lives and including respect for them towards the end of their lives.

Furthermore, there is no indication that the elderly live more miserable lives

population.

their own quality of life to be as important as the quality of life of the general

are indications in literature that patients with end-stage renal disease rate

mobile disease. The quality of life argument is based on the fact that there

modified for in cases similar to Goodmamoney, especially those with co-

for those in need of enhancing their quality of life. This is what is being

A case is made for increasing access by developing programs to cater

(foot).
Lastly, I wish to thank staff in the Department of Health who gave me valuable advice and assisted in the preparation of this report. Particular thanks to Mr. Dudi Mthombeni, Dr. P. K. Patel, and Mrs. S. Makhankal for their input and corrections.

I thank all of you for your comments which every piece of work submitted for telling me to keep the energy. Your words on every piece of work truly made me believe that I can do it. You spurred me on by Amos Dhal. Thank you too, my other Supervisor, Prof. K. V. Me on.

of writing this report was within my abilities. Thank you for politely nudging me to complete it. For making me believe in me.

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Annexure A: Hospital Providing Renal Dialysis in Gauteng

Whitewaterand Research Ethics Committee (Human)
According to the last published nephrology report compiled by a group of academics from several universities in South Africa, the prevalence of

governed by policy, resources, and long-term budgets

clearly been converted into a choice of life or death, as

of medicine had the physician's decision on treatment so

under what circumstances. Never before in the practice

raised troublesome issues of who would be healed and

... the power to foretell death in cases of renal failure

and his chief of team in Seattle, emphasizing this dilemma:

healing patients with renal failure' (bid: 1204). Friedman quotes Scroner

haemodialysis, we are told, led to the dilemmas we are facing today in

to death. The advances in renal medicine and the introduction of

before this period, patients suffering from acute renal failure were doomed.

were previously alien to the lexicon of renal medicine. Were introduced.

We are informed that these words, profiling, rationalizing, and excision, which

Kidney doctors lost their innocence in 1960 (Friedman, 1993: 1204-1205).

1. Introduction

Chapter 1
Minister of Health, 1999). In 1996 his kidney also failed and thus had end-stage renal failure. He suffered from ischemic heart disease and cerebrovascular disease.

Mr. Thologo Soobramoney was a 41-year-old unemployed man, who was

1.2. The Soobramoney Case

Public hospitals: allocation of resources in the light of budget limitations in the South African case. This will help us appreciate the problem of justice, health rights and the case. I will look at the ethical and legal implications emanating from this case. This will be done by mainly reflecting on the now famous Soobramoney case...

International options and controversies e.g. funding and access, economic factors, disease prevalence, management protocols (including chronic renal failure in South Africa reflecting on such issues as socio-economic prioritising, rationing and exclusion) I will overview the problem of transplant to patients with end-stage renal disease. I will consider concepts of current government policy of rationing access to renal dialysis and kidney...
necessary nurse-patient ratios as there is a dire shortage of nurses in the
work (Rizvi et al., 2007: 217). Most of the hospitals do not have the
countries range from 0.8% to 2% compared to 10-15% in the developed
The healthcare budget as a percentage of GNP in so-called developing

dialysis machines (bid: 15).
service. The hospital had been following a set policy in regard to the use of
not possible as the provincial health department did not have funds for the
that their could only be done if its budget was increased. The was however
machines and more trained nursing staff were required to enable it to do
specialist in nephrology, Dr. Nejjar told the court that additional dialysis
machines for all patients suffering from chronic renal failure. Their
dialysis treatment for all patients suffering from chronic renal failure. Their
argument before the court, stated that it did not have resources to provide
soothingmoney approached the courts for redress. The hospital in its
feasible, the patient did not qualify for regular renal dialysis. Mr.
facilities, the hospital said according to its treatment protocol, based on limited
hospitals.

Doctors, but when his funds were depleted, he was obliged to go to public
arrangements to receive dialysis treatment from private hospitals and
Dublin for treatment but was denied treatment. He had earlier made
regular renal dialysis. He went to Addington Hospital a public hospital in
stage renal disease. Mr. Soobramoney’s only hope for survival was
circumstanced chronic dialysis program, with as short a time on dialysis as
such as South Africa, the goal of the therapeutic options has been to have a
diagnosis, and renal replacement therapy. In so-called developing coun-
countries and chronic lung disease. The preferred management of ESRD is renal
ischemic heart disease, cerebro-vascular disease, chronic liver disease.
patient must be free of significant disease elsewhere, for example.
transplant could be beneficial renal dialysis. Eligibility meant that a
those with end-stage renal disease (ESRD) and eligible for kidney
automatically access to the program. The guidelines stipulated that only
suffered from chronic renal failure like Mr. Soordamoney did not have
by renal dialysis had automatic access to renal dialysis. Those who
The patients who suffered from acute renal failure and could be remedied

exclusion criteria mentioned previously.
dollars in private but access is free in the public service based on the
ISN Belhagio Conference, 2004) 7 in South Africa it costs 100-200 US
dollars in the US and 100-200 US dollars per session in African coun-
tries the Belhagio Conference the cost of haemodialysis is 40-60 000 US
programme. She also informed the congress in Dublin that according to
15.8% - in Belgium, 0.7% in the UK and 7.3% for the US Medicare
indicates that the percentage of dialysis compared to the health budget is
country, Nacker reports that work done by De Vecchi, et al. (1999),
realisation of these rights. Measures, within its available resources, to achieve the progressive
(2) Further, "The state must take reasonable legislative and other
and other dependents, appropriate social assistance.
(c) Social security, including, if they are unable to support for themselves
(b) Sufficient food and water, and
(a) Health care services, including reproductive health care
(1) Everyone has the right to have access to
S 27. "Healthcare, food, water and social security."

Constitution makes the following provisions:

basic services to its citizens in the Bill of Rights in Section 27 of the
and democratic society, that the state has an obligation to provide certain
South African Constitution of 1996, Section 27(3) of the 1996 Constitution

The argument used before the courts was based on the provisions of the

did not qualify for a kidney transplant.
suffering from ischaemic heart disease and cardio-vascular disease, he
released and cadaver. (Nelker, 2001: 263). As Mr Schoepenre was
possible, and to increase the availability of transplantation (both living
directed at curing patients and not simply maintaining them in a chronically

With this approach the outcome was said to be more beneficial as it was

they were used to keep alive persons with chronic renal failure.

guidelines, more patients would have benefited than would be the case if
was stated that by using the dialysis machines in accordance with the
who qualified in terms of the criteria set by the Renal Unit of the hospital. If
rehabilitation on renal dialysis would deny other more deserving patients
the provision of the section. The hospital had argued also that to put Mr.
dialysis is not to secure his life, but to prolong it, the said not qualify in terms of
emergency basis. As the appellants condition needed regular renal
on the basis of Section 27(3) which required him to be treated on an
Chancellor argued that the appellant requested recourse from the courts
In presenting judgment of the Constitutional Court judges, Judge P.

discharged the obligation.

expected the state to provide funding and resources necessary to
obligation in terms of Section 27(3) to provide him with the service. He
and as such requiring renal dialysis to prolong his life, the state had an
Mr Soobramoney contended that as a patient suffering from terminal illness

(3) No one may be refused emergency medical treatment (my italics)
metioned therein. He says that the Constitution does make an admission available resources to achieve progressive realization of each of the rights the state must take reasonable legislative and other measures within its jurisdiction. He states that the Constitution states in so many words that to. The guarantees are not absolute, the maintenance, but may be limited. In forward-looking: These provisions are ideal and something to look forward to further. He further goes on to say that the provisions of the Constitution are

(Soodramoney v. Minister of Health, 97:23).

