



González, Raúl Osvaldo v. Programa Incluir Salud (PROFE) – Ministerio de Salud de la Provincia de Buenos Aires C. 53 .XLIX.

Country: Argentina

Region: Americas

Year: 2013

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

Human Rights: Right to health, Right to life

Facts

The plaintiff filed a guarantee of protection of individual constitutional rights (amparo protection) against the Ministry of Health of Buenos Aires for it to provide a cardioverter defibrillator and cardiac resynchronisation that was prescribed for his disease (dilated cardiomyopathy), and at the same time filed for a precautionary measure so the cardioverter defibrillator and cardiac resynchronisation was handed immediately.

The First Instance Criminal Court of Mercedes [Tribunal en lo Criminal N° 2 de Mercedes] admitted the precautionary measure but held that it lacked competence to solve the case because the Ministry of Health of the Province of Buenos Aires was an State organ and because of its character, it corresponded to the Federal jurisdiction to solve the case.

The Federal First Instance Civil and Commercial Court of San Martín [Juzgado Federal en lo Civil, Comercial y Contencioso Administrativo N° 2 de San Martín] held that it lacked competence because the executive organ of the Federal Program of Health was the Ministry of Health of Buenos Aires, a local organ. The case was brought to the Supreme Court of justice to decide the court which was competent.

Decision and Reasoning

The Supreme Court of Justice held that as the Ministry of Health of Buenos Aires complied with the precautionary measure dictated by the provincial court, the case became abstract.

However the Supreme Court stated that the competent court was the First Instance Criminal Court of Mercedes [Tribunal en lo Criminal N° 2 de Mercedes] because even though the Federal Program of Health was created by the National Ministry of Health, it celebrated agreements with the provinces, in this case with the Ministry of Health of the Province of Buenos Aires, so the program is under provincial execution and jurisdiction, by provincial decree 1532/10. This criteria was adopted also in the Supreme Court's precedent "González Fabiana L.v. PROFE Salud".

Decision Excerpts