



## Menores Comunidad Paynemil s/ Acción de amparo

Case File No. 311-CA-1997

**Country:** Argentina

**Region:** Americas

**Year:** 1997

**Court:** Civil Court of Appeals of Neuquén [Cámara de Apelaciones en lo Civil de la Provincia de Neuquén]

**Health Topics:** Child and adolescent health, Environmental health, Water, sanitation and hygiene

**Human Rights:** Right to a clean environment, Right to health, Right to water and sanitation

### Facts

The public defender brought a guarantee of protection of individual constitutional rights (amparo protection) to protect the health of children in the indigenous community of Paynemil whose drinking water supply had been contaminated with lead and mercury by an oil company's operations. The State was alleged to have arbitrarily failed to protect the right to health of the children. Petitioners asked the Court to order the State to provide the necessary potable water for the victims, to adopt measures for the diagnosis and treatment of the affected children, and to adopt measures to prevent ground and water contamination.

The lower court found for the claimants, and ordered the State to take the necessary remediation measures. The State appealed, arguing that the Public Defender did not have standing to bring the case, that the case had not been timely presented, and that the protection action was not the adequate procedural recourse.

### Decision and Reasoning

The Court upheld the protection action in favor of the children. Among other considerations, it held that the pollution of the children's water supply that belongs to Comunidad Paynemil affected their right to health. Moreover, the provincial government had failed to adopt appropriate and timely actions to remedy the situation, an omission that was unjustified and contrary to Article 43 of the National Constitution. The Court ordered the State to (1) provide each person 250 liters of potable water daily within two days of the court order; (2) ensure the provision of potable water to those affected within 45 days of the court order; (3) determine damages resulting from the contamination of heavy metals in the community and provide the necessary treatment; and (4) take the necessary steps to ensure the protection of the environment from contamination.

### Decision Excerpts

"[...] lo que ocurre es un grave caso de contaminación en las personas, en el caso los menores que integran la comunidad Paynemil, y ello configure una palmaria violación a la salud que constituye no solo un derecho constitucional sino también natural y básico para la persona." Pages 2 - 3.

"[...] what we have here is a serious situation of persons having been poisoned, specifically minor children who are members of the community in Paynemil. This is shocking violation of the not only constitutional, but also basic human rights of these persons." Pages 2 - 3.

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"[...] En tales condiciones y teniendo en cuenta la gravedad y consecuencias que trae la contaminación del agua, la demora en proveer los recursos y adoptar las políticas necesarias a fin de revertir la situación y toda vez que se encuentra afectado un derecho de clara raigambre constitucional, me llevan al convencimiento que se ha producido una omisión por parte de la demandada que reviste la característica de arbitraria en los términos del art. 43 de la Constitución Nacional." Page 4.

"[...] keeping in mind the seriousness and the consequences of a contaminated water supply, the delay in providing the needed resources and adopting the necessary measures in order to remedy the situation has resulted in a continuing violation of a right that is clearly protected under the Constitution. I am led to the conclusion that there has been an omission on the part of the respondent that can be deemed arbitrary under the terms of Art. 43 of the National Constitution." Page 4.