To kidney dialysis machines even where resources are limited the question is whether everybody has the right of access condition? (ibid: 23). He says in the context of Mr. Soodramoney's case, doctor ever allow a patient to die when that patient has a receivable the court in this case submission. Judge Madela asks the question. Should a section 17 – the right to life, which the applicants' lawyers placed before Justice Madela looked at the provision of the Constitution dealing with

However,

angle altogether; whilst concurring with Judge Chaskes's conclusion A second Judge, Mr J. Madela sought to consider the case on a different quality and Mr. Soodarmoney lost the case. in condition, the court documents indicated. The court ruled that he did not
preclude investment in preventive care for the young, and
inevitably raise the level of spending to a point which would
technology care, utilized more often by the elderly, would
industry possible, the liberal provision of equal access to high
supported research has made a private biomedical technology

... Even in the industrialized nations where public tax-

quotes a UNESCO publication to emphasize this point
access to resources could lead to more difficulties than it none existed. He
democratic societies. He asserts that lack of principles criteria for regulating
incompatible with a human rights approach to healthcare, in all open and
access to the provisioning resources is regarded as integral to, rather than
both Justice Chaskalson and Mandela. He contends that the framing of
Judge Arike Sachs also gave a separate judgment, whilst agreeing with

limited or scarce resources thus. Soothe money’s case was denied.
limited heamodilysis facilities, both machinery and personnel considered
resources. In other words, in the present situation in South Africa, the
that one of the limiting factors in achieving these goals is limited or scarce
As mentioned in the arguments placed before the court, he also concurs

trying to resolve all of society's woes.
that it cannot solve all of society's problems outright, but must continue
There are many ways of looking at a problem and that the ethical issues involved in theudosbourn money case. I will draw our points which I hope will demonstrate that I will be able to show that the perspective of a legal sense, I am doing this, I will demonstrate that perspectives of law and ethics are often quite different. I will irrelevant or simply not issues in a legal sense. In doing this, I will include identifying issues that the court failed to raise believing them to be irrelevant. To see how the case impacted the life of the claimant, This will also be to see how the issues raised by the court and rejected back on them in the context of the us virtues and failus (Ado 1980: 74). M.Y. reflection in the context of the issue which has been brought to one’s attention, for example, is reflected on In ethics context, means to think, ponder, or meditate, on an... (Ibid. 32).

Would be to offer the benefit to nobody. This could be disastrous. He said person unless it was to give equally to everyone else. The resultant action would be to offer the benefit to nobody. This could be disastrous. He said...
Sodaramoney case in which I provided a broad legal analysis.

Concluding chapter, I propose recommendations. Now let us turn to the perspectives respectively. I will then offer a reflection on the case. In my next two chapters, I will look at the case from legal and ethical perspectives surrounding kidney dialysis and treatment. I raise many serves to provide further insight into the myriad of difficulties faced.
services. In the Court's view, the state had indeed complied with section 27(2) that courts decided that his claim had to be considered under section 27(2) that person may be refused emergency medical treatment. The Constitutional Court decided that his receipt to life in section 11 and the guarantee in section 27(3) that no denial of access on the basis of two constitutional rights (which: 35). These approaches the Constitutional Court appealing his case challenging the appeal.

Mr. Scobramoney was unsuccessful at the Durban High Court, so he

needed medical eligibility for a kidney transplant to qualify for renal dialysis, and could not be accommodated at state hospitals. For this reason, the

satisfy strict medical criteria. Mr. Scobramoney did not meet these criteria

service is provided for at state hospitals at state expense for those who

state after he was unable to find this service at a private hospital. Thus

to a renal dialysis service in the public sector hospital at the expense of the

As stated above, Mr. Scobramoney approached the Court seeking access

indicate that the state went on to defend this case successfully also.

the Constitutional Court, (Hassim et al. 2007: 35) The author goes on to

The Scobramoney case was the first socio-economic rights case to reach

Chapter 2

2.1 Legal Analysis
Unresponsive infections e.g. HPV, Hepatitis B and C
Lung disease
Mediastinal or surgically irreversible coronary artery disease
Advanced cirrhosis and liver disease
Cardiac, cerebrovascular or vascular disease
Advanced, irreversible progressive disease of vital organs such as:
Active, uncontrollable malignant or with short life expectancy

Medical exclusion criteria

2.2.1: Medical exclusion criteria

Administrators of Department of Health in consultation with nephrologists and health professionals for putting patients on renal dialysis by the South African hospitals for putting patients on renal dialysis by the South African hospitals for putting patients on renal dialysis by the South African hospitals for putting patients on renal dialysis by the South African

The following exclusion criteria have been used as guidelines for public

2.2: Exclusion Criteria for Renal Dialysis in South Africa

in South Africa are as follows:

The criteria for access to renal dialysis as set by the Department of Health

dismissed. A week later he died from renal complications (kid: 35).
case, had been applied fairly and rationally. His claim was therefore
access to renal dialysis is limited and reasonable, and in Southamone’s

27(2) constitutional duties because the guidelines according to which
The population is 51 years (median, Health Guidelines for Renal Disease, 2007). In LK, the median age of starting renal replacement therapy is 67 years and the median age of death is 72 years. Which death expresses with a night.

Considered this case under section 27(2) which death expresses with a night.

Subsection (2) shall the applicant did not qualify for the service. They had satisfied that the applicant did not qualify for the service. They had

The court had concluded that these criteria were reasonable and were

Programmes.

Lifestyle modification will be excluded or removed from chronic renal dialysis.

Patients with proven habitual non-compliance with dialysis treatment and

2.2.5 Compliance

Obesity

Active substance abuse or dependence including tobacco use.

For patients to take responsibility for their actions.

Any form of mental illness that has resulted in diminished capacity.

2.2.4 Psychological Exclusion Criteria

Indication for chronic renal dialysis:

2.2.3 Age (provided above exclusion factors are absent) is not a contra-

exclusion factors are absent.

