



Miguel Ignacio Fredes Gonzalez and Ana Andrea Tuczek Fries v. Chile

Report No. 14/09, Petition 406-03, March 19, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009

Country: Chile

Region: Americas

Year: 2009

Court: Inter-American Commission on Human Rights Inter-American Commission on Human Rights

Health Topics: Diet and nutrition, Environmental health, Health information, Public safety

Human Rights: Freedom of expression, Right of access to information, Right to a clean environment, Right to due process/fair trial, Right to participation

Facts

Miguel Ignacia Fredes Gonzalez and Ana Andrea Tuczek Fries, among others, filed an information request with the Agriculture and Livestock Service (the "SAG"), a department of the State's Ministry of Agriculture requesting information and documents related to transgenic crops and their location. The national director of the SAG failed to answer the request within the time period required by law.

An amparo action [a writ for protection of a fundamental right] was filed in Santiago's 26th Civil Court on behalf of the alleged victims against the SAG, invoking their right of access to public information. The court ruled in favor of the alleged victims based on Article 13 of the American Convention on Human Rights (the "Convention"), which guaranteed the right to receive information, and ordered the SAG to provide the requested information within ten days. The SAG and the Chilean National Seed Producers challenged this ruling on appeal with the Santiago Court of Appeals. The appellate court reversed the lower court's ruling.

Subsequently, the Southern Environmental Law Center, the Human Rights and Public Interest Action Clinic, and the Chilean Users and Consumers Organization (the petitioners) filed a petition for admissibility with the Inter-American Commission on Human Rights, alleging that Chile violated the human rights of Miguel Ignacio Fredes Gonzalez and Ana Andrea Tuczek Fries and of all Chilean citizens by the unlawful restrictions it placed on the right to seek and receive information on biosafety, the release of living modified organisms and genetically modified organisms, and the right to participate in public affairs on those subjects. The petitioners alleged that Chile violated their rights under Articles 13 (freedom of thought and expression), 23(1) (right to participate in government), 25 (judicial protection) and 30 (scope of restrictions) of the Convention.

Chile denied any rights violation and alleged that the petitioners failed to exhaust their remedies under domestic law

Decision and Reasoning

The Commission declared the case admissible with respect to the alleged violation of articles 13 and 8(1) (guaranteeing the right to a fair hearing within a reasonable amount of time). With respect to article 13, the Commission found that the parties set forth sufficient arguments to raise a legal question as to whether a violation of the rights protected by article 13 had occurred. With respect to article 8(1), the Commission applied the principle of *jura novit curia* (the court knows the law) and found that it would determine whether the absence of a justified written response from the Chile government constituted a violation of the State's obligations under article 8(1).

The Commission found the case inadmissible with respect to the alleged violations of Articles 23(1) and 25 because the petitioners had failed to substantiate these claims of alleged violations.

Decision Excerpts

"In the Commission's opinion, the arguments made by the petitioners and the State regarding the alleged violation of the right of access to information pose a legal question that could tend to establish a violation of the rights protected by Article 13 of the American Convention, in relation to articles 1(1) and 2 thereof. Therefore, in its analysis of the merits, the Commission will decide whether the failure to respond to the

request for information that the alleged victims filed, the December 4, 2002 ruling of the Santiago Court of Appeals and the laws used as the grounds for that decision, are compatible with the obligations established in Article 13 of the American Convention and the duty to ensure the Convention-protected rights and to adopt domestic legislative measures, undertaken in articles 1(1) and 2 of that instrument. In addition, the IACHR will analyze if the restrictions imposed to the right to access to information in the present case observed the obligations under Article 13(2) in relation to Article 30 of the American Convention.â€• Paragraph 55.

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