



## DÃ-az, BrÃ-gida v. Provincia de Buenos Aires et al.

D.2031.XXXVIII

**Country:** Argentina

**Region:** Americas

**Year:** 2003

**Court:** Supreme Court of Justice [Corte Suprema de Justicia de la NaciÃ³n]

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Poverty

**Human Rights:** Right to health

### Facts

Brigida DÃ-az was told by her doctors that she urgently needed surgical intervention to replace her pacemaker. Her original pacemaker had been covered by a social welfare scheme, and she had used these funds to replace it once. However, by the time she was told that her pacemaker needed to be replaced a second time, she was no longer a beneficiary of this scheme, and did not have the personal means to pay for the replacement. She contacted the Ministry of Health several times requesting the replacement of her pacemaker, but did not receive a response.

DÃ-az consequently filed an action of amparo against the Federal State and the Province of Buenos Aires demanding that the Respondents finance the surgery and all materials required for it. As a subsidiary remedy, she requested that the judiciary issue a provisional measure ordering both governments to locate the resources necessary to make the operation possible. The Claimant based her action on arts. 43, 75 inc. 22 of the National Constitution, art. 15, 12, 28, 36, inc. 8 of the Constitution of the Province of Buenos Aires, and Act 16.986. The Court ruled on the provisional measure in 2003.

### Decision and Reasoning

The Court issued the requested provisional measure in part. It considered that for the purposes of the provisional measure, it was not necessary to prove the existence of the right, only that the right plausibly existed.

This requirement was satisfied in the present case. However, the terms of the Claimant's demand and her supporting documentation only included claims against the provincial government for a pacemaker, and not the claims against the Federal Government or for materials related to the surgery. The Court could therefore grant only part of the interim measure on this prima facie examination.

Accordingly, the Court ordered that, within five days:

both Respondents were to submit a detailed report of the circumstances to the Court, and the Province of Buenos Aires was to provide the Claimant with a pacemaker.

### Decision Excerpts

2Ãº) Que en atenciÃ³n a la solicitud precautoria requerida en subsidio, cabe recordar que esta Corte ha seÃ±alado en reiteradas ocasiones que, como resulta de la naturaleza de las medidas cautelares, ellas no exigen el examen de la certeza sobre la existencia del derecho pretendido, sino sÃ³lo de su verosimilitud. Es mÃ¡s, el juicio de verdad en esta material se encuentra en oposiciÃ³n a la finalidad del instituto cautelar, que no es otra que atender a aquello que no excede el marco de lo hipotÃ©tico, dentro del cual, asimismo, agota su virtualidad.

(...)Que, en efecto, cabe destacar que de los propios tÃ©rminos de la demanda y de la documentaciÃ³n acompaÃ±ada se desprende que la actora Ãºnicamente efectuÃ³ el pedido de un marcapasos, y sÃ³lo ante el Ministerio de Salud de la Provincia de Buenos Aires, circunstancia que prima facie habilita exclusivamente la pretensiÃ³n cautelar respecto del Estado provincial. Por ello, se decide: 1) Requerir al Estado Nacional y a la Provincia de Buenos Aires el informe circunstanciado que prevÃ© el art. 8 de la ley 16.986, que deberÃ¡ ser

contestado en el plazo de cinco días. (€). 2) Hacer lugar a la medida cautelar solicitada en subsidio y, en consecuencia, ordenar a la codemandada Provincia de Buenos Aires que provea a la actora, dentro del plazo de cinco días, el marcapasos correspondiente, bajo apercibimiento de astreintes.

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