Multimodal treatment and is stable for at least six months and the above

patient has access to a comprehensive AIDS treatment plan including

2.2.2 HIV and AIDS are not a medical exclusion criteria provided the
everything to everyone at once
care services does not impose a duty on the state to provide
that the Sodobonmony case shows that the right of access to health
•
Some lessons are provided Emanuel from this case:

Requiring this at any time this was demanded.
would be forced to provide immediate health care services to anybody
indicate that instead of fulfilling the provisions of section 27(2), the state
been severely compromised (Hassim et al. 2007: 39). The authors further
the state's obligation to ensure access to health care services would have
were to have been interpreted in accordance with Sodobonmony's claim,
Hassim et al. In her argument against the case states that if section 27(3)
36

needed urgently, it is not considered as emergency treatment (id);
which is inculpable (paragraph 27). While renal dialysis may be
affects resulting from a deterioration of the applicant's renal function,
treatment does not include chronic treatment for an ongoing state of
given in an emergency...decided that emergency medical
section 27(3) is purpose as ensuring that medical treatment is indeed
was not adequately covered by the right to the case as it saw
case challenging a right to life. The Court held also decided that the case
to access to health services and not ruled that this was not necessarily a
spects of socio-economic rights jurisprudence generally, and of health.

looking at other cases that came before the courts. This will consider
with health rights, using the South African case as a prime study, but
The following sections will consider how the South African courts have dealt

willingness to ensure government proves its claim. (bid: 37)
later cases, as we shall show heretofore, have shown a greater

require significant financial resources
interventions simply because large numbers of people in need could
the state will be held to account for not providing certain health care

Doing it on time (Chabane, 2009: 1)
resources and yet be willing to commit to doing more with less and
paper, recognize that there will always be limited funding and
responsible for Monitoring and Evaluation wrote in his discussion
funding to service delivery areas. The Minister in the Presidency
the new administration in charge of government now to replicate
amounts of funds on non-priority areas. This is an area of focus of
services. The state cannot use this argument either if it spends vast
relatively small need leading to a limited access to health care
to account for allocates a disproportionate share of the budget to a
the "available resources" argument could be used to hold the state

•
did not fall foul of s 27(1)(e) merely because it found the policy has been applicable in the matter (bid: 88). The court held that the rationing policy was not to life and not to be refused emergency medical treatment were not when the case was appealed the constitutional court ruled that the rights limited by resource scarcity and the competing rights of other patients.

The issues raised by the Southemmoeny case were then refusal to real

Khoas/Mahlane " and TACI cases,

concern arising from this case and other related ones like the Groodboom',

therefore be explaining some of the concerns he has identified as areas of

in our health-nights jurisprudence (bid: 87). The following section would

trials by the hospital had infringed his right to life and not to be refused

Peters argues further argues that despite the benefits that result from the

benefit-focused perspective (Peters 2005: 66),

rights jurisprudence specifically that present cause for concern from a
It is clear that the
new administrative taking over government in April 2009, it is clear that the

State is unable to offer the service considering resource constraints. With the
issue unresolved so far, there is a risk that the State will be

declared unable to offer the service due to resource constraints is detailed.
For concern, please confirm that the State is unable to accept that the

State had been declared unable to offer the service. The decision is based on the basis that it does not want to be seen to

be second-guessing the Rationing decision as it would do more harm than

make the service available on the basis that it does not want to be seen to

The State's decision not to make a judgement directing the hospitals to

through section 27(2).

and specifically meaning to s 27(1)(e) and secondly by limiting that right
restrict the extent of the applicant's entitlement by firstly awarding a narrow
conception. Please (Ref: 107) further indicate that the Court attempted to
judgement seemed to accept that the claimed entitlement fell within the
pays much attention to the concept of, health care services, nothing that the

limits to s 27(1) (e) then with the context of entitlements it awards. He

Please (Ref: 109) notes that the Constitutional Court engaged more with
prevailing resource constraints.

better placed to take decisions of who was to receive treatment within the
rationally conceived and implemented in good faith by authorities who were
Government budgets allocated within the provinces.

Several meetings have taken place between provincial Treasuries and Ministers and government departments. A Treasury has currently busy scrutinising all state expenditure. The intent is to rationalise its services and reduce waste in all government departments.

Governmental decisions need to be made within the province.

Several meetings have taken place between provincial Treasuries and Ministers and government departments. A Treasury has currently busy scrutinising all state expenditure. The intent is to rationalise its services and reduce waste in all government departments.

necessary imposing limits to those rights according to Section 36.

should be a balance between entitlements or expectations without systemic to the limitation of rights in this judgment. The proposed plan there provide services to all people like Mr. Soobramoney. Similarly, Sachs, judgments tend to indicate that it would be very costly for the state to and societal demands for limited resources. Chaskalson's majority and Societal demands for limited resources. Chaskalson's majority and societal demands for limited resources. Chaskalson's majority and societal demands for limited resources. Chaskalson's majority.

The second dearest service according to Pleaue is the finding that Mr.

remedial potential.

obligations, thereby shifting socio-economic rights of much the state in every manner where it fails fully of its socio-economic

society. allows for the underserved, taking of the resource-based by

supporting government-assigned resource scarcity to meaningful

Pleisure (bid: 91) says

be better spent and government may allocate funds to appropriate services.

delivery. With this approach it is possible to determine that the budget could

with a view to prioritising the budget and allocate costs to pure service departments. 10 Treasuries is currently busy scrutinising all state expenditure

State intends to rationalise its services and reduce waste in all government departments.
been evinced from the vacant land they had occupied but when they
to health care services, the same authors predicted. The applicant had
duties in respect of all socio-economic rights, including the right of access
duties framework for future claims against the State regarding its positive
respect of socio-economic rights (Hasan v. Heywood, 2007: 37). It set the
Groothoom's. This case decided that the State had breached its duties in
The other case considered by the Constitutional Court was the
but rather to prolong his life.
right to quality of life. The court ruled that his case was not to save his life
his position could reconcile. The right to the life could equally be defined as the
argued by the hospital authorities would expose the State if more people in
inferred that indulging in his favour considering the scarcity of resources as
life that renal dialysis could offer. This right was implied when the State
courts that I wish to explore in this discourse is his desire for good quality of
The individual right pertaining to all socio-economic not infringed by the
individual rights as espoused in the constitution.
over other claims we will explore. This lies in the face of entrenching
any attribution of a claim to resources as enjoying constitutional priority
sanctioned to the amorphous general good which could predominate virtually
The implications of the judgment may also mean individual rights are
For the implementation of the plan:

- Making appropriate financial and human resources available.
- Medium and long-term needs.
- Sufficient flexibility to deal with emergency, short term.

From this it is clear that the State has to develop reasonable plans to give

realise the right of access to housing, resources and comprehensive and co-ordinated programme to

rule that the State had failed to devise and implement within its available

section 26. In the appeal against this decision, the Constitutional Court had

The High Court had ruled that the State had to provide shelter to children in

The High Court of Appeal of India, which is an unqualified right as opposed to

homeless (bid: 37). The High Court hearing their case decided that they

found out that this was now fully occupied and thus became "unfit".

returned to their initial place of residence, an informal settlement.
The authors have stated also in the case of Soobranmy that the State cannot spend vast sums of money on non-priority areas if the effect is to limit access to essential services like renal dialysis (ibid.: 37). There has been an uproar over government ministers and officials' expenditure on luxury vehicles. It is said that such money could have been spent on other essential services like education, health, and infrastructure. The green paper on Strategic Planning 2009, the Ministry in the Presidency writes, 'A key objective of national strategic planning is to ensure greater efficiency in allocating and using resources.' (Manuel, 2009:2.)

As stated earlier, the new Administration in Government seems intent on managing resources well and as such has a full ministry dealing with monitoring and evaluation of government programmes. Explaining the purpose of government's new long-term strategy, Manuel (2009:2) writes, 'The Green Paper: National Strategic Planning is being tabled alongside a discussion paper on performance monitoring and evaluation. Together, they make clear that planning, coordination and performance management are interrelated. These functions call for close interaction and collaboration.'

