



Asociación Civil para la Defensa en el Ámbito Federal e Internacional de Derechos v. Instituto Nacional de Servicios Sociales para Jubilados y Pensionados

CSJ 000721/2007(43-A)/CS1

Country: Argentina

Region: Americas

Year: 2015

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

Health Topics: Aging, Child and adolescent health, Disabilities, Health care and health services, Health systems and financing

Human Rights: Right to development, Right to health, Right to life, Right to social security

Facts

The plaintiff, a Civil Association for the Defense of Rights in the Federal and International Level [Asociación Civil para la Defensa en el Ámbito Federal e Internacional de Derechos - Asociación DE.FE.IN.DER.], filed a guarantee of protection of individual constitutional rights (amparo protection) against the National Institution for Social Security Services for Retiree [Instituto Nacional de Servicios Sociales para Jubilados y Pensionados (INSSJP)] so that they recognize the right to the comprehensive coverage of benefits for disabled people that are beneficiaries of non contributory pensions according to laws 22 431 and 24 901.

The Federal First Instance Civil and Commercial Court [Juzgado Nacional de Primera Instancia en lo Civil y Comercial Federal N° 11] dismissed in limine the complain for absence of standing because the Association was defending individual rights, not collective ones. The plaintiff appealed to the Federal Civil and Commercial Court of Appeal [Cámara Nacional de Apelaciones en lo Civil y Comercial Federal] which confirmed the first instance judgement. The plaintiff filed an extraordinary appeal with the Supreme Court of Justice which was dismissed and then the plaintiff filed a complain with the Supreme Court of Justice.

Decision and Reasoning

The Supreme Court of Justice held that even though there is not a legal norm that regulated in which way an association should proceed to a class action of article 43 of the National Constitution, the DE.FE.IN.DER Association should fulfill two requirements to have standing in a class action: the verification of a factual common cause, a procedure claim focused in the collective aspects of the effects of the issue, and the confirmation that an individual interest would not justify an individual claim. It has also been stated that the complain will proceed when there are individual rights and there is a strong State interest in their protection because either of its social transcendence or the characteristics of the vulnerable group. According to the Supreme Court the first two requirements took place, that is the common cause that is the right to health and the claim have effects on a collective group. Even if this is not considered to be the case, they can also be defending an individual interest where there is a strong State interest in the protection of this group composed by children, woman, disabled persons and the elderly. For those reasons and to guarantee the right to effective protection of a vulnerable group, not only because of their disability but also because of their delicate socioeconomic situation, the Supreme Court held that the Association should have standing to initiate the class action; the complaint was accepted and the previous judgement was revoked.

Decision Excerpts

"La protección de los derechos que invocan hacen a la satisfacción de necesidades básicas y elementales a cargo del Estado. Estos aspectos cobran preeminencia por sobre los intereses individuales de cada afectado, al tiempo que ponen en evidencia, por su trascendencia social y las particulares características del sector involucrado, la presencia de un fuerte interés estatal para su protección, entendido como el de la sociedad en su conjunto." Paragraph 9

"The protection of the rights invoked by the plaintiff do to the fulfillment of basic needs in charge of the State. These aspects are above the individual interests of each affected, as they evidence, because of their social

transcendence and particular characteristics of the group involved, the presence of a strong State interest for their protection, understood as the interest of the society as a whole." Paragraph 9

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