



Comunidad Indígena Toba La Primavera & Navogoh v. Provincia de Formosa

C. 528. XLVII.

Country: Argentina

Region: Americas

Year: 2015

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

Human Rights: Right to a clean environment, Right to privacy

Facts

The plaintiff, the leader of the Toba indigenous community - Félix Díaz - filed a suit with the Supreme Court of Justice (by original jurisdiction) against the province of Formosa for breaching a precautionary measure and to order the cessation of the construction of an Hospital. The precautionary measure prohibited the Province of Formosa to build a University in a land that belonged to the indigenous group because the construction authorization obtained by the Province of Formosa to build in the indigenous land was obtained by an irregular procedure because the Toba community was not consulted. The plaintiff held that this was an analogous case where the Province of Formosa did an irregular procedure to obtain a construction authorization because it didn't count with the consent of the Toba community to build the Hospital in a land that corresponded to the Toba community so the Court should order the Province of Formosa to stop the construction of the Hospital.

Decision and Reasoning

The Supreme Court of Justice held that the scope of the precautionary measure that prohibited the Province of Formosa to build the University could not be extended to a prohibition to the Province of Formosa to build a hospital in another land that belonged to the Toba community. The Province of Formosa proved that the Toba community was consulted and handed folders to the indigenous group to show the constructions and the benefits of it. At the same time, the plaintiff was part of the meetings and only him and a minority of the indigenous group opposed the construction of the Hospital. The plaintiff did not evidence how the process was illegal and the community was consulted throughout the whole procedure.

For those reasons, the Supreme Court of Justice dismissed the appeal that requested the suspension of the hospital construction and ordered the Province of Formosa that throughout the construction it informed the community how the health center would provide its services.

Decision Excerpts