National government assuming responsibility for ensuring the adequacy of laws, policies and programmes, including the clear allocation of responsibilities and tasks, as well as monitoring programmes (ibid: 39).
clinical, but political in nature (bid: 131). Plearess says as it is expected that
returning decisions such as that channeled in Goodmoney, are not
sacrosanct (Plearess, 2005: 130). He argues that health care-related
Plearess argues that not all decisions involving health care should be
departmental as alluded to above already embarked upon programmes to reduce waste in government
care could then be more clinical than resource constrained. The State has
realised more funding for renal dialysis programs. The denial of access to
introduce plans to reduce waste by improving its efficiency so as to
access to renal dialysis programs. The State could be compelled to
where could have been valid reasons to allow people like Goodmoney
just as the State had been obliged to institute a PIFCT programme,
but require a better quality of life for their remaining years of a short life?
conditions similar to Mr. Goodmoney who would have limited life spans
implementing a reasonable programme of renal dialysis for patients with
whether the State should be similarly compelled to have a look at
reasonably PIFCT plan. Similarly a question may be asked as to
The State was similarly made to implement a comprehensive PIFCT


Chapter 3

3.1 Ethical Issues arising out of the original case in context

Although not considered by the court, the gravity of the issue that were not considered by the court, and a recommendation on how the matter may be addressed when looking at a decision only to limited scrutiny, I will come back to this when I finally make a medical/scientific one, and accordingly unexpectedly subjected the Social movement counter to the help of falsifying evidence a decision, make social decisions, giving partings. He does not show that the lawyers should not make medical decisions, similarly doctors should not
Health care was not adequate at the hospital. The patient, whom claimed he was denied renal dialysis care on the basis that he could afford it, the pre-renal condition of a patient is not a pre-existing medical condition has been judged as

condition is such that for example, renal diabetes would not prolong the patient's life, or even both physician and patient. This is because the patient's ini a situation of denying a patient the right of care which is sought by the patient in medical injury. In such cases, the attending physician may be forced

Another important issue was brought forth in the original court case is

protection, following, and exclusion we will see complexities arise (bid).

concern the allocation of scarce resources with its sub-sets such as distributive justice. Particularly in the areas of distributive justice which

From the case review, the ethical issue which is most apparent is that of

patient is their primary concern.

issue of justice is a vexing one for physcians generally, as their particular

selects, does their make such selection just? (Friedman 1983: 1205). The

decision, have to live with the question even though everyone rationists and

From this it is clear that renal physicians are stressed by Keffelstrand and

access to renal dialysis (Moosa, 2006: 1107-14).

at Uypeberg Hospital, discrepancies remain in trying to create equity in

Department of Health. According to Katz, referring to the work by Moosa,
referred to the preamble of the first national guideline in 1996 which
hospitals cannot supply unlimited access to dialysis in South Africa as
In the letter I referred to above, Katz (1996) states further, that the public

3.2 Allocation of scarce resources

the main I will now turn to an overview of each of these issues.
not pursued further as this discourse looks at the public sector hospitals in
and providers under scrutiny thus, this case involving the private funders is
government, it would be appropriate to put the private health care funders
consideration, with the National Health Insurance policy being modelled by
South African’s prescription. He did not raise this as a matter for
This matter was not put under scrutiny by the Court during Mr.
condition, should some benefits be on-again dependant on circumstances?
make the time of membership, contributions, age, gender, and medical
result the subscriber is summarily ousted from the medical scheme no
role of the private health care sector - when funds run out for a subscriber.
Another ethical issue the South African money case brought to the forefront is the
renal dialysis would be futile if it were not so.
renal dialysis has to qualify for a renal transplant otherwise treatment by
terminal. The basis of the dialysis protocol is that any patient who is put on
This scope includes policies that affect diverse benefits and burdens, such as
determined by justified norms that structure the terms of social cooperation.
case. This term refers to fair, equitable, and appropriate distribution
Distributive Justice is the next ethical problem identified in the Goodmoney

3.3 Distributive Justice

Programme at State Expenditure

Medicare programme was initiated and has a number of patients on the
Nephrologists in most countries are governed by rules in the US the
rules were necessary to fill the State’s eligibility (Freedman, 1993: 1205).
haematologists supported by grants and philanthropy. If became evident that
given the limits on the number of patients who might be accepted for
referred to above. Explaining the advent of policies, Freedman states that
promises those who could benefit. The guidelines have already been
developed the guidelines to assist the hospitals in relation services and
services and many benefit from these. The Department of Health had
public hospitals. In order to ensure that those who require renal dialysis
not have sufficient resources to meet the needs for all those accessing its
goodmoney case adequately articulated the position that the State does
The arguments brought before the court by the hospital in the

Treatments that are available.

needs, There is no country in the world that can afford high technology
3.4 Medical eligibility

and comprehension to obtain goods or to avoid burdens (id: 226).

that the problems of distributive justice arise under conditions of scarcity
so applied in excluding him, was fair and reasonable. The authors explain
programme. The court had also concluded with the hospital that the policy
was determined by justifiable norms which excluded him from the
terms of the guidelines. He did not qualify for renal dialysis as the service
Adjudicating Hospital when his funds were exhausted at a private facility. In
care problem, which was a desire to access renal dialysis services at
example, civil and political rights, in this case we shall dwell on the rights of
distribution of all rights and responsibilities in society, including, for
The authors go on to indicate that the term also refers broadly to the

property, resources, lexicon, privileges, and opportunities (Beuchamp

producing his life but would deny other more deserving patients a slot on the
for this due to his medical condition. Providing him with this service would

mean for people who were eligible for renal transplant. He did not qualify

Scandinavian would not benefit from the service he required as this was

the nephrologists in the country in a way argued before the courts that Mr.
The guidelines developed by the Department of Health and supported by

and Children's, 2001: 226).
3.5 The role of the private sector

Intensive medical care and was therefore non-beneficial. Thus quelling as permanent unconsciousness or that failed to end total dependence on benefit of a qualitative life but did not require a treatment that preserved a Mr. Soobramoney required renal dialysis to prolong his life and thus have a...

...in our present open system of medical care...

should proceed by an entirely different route and with great caution, arguments for withholding treatment on grounds of resource allocation...

Resource allocation and medical priority setting.

1989:760) though warm against withholding treatment on the basis of reason to suspend this was implied.Schedulerman et al. (in Cui

through the withholding of treatment from Mr. Soobramoney was not stated was concluded.

was of resources. Mr. Soobramoney actually died two days after case programme. In short treatment for him would be futile and it would be a
and other important ethical issues still have relevance.

original context. Now I will turn to reflect on the case initially how these issues I consider to be the major ones which arose from the case in its examined national health insurance plan may be an answer. These ethical recommendations and reflections in the next sections, though the their rates mid-way with the treatment plan, I will refer to this under once a patient had started treatment with them and could no longer afford their discussion is what should be the role and responsibilities of the private sector which should be the role and responsibilities of the private sector was not brought before the courts. The issue that needs further sector but never made any further comments on finding as the funds were exhausted. The Constitutional Court also referred to the role of the private sector when he could no afford private rates when his medical needs further money was initially needed at a private facility but had to go to

Inevitably "dumped" onto the public service.
remains the ethical ideal towards which we should continue to strive. Stage renal disease when it can contribute to the patient's quality of life higher quality of life. I will conclude by arguing that renal delighted in end-ethical obligation to work towards respecting a patient's wishes regarding medical resources. I will argue that healthcare professionals still have an autonomous choice of our patients. Notwithstanding the problem of scarce resources, we are obliged to respect the personal perceived quality of life may or may not be yours. manifestation of his or her own choice, what may or may not be my argument. Finally, I will conclude that the quality of a patient's life is a matter of quality of one's life. In the following section, I will present objections to the concept of medical futility and how it relates to the Soobramoney case. Then in the next section, I will present my argument for the importance of choices they make concerning their lives. This will include references to the Soobramoney case and provide a brief case summary. Then I will discuss the idea of respect for persons - respected for the autonomous decisions. Then I will review some comments concerning.

