



## GÃ³mez Arambula, Carlos Humberto v. Instituto Nacional de Vigilancia de Medicamentos y Alimentos INVIMA

Case File No. 11001-03-24-000-2002-00251-01

**Country:** Colombia

**Region:** Americas

**Year:** 2008

**Court:** Higher Court on Administrative Law, Chamber of Administrative Litigation

**Health Topics:** Health care and health services, Medicines, Sexual and reproductive health

**Human Rights:** Right to life

### Facts

A Colombian citizen challenged before the Supreme Administrative Court the constitutionality of an administrative decision that allowed the AsociaciÃ³n Probienestar de la Familia Colombiana PROFAMILIA to import and distribute the emergency contraception pill Postinor 2. The petitioner argued that the drug suppressed life in its initial stages, acting as an abortive and therefore violating the right to life protected by the Colombian Constitution and violating Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, as approved by Law 74 in 1968, Article 4 of the American Convention on Human Rights, or the Pact of San Jose, as approved by Law 16 in 1972, the Preamble to the Convention on the Rights of the Child, as approved by Law 12 in 1991, Article 91 of the Civil Code, and Article 3 of Decree 2737 of 1989, and the Code regarding Children.

### Decision and Reasoning

The Council affirmed the constitutionality of the registry that allows the distribution of Postinor 2 in Colombia. Supporting its decision on arguments of the World Health Organization, among others, the Court determined that the Emergency Contraception pill has no abortive consequences and its effects happened before the conception took place. Thus, no abortion was produced by the POSTINOR2 pill.

### Decision Excerpts

â€œAsÃ­ las cosas, el aborto tiene como condiciÃ³n necesaria la concepciÃ³n o estado de embarazo de la mujer, y como quiera el POSTINOR 2 no actÃºa despuÃ©s de la concepciÃ³n o embarazo, sino antes de que Ã©ste se presente, no es posible que sea abortivo, e incluso, no estÃ¡ probado que actÃºe siquiera sobre el embriÃ³n u Ã³vulo fecundado.â€• Page 20.

â€œThis being the case, for an abortion to occur, it is a necessary condition that conception has taken place, or that the woman is pregnant, and given that POSTINOR 2 does not have any effect after conception or pregnancy, but acts prior to the occurrence of either condition, it is not possible that it be considered an abortion drug. It is not even proven that it has any effect whatsoever on the embryo or fertilized egg.â€•

â€œDe lo contrario, ese derecho a la vida habrÃ­a que considerarlo amenazado o vulnerado bajo la forma de los elementos que confluyen a la reproducciÃ³n humana, como son los gametos masculino y femenino, antes de su uniÃ³n o fusiÃ³n, ya que en sÃ­ mismos son portadores de vida, siendo que para ese momento el derecho no reconoce sujeto de derecho alguno. Incluso, en caso de que el Ã³vulo llegue a ser fecundado y no implantado, podrÃ­a constituir un problema con interÃ©s en los planos religiosos, Ã©ticos o morales, pero en esos Ã­mbitos el problema escapa a la competencia de esta jurisdicciÃ³n al no tener Ã³n relevancia en el derecho supranacional ni en el derecho internacional colombiano. Pages 20-21.

â€œA contrary finding would suggest that the right to life would have to be considered to be threatened or violated even in respect of any risk to the elements that act together to create human reproduction, such as the masculine and feminine gametes, before their union or fusion, given that they are in and of themselves procreative elements, but at that point the law does not recognize any subject for the right to attach to. Indeed, in the case that the egg were to be fertilized and not implanted, this could constitute a problem for religious, ethical or moral interests, but in those areas the problem is beyond the reach of this jurisdiction, as there is no relevant law to address it, either at international law or within the Colombian domestic legal

system.â€•

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