



Morelli, Miriam v. Ministerio de Salud de la Nación et al

C. 432. XLV. COM

Country: Argentina

Region: Americas

Year: 2009

Court: Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

Health Topics: Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Hospitals, Medicines

Human Rights: Right to health, Right to life

Facts

The patient filed a case against the National Ministry of Health and the health insurance company "Solidaridad Obra Social Bancaria Argentina" to obtain access to medication for an oncology treatment.

The First Instance Court [Juzgado de Garantías N° 3 de Lomas de Zamora, Provincia de Buenos Aires] dismissed the claim. Then the plaintiff brought the case to the Contentious-Administrative Court of Appeal of La Plata [Cámara de Apelaciones en lo Contencioso Administrativo de La Plata] but it dismissed the appeal based on incompetence. The plaintiff brought the case to the Federal Contentious-Administrative Court [Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal (Sala III)] who also declared incompetence because the Tribunal that should decide was the local one, not federal. The plaintiff brought the case for the Supreme Court to decide which court was competent.

Decision and Reasoning

The Supreme Court of Justice adhered to the opinion of the Attorney General which found that the Supreme Court was competent to decide the competence of the case based on art. 24 inc. 71 of law 1285/58. The attorney General found that the competent tribunal was the Contentious-Administrative Courts of Appeal of La Plata [Cámara de Apelaciones en lo Contencioso Administrativo de La Plata] because there was a previous judgement in the local jurisdiction and the plaintiff agreed to the jurisdiction by filing the case with the Provincial Courts of Appeal. Therefore the lawsuit should continue in provincial jurisdiction.

Decision Excerpts