4.1 Ethical Reflections on the Soobramoney Case

Chapter 4
The receiving delays were made. Sadly, Mr. Thimagoor Soodamoney died two days after the judgment against his behalf.

This delay, by reference to comment made earlier in this discourse, I will refer back to criteria (Næther, 2005). This, however, ties in the face of the remark made hands of those best equipped on medical personnel, who should get the service is best left in the programs and deciding what should be decided on ethical and the public good, and renal transplantation ethics, their ranking of resources like renal delays and renal transplantation Næther surmises, in agreement with the concluding remarks of Judge Sack's assertion that a healthy life depends upon social

Kidney Transplantation.

With regards to the renal transplantation, the scarcity of resources forces us, who are supposed to be maintained by the state for the public good. This also independence in the form of clean air and water; good sanitation which

Judge Sack's assertion that a healthy life depends upon social
Soobramoney had a pre-existing medical condition that disqualified him for renal dialysis in terms of guidelines set in the public sector. His presentation by the doctors was poor, and the case went against the usual quality of the high renal dialysis could not provide. The arguments presented by the doctors were opposed by the case where he did not quality for renal dialysis. Only hope for survival was regular renal dialysis. All that Mr. Soobramoney’s Svasti means is that survival was a good hallmark.

Meanwhile, judgments of other related health and social care judgments like Groodoom and the courts yet to see how the court would interpret such a case in the light of recent change. No further cases similar to this have been brought before the court. The availability of resources argued meant that the state did not have to provide services to dialysis for people with Mr. Soobramoney’s medical condition but rather in another time and another case. This may have been brought before the court.

The individuals within society. She concludes that in the case of Mr. Hassan, et al. (bid: 42), further studies will be times when services does not impose a duty on the state to provide everything to state that the Soobramoney case recognizes that the right to healthcare others like Hassan putting weight to this argument on limited resources.
effects their ability to carry out normal social and physical activities (bid). The quality of life extends the definition to include the way a person's health an individual's satisfaction with their own lives (bid: 76). A healthy relationship according to this author as an overall sense of well-being. This includes explaining this concept one would venture to offer a definition of quality of longevity of one's life is what is important (Brown et al. 2007: 72). In the argument, Dr. Martin Luther King Jr. is quoted as saying, "The quality, not the quantity, of life is what matters."
4.1. Respect for Persons

Relates to the Suddaramoney case.

Lives. This will include references to the concept of quality of life and how it
persons - respect for the autonomous choices they make concerning their
In the next section of this chapter, I will discuss the idea of respect for

Treatment

that their lives will be significantly improved as a result of undergoing
results in patient's electricity to commence daily in the expectation
improving a patient's quality of life and well-being. This inevitably
Diagnosis treatment is promoted as a means of maintaining or

explain this assumption
renal dialysis does enhance a quality of life. Brown et al. (1992: 39) further
By approaching the court's Suddaramoney was under the assumption that
describe and define the moral obligations between the patient and the

In biomedical ethics we look at all the principles in varying degrees to

and Justice.

principles: autonomy (respect for persons), non-maleficence, beneficence,

(1991) developed their theory of "principlism" which is based on four

From the theories of Kant, Mill and W. D. Ross, Beauchamp and Childress

would hinder their ends, and would use and manipulate them.

further their ends and respect their rationality. If we did not do this, then we

means that when we help and not harm others, in so far as possible, we

Kant, treating others as ends involves a strict duty of beneficence. This

rational beings are beyond value since we are the sources of value. For

humans are free agents capable of making our own decisions. So we

rational aims and hence intrinsic goals: only people are rational agents.

An outline of what Kant (bid) says is that (only) people have conscious

should never be used as means to ends.

we have moral standing we are morally valuable. And as human beings we

have moral standing, which, for example, plants and animals lack. Because

makes us valuable "above all price". Because we have intrinsic worth, we

above the animals and the rest of creation — this intrinsic value of worth
hospital in June, decided that despite the previous benefit he received from
knowing that renal dialysis was able to meet his medical needs, the state
medical condition. He had made a conscious and legitimate decision
resources and that he would not benefit from the service considering this
to request renal dialysis to prolong his life was denied on account of score
produce the best overall results for him (bid: 165). His autonomous choice
were expected to work as agents to balance beneficence and drawbacks to
important and legitimate interest. The renal physicians, in terms of utility,
Request of Mr. Soobramoney was to be offered renal dialysis as his

Requiring healthcare from the doctor or health facility
166). These interests are what bring a patient to the doctor as the patient
obligation to help others further their important and legitimate interests (bid:
receive help. In another definition, beneficence is described as, an
patient and the doctor is that of the patient approaching the doctor to
positive steps to help others” (bid: 166). The relationship between the
beneficence (Beauchamp 2001: 165). He defines beneficence as, taking
beneficence describes beneficence in two forms, positive and negative
Here, I will look at beneficence as it relates to the Soobramoney case.

Persons are not to be harmed.

docor of health professional. We understand that in this relationship
case of intensive care units, physicians have to make end of life decisions regarding withdrawal of therapy..." (Hodgson, 2006: 73-75) It is said that in basis of the likelihood of survival, and public hospitals make decisions to maximize utility of the resources on the

and administrators in public service hospitals. Resources do compound the ethical challenges faced by both clinicians past have been carried over in the new democracy. So allocation of scarce to the skewed allocation of resources based on race. The imbalances of the population. This is so considering the past history of this country which led End of life decisions are complex matters to deal with in the South Africa.

4.1.2 Respect for Persons and Quality of Life

his life, court ruled against him and renal dialysis could have helped by prolonging his life. The crm was probably caused because he subsequently died soon after the hem. (ibid: 176). By not helping Crm (providing dialysis) a

clinicians should make a habit of two things, to help or at least to do no In the Hippocratic work of Epidemics we are told that "as to disease

factly, the private institutions he could not access service at the public hospital.
capacity to perceive and appreciate, such as merely benefit that the patient would ever have the when it has no realistic chance of providing a Center, for example, defines a treatment as futile. The University of California, San Diego Medical

Schneiderman (2007) maximise the patient's quality of life (bid: 46) as put by Homann and circumstances of the case. We could say a treatment is futile if it will fail to when made, may or may not be discussed with the family depending on on futility are based on criteria that are seldom described or written and Care Units in the public service. He reports that it is peculiar that decisions in the same article Hodgson (bid) cites examples of practices in Critical cases.

decision largely made by the children in a paternalistic fashion in most that the results would not differ (bid). The futility of treatment thought, is a such studies have not been done in South Africa, the impression is made want to be involved in such decision-making processes but even though guilt (bid: 74). Studies done in France indicate that family members do not momentoous/reversible decision, so that they are not left with a burden of involved together with the team and are "being called upon to make a the decisions and involve families in such discussions. Family members are
morbidity conditions they have. Resources of the state hospitals due to the length of stay in hospitals or co-
patients described as outliers, meaning those patients who exhaust the
arguments raised by Parpamios describing the duties of care-workers to
In answering the question I pose I above, I wish to refer extensively to

co-morbidity disease?

