



Confederación Indígena del Neuquén v. Provincia del Neuquén

C. 1324. XLVII.

Country: Argentina

Region: Americas

Year: 2013

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

Human Rights: Freedom of association, Right to participation, Rights to the benefits of culture

Facts

The plaintiff brought the case to the Superior Court of Province of Neuquén to declare the unconstitutionality of the executive provincial decree 1184/2002 that regulates the National Law of Indigenous Policy 23.302 [Ley Nacional de Política Indígena 23.302] because it violated Articles of the National Constitution, International Laws, Federal Legislation and Provincial Constitution (Articles 7, 13, 134.3 y 18 y 170.a). By legislating about the indigenous policies it was violating article 75.17 of the National Constitution that determines that indigenous policies should be legislated by federal legislation of the subject. The decree imposed a greater burden in demonstrating the indigenous group's "self determination" by requiring them to be registered in a national registry.

The Supreme Court of Province of Neuquén dismissed the appeal. The plaintiff filed an extraordinary appeal to the Supreme Court of Justice which was dismissed and then filed a complain which was admitted and revoked the provincials supreme court's judgement and order it to decide in accordance with its judgement. The Supreme Court of Province of Neuquén partially admitted the suit declaring the unconstitutionality of Art 3.b and 3.d of the decree 1184/2002. The plaintiff filed another extraordinary appeal with Supreme Court of Justice.

Decision and Reasoning

The Supreme Court held that Article 75.17 of the National Constitution allowed the province to legislate on indigenous policies as long as their regulation didn't imply a contradiction or a detriment of the federal standards in the subject. Therefore the provincial decree 1184/02 should respect the federal standards that are the National Law 23.302, the regulatory decree 155/89 and Indigenous and Tribal Peoples Convention 1989 (No. 169) of the International Labor Organization. The provincial decree 1184/02 replaced the standard of self determination that the National Law and the Convention 169 by the opposite principle of identification. There are two criteria for the self determination of indigenous people: the objective criteria that includes two elements, the historic element that is that those indigenous people actually are the descendants of groups that are previous the creation of the State and the actual element that is that the indigenous group maintain in a certain way their traditions and political institutions and the other criteria is the subjective one, that is the one from the national law and the international convention that is that the group must have their own self awareness of their own indigenous identity. The decree establishes also that the indigenous groups should comply with other requirements such as the group have to be composed at least of 10 families whereas the federal regulatory decree requires that the group should be composed at least of 3 families. at the same time, the provincial decree 1184/02 was not consulted with the indigenous group, a requirement present in the federal law and the Convention 169.

The Supreme Court held that the provincial Decree 1184/02 was unconstitutional because it didn't respected the federal standards in the subject so it admitted the extraordinary appeal and revoked the previous judgement.

Decision Excerpts