



## C., M. E. et al. v. Estado Nacional &#8211; INCUCAI

C. 526. XLVII.

**Country:** Argentina

**Region:** Americas

**Year:** 2014

**Court:** Supreme Court of Justice [Corte Suprema de Justicia de la Naci3n Argentina]

**Health Topics:** Public safety

**Human Rights:** Right to health, Right to liberty and security of person, Right to life, Right to privacy, Right to property

### Facts

The plaintiff filed a&nbsp;guarantee of protection of individual constitutional rights (amparo protection) against the National State [INCUCAI] that challenged the INCUCAI resolution that prohibits the autologous use of the hematopoietic stem cell originated in placental blood and umbilical cord obtained from the birth of their children.&nbsp;The co-plaintiff,&nbsp;Matercell S.A., a private cell bank where the mother cells were stored, processed and cryopresevated, challenged the INCUCAI's resolution that established that the banks should be non-profit organizations authorized by the INCUCAI because they did not have the competence to decide upon that subject.

The Federal First Instance Contentious Administrative Court [Juzgado Nacional de Primera Instancia en lo Contencioso Administrativo Federal nÂ° 7] upheld the amparo protection and declared the unconstitutionality of the INCUCAI resolution 69/09 that obliged them to be donors of the mother cells because the INCUCAI exceeded its competences. In respect to the co-plaintiff, the Federal First Instance Contentious Administrative Court dismissed the complain because the resolution didn't prohibit the parents to store the material in banks, it only said that they should store their material in establishments approved by the INCUCAI.

The judgement was challenged by the National State and the co-plaintiff with the Federal&nbsp;Contentious Administrative Courts of Appeal.&nbsp;The Federal Contentious Administrative Courts of Appeal confirmed the First Instance judgement.&nbsp;The National State and the co-plaintiff&nbsp; filed an extraordinary appeal with Supreme Court of Justice.

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### Decision and Reasoning

The Supreme Court of Justice held that the INCUCAI according to LawÂ 24 193 is only competent to propose a legal norm of its technical specialty, but it cannot legislate. The Ministry of Health established that the INCUCAI could regulate norms of mother cells when they were compatible to LawÂ 24 193 but that didn't mean that the competence to legislate was delegated to the INCUCAI. The Supreme Court of Justice confirmed the previous judgement.

The Supreme Court of Justice admitted the extraordinary appeal of the co-plaintiff, Matercell S.A..The Supreme Court held that the competent authority to regulate the establishment of nonprofit banks to deal with the stem cells was the National Ministry of Health. The Law of Blood considered that the storage ofÂ hematopoietic stem cell should be regulated by the Ministry of Health, the authorization and the price, because they weren't considered as donation. The Supreme Court of Justice revoked the previous judgement that denied the co-plaintiff's claim, declaring the unconstitutionality of the resolution 69/09.

### Decision Excerpts