The question to ask is "Is dialysis futile in elderly patients and those with

access to renal dialysis care.

elderly patients and people in the same position as Mr. Soobramoney
This is what I would like to explore looking at the current protocol to deny

validity.

pathomorphological considerations on lung capacity and
palliative kidney function is adequate, and the
outpatient nephrologist wants to make sure the
outpatient nephrologist wants to help the patient maintain a strong cardiac
cardiovascular care setting... The cardiologist
outside the acute care setting... the patient to a level of health that permits survival
chance of achieving the medical goal of remaining
permanently unconscious patient or has no realistic
preserving the physiologic functions of a
the care of outliers. As a basis for a physician to never disengage from philosophies of Immanuel Kant and G.W. Hegel, are themselves, as viewed by the authors and supported by the existing on principle, justice, and healing people as an end in itself. In this sense, the authors’ moral responsibility, good will, duty, cohere the consciousness of many health care providers. Surrounding with obligation regarding the care of outliers...

Pediatricians (2009) goes on to say:

emotions. Why stay engaged in their care? An outlier will cost money, and an outlier will tax psychological stress. An outlier can be recognized. care providers and administrators economic and financial burden. Who, in turn, will cause health suffers an incredible psychological, emotional, and

An outlier, in this context, is a human being, who

outlier (Pediatricians, 2009: 11) is given below. Considering he had pre-existing co-morbid disease. Another definition of an generally and Mr. Soboluk was a fitting example in particular.

Patients with end-stage renal disease requiring dialysis at this description...
21

The second formulation of Kant's Categorical Imperative also leads to the Imperative duty to

with the will of others" (bid).

rule. This moral law involves, according to Hegel, "... identity of my will

the according to moral law — meaning that we live according to a set of

law that we are reminded that we are all part of society and

which is extrapolated here to mean a patient has a right to health

introduced the concept of

Hegel, according to Papadopoulus (2004: 21),

self- respect. Rather, acting a person as in and in his or her self requires that

decisions are not based solely on issues such as availability of resources.

In the context of the Stoothonstown case, a renal physician has an

merely as a means to an end

always at the same time as an end and never

in your own person of in the person of any other

Act in such a way that you treat humanity, whether

articulates in the second Formulation of the Categorical Imperative.

work of major philosophers such as Immanuel Kant as Kant (1797 [2005])

To never disregard from the care of others, as mentioned, looks to the
do things that don’t work (2) don’t do things that do

migrated through three general strategies: (1) don’t...

...decisions over resource allocation can be

Papedimos quoting Singer (1997: 24):

challenging situation. They do however pose a few thoughts proposed by
solutions on what to do concerning allocation of scarce resources in this
philosophy of self-determination. The authors however do not offer
for allocation of these resources. This would fit in with the Hegelian
group, it is said, may ultimately make the physician their primary negotiator
the number of patients who may require dialysis as a collective will. This
who may be able to force the government to allocate resources to cater for
United States of America. A scenario is painted of this growing population
concerning the rising numbers of the ageing population as voters in the
Another interesting though introduced by Papedimos is brought to the fore

a beneficent action having moral worth (Papedimos, 2004: 17).
are required to do; but in doing so they provide society with an example of
are something providers and institutions do not like, or even
sickening someone younger with no co-morbid disease. Taking care
of that physician to attend to the needs of that individual, whether it is Mr.
disease coming to the hospital requiring assistance. It is the responsibility

The renal physician has a moral duty to help a patient with end-stage renal
753) argues that the fact that a patient suffers from cancer should not be


4.1.3 Arguments, pro and con the quality of life in context

Partnerships.

provide an avenue for expanding this programme of private-public

Health insurance, as envisaged by the Ministry of Health, could probably

issue involving medical care (Hopson, 2006: 7). The advisor of National

cases where public service physicians can assist the private sector with

sharing resources where the private sector has a financial advantage and in

between the public and the private sectors should be pursued, e.g., in

needs of patients in a resource-constrained environment. The partnerships

renal diliary programmes so they are not only efficient but consider the

aged and those with co-morbid disease. There is a need to share up the

aged to review the situation, especially with regard to the

The current protocol for renal diliary programmes is still exclusivist but the

alternative funding sources for these patients (bid: 25).

a well-planned approach to steering, securing of funding, and locating

be translated into a plan for expansion of care of outillers. But should result in

The answers to these comments should be that these concerns should not

"do things inefficiently..."

work, but the patients don't want done: and (3) don't
private sector

history, with expansion in the last decade driven from the
the renal transplant programme in South Africa has a long
efficiency in the developing world is less well described.
the intervention is significantly cheaper. While cost
survival is 10 - 15 years longer than in patients on dialysis, and
significantly higher mortality, but after the first year, expected
after the transplant can be more expensive and may have a
quality of life perspective in the developed world. The first year
effective form of renal replacement therapy from a cost and

Kidney transplantation has been established as the most

Retrouval drugs is however changing this as Venner (2006: 182) states:
patients on renal transplant in the country is quite low. The advent of anti-
absence of renal transplant. Also as indicated above, the percentage of
Renal dialysis is considered to be a life-long treatment and life-saving in the

the costs of paying for this service in the private sector.
could not access this care in the public sector. He could no longer afford
quality of life. Due to rationalisation of scarce resources Mr. Soobramoney
medical conditions, he had a right to access renal dialysis to enhance his
to contend that despite the fact that Mr. Soobramoney had pre-existing
the reason for denying them access to renal dialysis care. Similarly, I within
disease.

Treatment in modifying the course and symptoms of end-stage renal treatment decisions. Dialysis, however, is understood to be an effective approach of paternalism (bid: 744). Epstein indicates however that it is the principle of self-determination. This approach has largely replaced the today however the ethics of treatment of non-renal dialysis strongly embraces.

From patients with advanced cancer because of cost (Epstein, 1998: 744), result in poor quality of life for patients with cancer, dialysis may be withheld advanced are dialysis may be thought to be futile if may be thought to elderly with debilitating disease renal replacement therapy. The reasons cancer patients, which may justify some people supporting denying the need for renal dialysis. To improve their quality of life.

Programs like the elderly and similarly debilitated patients, also have a for patients with HIV/AIDS, patients in need of renal replacement way as the availability of drugs has added to a much improved quality of the availability of anti-retroviral therapy is rapidly changing this. In a similar HIV infection was an absolute contraindication to organ transplantation but now
due to financial problems.

courts as he desired to continue dialysis which he could no longer afford.

Schoedermeyer was hoping for a less-miserable life when he approached the

sought for a number of elderly patients on dialysis (Esposito, 1998: 749). I

acceptable and is not in itself a source of misery from which death is

general population. It appears that quality of life on dialysis is clearly

disease on dialysis rate their quality of life to be almost as good as does the

total There are indications in the literature that patients with end-stage renal

or her quality of death as well.

way, a physician can contribute not only to a patient's quality of life, but his

the patient's relatively pleasant death instead of an unpleasant one. In this

would be welcomed by a patient, the physician may be able to "choose" for

welcome death until life becomes unbearable. Finally, even when death

value that time more than the physician realizes, there is no reason to

short amount of life remaining, but with an acceptable quality of life, may

He may differ from that of his or her physician. Second, the patient with a

is subjective: what is a good quality of life for one person may differ from

of life for a number of reasons. The first one is that a patient's quality of life

that physicians may not be aware of the patients' desire for a better quality

after the course of their disease and enhance their quality of life. I suggest

Patients who opt for this form of therapy therefore are hopeful that this will
Informed patient or proxy who should make the decision (Epstein, 1998). Each case must be decided on its own merits, and it is the competent and burdens of treatment. In general, this will include all but those near death, people with cancer to be used when the benefit to the patient exceeds the Dialysis should be a therapeutic option available to all people, including decisions about benefits and burdens of any other medical treatment. Decisions concerning dialysis should not be treated differently from individualized, taking into consideration both medical and psychological factors. Decisions concerning the elderly should be taken to the personal quality of life benefits derived from the procedure. Those whose benefits outweigh the burdens in the majority of cases. By benefits, the end-stage renal disease is a reasonable cost-effective treatment. that being said, Epstein (1990) argues that dialysis in cancer patients continue to receive treatment for other illnesses they suffer e.g., cancer. are being saved without achieving a cure. The elderly on the program are shown that more elderly patients have been put on renal USA has been shown that more elderly patients have been put on renal to any health care system. For example, in the Medicare program in the there is no doubt that renal dialysis does add an additional financial burden.
The argument forwarded by the doctors at King Edward VII Hospital was that in offering him dialysis to save his life other more deserving younger patients would have been denied the chance for a better quality of life. The judge agreed that he was entitled to this basic right. Behind this right was a desire for quality of life which as I stated earlier was not articulated during care. He argued that he was denied this basic right. Behind this right was a case involving Mr. Seabourn and was about his right to emergency medicine. (Carr 2002).

Other factors which concern the provision of renal dialysis and worth and their own opinion concerning their quality or the outcomes worth is known. I suggest that respect for that particular person's dignity whenever a patient's perspective on his or her quality of life - its value and may reflect a societal bias against older people in general (MRC 1994: 37). The type of care provided is most likely not built on a solid foundation and individuals in the same way. Using age alone as a status on which to base the distinction is arbitrary (will any implementation of procedures affect all be noted is that at no age - the "young" of the "old" (and in recognition that on the other hand, is not considered a "risky procedure". A point that should younger people after risky medical or surgical procedures. Renal dialysis.

On average, we can say it is true that elderly persons do less well then
Required when reserving individual lives.

Lives are valuable (bid: Z11). He says that adaptation of CALs to
life-threatening disease because they suggest that the-years rather than
Alternatively this, Beauchamp quotes Harris who states "CALs are

over the number of individual years.

healthy favors the-years over individual lives and the number of life-years
quality or life, which is more compromised in the elderly (bid: Z11). This
other person. This argument says that age plays a role in considerations of
younger person is likely to bring more CALs than saving the life of a

Propositions of cost-evaluation assessment believe that, saying the life of a
developed. This is referred to as a health-related quality of life (QALY).

determined. From this, the concept of quality-adjusted life-years was
question following this analysis was however how quality of life can be
are high in relation to costs" (Williams quoted in Beauchamp, 2001: 210). A
redeployed at the margin to procedures for which the benefits to patients

Williams, a British health economist who did a study on the cost-

would be denied.

patients who stood a better chance to survive and receive a renal transplant.
mortality post-ICU.

Considering the number of hospital ICU readmissions and higher levels of diseases and or a much older age do not enjoy a better quality of life indicate that patients with ESRF with severe illnesses and co-morbid thought this was a younger age group. Those against quality of life would patients lived badly in the longer term compared to the other cases even. There was also greater post-ICU mortality with ESRF patients. Such patients considering their live years and improved quality of life, as more beneficial to the young compared to the elderly and much weaker. But this also emphasizes the point that services like renal dialysis are seen (dis)advantages according to the authors, supporting the same point I made earlier. The notion that generally older patients have difficulty accessing renal dialysis against older patients for receiving dialysis. This strengthens the authors' arguments that patients were younger and had severe illnesses compared to the non-ESRF cases. The younger and had severe illnesses compared to the non-ESRF cases. Most of the ESRF patients were comparable to the non-ESRF patients. Most of the ESRF patients were readmitted to ICU than non-ESRF cases but the lengths of stay were the United Kingdom in this study the ESRF patients had far more for patients with end-stage renal failure (ESRF) and non-ESRF patients in Hutchinson, et al. (2007) quote from a very large study on ICU admissions.
vasculopathy or neuropathy associated with diabetes. In addition, the
improve congestive heart failure, it will not prevent the progressive
19) For example, although dialysis will ameliorate neurologic symptoms and
unrealistic expectations of just what dialysis can accomplish (Wykins 1998).
expected. However, some individuals and their families may have
long-term survival (greater than 10 yrs) is often not anticipated nor is it
undergoing dialysis may be different from those for younger age groups.
their lives better after being put on dialysis. The goals for elderly patients
1999: Rely A, Prestavile 2001) appear to indicate that the elderly have valued
in addition, other studies (see: Klevan, Deyo et al. Congrillis 1986: Levinisky
Renal failure who are elderly and have co-morbid disease.
resources like renal dialysis before care is denied to patients with end-stage
need to be considered when making decisions about allocation of scarce
resources preserving this for younger patients. These are some factors that
decided against referring patients to renal physicians as a form of rationing
centers. Some of the patients are not referred because physicians may
some of the physicians take long to refer the patients to the renal care
black patients live in rural areas with limited access to health care is still
imbled. Dialysis centers which have an impact on the care of the aged. Most elderly
physician referring, physician rationing, medical insurance and distance to
dialysis (Naveenathan et al. 2008: 116). There are other factors like race,
There are studies that indicate that the aged tend to present late for renal
Time they can spend at work or other activities and the impact it has on being less than "good" as determining health impacts on the amount of the majority of patients on renal dialysis rate health-related quality of life as dialysis supports life, it does not necessarily improve quality of life and that on renal dialysis (Brown et al., 2007: 75). The authors state that while some studies done however yield different results concerning quality of life remain as an official ideal towards which we should continue to strive.

Stage diseases when it can contribute to the patient's quality of life should One may conclude by stating that renal dialysis for the older person in end-need before their deaths. Mr. Goldbronym was denied this desire.

the last days of their lives. Such patients need to be afforded this basic assist in letting those not qualifying for a renal transplant add some value to Thus renal dialysis, not being a cure for end-stage renal disease can still

(Leeds 1999: 64).

and friends, and some rank their health at least as good as others their age feel that dialysis offers them the chance to spend increased time with family survival and quality of life among elderly dialysis patients. Many individuals Nevertheless, several studies have provided strong evidence for acceptable potential deletions. May not be appealing for some patients changes in lifestyle required by dialysis, coupled with the trade-offs of
Socioeconomic case.

at the recommendations as we conclude this discourse on the
families. Did Mr. Socioeconomic and his family receive this? Now let us look
palliative care can play in their management and that of support for the
and always seek to improve it. They suggest that this is the role that
importance of quality of life in assessing someone who is receiving dialysis
The authors conclude by advising that it is essential not to forget the

Living (bid).

that their expectations have not been met and that the care ot dialysis is not
family life. They indicate that some patients on dialysis feel short-changed.
Health rights are infringements (Petersen, 2005: 83). He holds that the state did
some of the infringements in the health rights cases limit health rights in our
Petersen, who has been quoted extensively in this discourse, argues that
resource and that the guidelines provided by the hospital were responsible.
Due to this right to life, the service that the service was limited as a scarce
discourse, interpreted as requiring an enhanced quality of life. He was
denied this right to life on the basis that the service was limited as a scarce
discourse, interpreted as requiring an enhanced quality of life. He was
The court heard that he needed renal dialysis to prolong his life and for my

soon after the case was concluded.

under a different section of a right to life. His case was dismissed. He died
on the basis of emergency care (Section 27(3)) but the court heard his case
of the constitutional court in Durban. He had sought relief in the Constitutional
Supreme Court in Durban. He had sought relief in the Constitutional Court.
He went to the Constitutional Court when he failed to win his case at a

a private facility.

funds whilst being treated by renal dialysis for his end-stage renal failure at
renal dialysis treatment at state expense after he had exhausted all his
state money who approached the courts to demand that he be put on

In summary, this is a reflective discourse on the case of a patient, Mr.

6.1 Conclusion & Summary

Chapter 6
They need to be respected as persons and not to be named.

In reflecting back on the Soobramoney case, highlighted quality of life

should have been handled by the Court.

Referring to health care-related decisions are not clinical but political and

sacrosanct and is best left in the hands of clinicians.Petitioner argue

they termed as medical or scientific decisions and that this is

The Constitutional Court erred by not wanting to make comments on what

as it was compelled to do in the TAC case on PMCT.

comings in its service delivery in health care like renal dialysis. This can be

Sections 26(2) and 27(c) by developing responsible plans to address short-

Following the Grocott case it is clear that the State has to give effect to

rights like that of Mr. Soobramoney.

enjoying constitutional priority over other claims thus infringing on individual

which could prejudice virtually any adjudication of a claim to resources as

stating that individual rights are sacrosanct to the amorphous general good

service considering constraints. The court's decision is also criticized for

not go to the extent of verifying whether it was truly unable to offer the
societal and physical activities. Include the way a person's health affects their ability to carry out normal further indicated that health-related quality of life extends this definition to their life and relates to their ability to take pleasure in everyday activities. I overall sense of well-being which includes that individual's satisfaction with (2007: 72), I defined quality of life as a conceptual that relates to a person's and help ease inevitable death. This is important and following Brown need to recognize the continued care may improve the quality of their lives, outlines that physicians do not need to disengage from their care but rather, whilst recognizing this I made a point, quoting the studies made on

burdens in addition to the financial one.

exhausted state funds during their care and cause psychological and emotional
fullfill of care of patients defined as "outliers". These are patients who
in looking at medical fullfill I identified that there are studies that looked at

involved in such decision-making processes, but they should be included.

be made in a paternalistic way by physicians. Families are not normally
the decisions in terminal care are difficult to make but when taken tend to
and intuitively so seen in renal dialysis care and critical care units. Thus end of
Hospitals make decisions to maximize utility or resources based on trade
The inconveniences involved with renal dialysis.

Comorbid conditions like vasculopathies remain. Also, there are many other enhancing this, the patient's uremic symptoms may be relieved but their other arguments against quality of life indicate that renal dialysis does not spend more time in hospital than those without the disease, unlike for those with (ERFR) than those without showing that such patients young on renal dialysis. There are more readmissions to intensive care stage renal failure (ESRF) show that the aged tend to do far worse than the stages renal failure (ESRF) show that the aged tend to do far worse than the young years. Some studies using this theory tend to be pleased towards the young years. Some studies using this theory tend to be pleased towards the young patients' wishes for a type of treatment envisaged it will improve their have a pleasant death too. Simply put, physicians need to respect the unbearable and that physicians have a role in assisting patients to greedily the remaining time of their life years. They value life until it becomes further it becomes clear that quality of life is a subjective feeling for patients.
healthcare, particularly targeting poor people living in remote areas.

The purpose of this project is to research cost effectiveness and efficiency of Telemedicine in expanding access to quality health care. The results have since been strengthened as we note such a facility being opened at Mackenzie Hospital, Polokwane, where the former minister of Health care, currently in place should be strengthened as we note such a facility being Public-private partnerships to increase access to renal health care that are renewable.

Population. Perhaps this could be a review of the protocols for dialysis in the private sector will now be available to the indigenous who face renal disease will hopefully benefit as more centres offering renal and regulations. This is what NHI will achieve in our country. More patients with renal disease will benefit and value-based competition will produce dramatic improvements in efficiency and quality. Porter and Leduc (2006: 225) state that universal coverage and value-based care should be able to achieve universal coverage for all.

The main recommendations from the National Perspective Centre on giving effect to Section 27 (1) and Section 27 (2) with the advent of a National

6.2 Recommendations
assessment made of the patient's requirement of quality of life if they require be covered under NHI.

As the care as they will not be required to pay for the service. This could conclude treatment or should stay in the private facility even if they cannot developed to determine who should be transferred to the public hospitals to should be dumped onto the public service. Some form of criteria should be presented to a private facility, and once having exhausted their funds, should be mechanisms undertaken to determine whether a patient who first sector to dump patients on the public service should be reviewed. The tendency for the private particular, but overall health care generally. The tendency for the private

The other point looks at the role of the private sector in renal care in

Spending the allocated resources appropriately.

resources based on medical criteria to see if the departments are indeed

This way the courts should interrogate the defense on allocation of scarce

on medical issues brought before it as no profession should be sacrosanct.

matters before it, the Constitutional Court should be able to decide a matter

just like they are able to pronounce on political and socio-economic medical decisions without abrogating those to the medical profession only.

As suggested by Piereese, the courts should begin to make rulings on
Although over 12 years old, this case still has relevance to the people of South Africa. Reflecting back on it gives us an opportunity to reconsider issues such as the fair distribution of medical resources, the role of the public sector in health care, decisions concerning who decides if a patient is in final stage (end-stage), and the respect for a patient's view on the treatment he desires (and why). Some pharmaceutical companies may be required to look after the public service clinics.

Country under the auspices of private industry e.g. some pharmaceuticals produced in the country. The number of renal care units existing in the country. The number of renal care units opening the medical care program, to look after renal care program, should be given to establish a renal care program. Basically, as it was the case with the PMCT programmer and the HIV/AIDS vasculopathies remain.

We read that at times the uremic symptoms may be improved but other care is not as in all cases where the quality of life may be enhanced as renal disease should. However, if renal disease is not being properly handled, the protocol generally adopted by renal physicians should be evaluated to determine if they would be able to improve their renal dialysis or a similar treatment. Patients in Mr. Soodamoney's case.
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highlight these and other ethical issues in the legal context of the case of
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Please note that the indicator 'X' stands for those hospitals which have renal

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<th>Name of the Hospital</th>
<th>Hemodialysis</th>
<th>Peritoneal</th>
<th>Dialysis</th>
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<tr>
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<td>no</td>
<td>no</td>
</tr>
<tr>
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<td>no</td>
<td>no</td>
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</tr>
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<tr>
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<tr>
<td>Christia Moxeka</td>
<td>no</td>
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<td>x</td>
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<td>x</td>
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</tr>
<tr>
<td>Baghdad</td>
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Guanteng Public Hospitals That Provide Renal Dialysis Services

ANNEXURE B