



## Vega Atencio, Damas v. Ministry of Justice

Corte Suprema [Supreme Court], Sala Constitucional, 12 de diciembre del 2006, Res. No 2006017867, Expediente: 06-011793-0007-CO (2006)(Costa Rica).

**Country:** Costa Rica

**Region:** Americas

**Year:** 2006

**Court:** Supreme Court of Costa Rica

**Health Topics:** Chronic and noncommunicable diseases, Controlled substances, Tobacco

**Human Rights:** Right to a clean environment, Right to health, Right to life

### Facts

The plaintiff, a Costa Rican national, presented an appeal of protection against the Ministry of Justice claiming his right to health had been violated. The plaintiff was deprived from liberty in a local prison which he claimed was overpopulated and in close contact with persons with chronic diseases. The Ministry of Justice argued that it adheres to the report presented by the correctional institution where it is stated that no fundamental rights have been violated and that all possible efforts have been undertaken to safeguard all rights especially the right to health of the inmates. The Director of the Center also argued that there is no overcrowding, that all inmates have their own beds in wards with natural and artificial lighting, proper showers and bathrooms and other necessary services. He further informed that although it was true that there were patients with chronic diseases receiving special medical care but that chronic did not mean infectious and contagious and that at no point did they affect the right to health of any other inmates.

The plaintiff further claimed that non-smoking wards needed to be created and that his right to life was being violated because he could not be in a healthy environment, free from smoke. He asserted that his ward mates were active smokers, damaging his health directly. The Ministry of Health answered this claim, stating that at the Center it was suggested to inmates to smoke in bathrooms or open areas in order to limit the impact to non-smokers. Because of the amount of open spaces, they argue all inmates could have the liberty to smoke without affecting the rest. The Center's Director added to this, stating that campaigns to sensitize inmates to the dangers of tobacco and reduce smoking had been put in place.

### Decision and Reasoning

The Court observed Article 3 of the Regulatory Law for Smoking, which states places that need to be completely smoke free, excluding from this prohibition all inmates from the National Prison System. Because there was an expressed authorization and no legal prohibition, the plaintiff's cellmates and other inmates could smoke throughout the Center.

Further, the Court found that the right to health is a fundamental right of higher hierarchy and that the penitentiary system should take the necessary measures in order to protect this right. The Court held that the Center should relocate inmates, such as the plaintiff who do not want to be exposed to smoke, to areas where the impact will be reduced.

The Court held that special designated non-smoking places should be created in order to protect all inmates and their right to liberty as well as the right to health. The Court denied the plaintiff's appeal for protection but recommended to the authorities ways to further protect the right to health.

### Decision Excerpts

"IV.- Sobre el caso concreto. En el caso concreto el recurrente "privado de libertad", se encuentra inconforme con el hecho de que sus compañeros de cuarto puedan fumar, pues considera que esto lesiona la salud de las personas que deciden no hacerlo. En cuanto a la prohibición o no de fumar, es necesario citar el artículo tercero de la Ley Reguladora del Fumado que indica: "Se excluye de esta prohibición a los reclusos del sistema Penitenciario Nacional"; asimismo el artículo octavo inciso e) del Reglamento a la Ley Reguladora del Fumado señala: "Los reclusos del Sistema Penitenciario Nacional, se les permite fumar". Así las cosas, queda claro en el presente caso, que no existe ninguna prohibición de carácter legal que impida a los privados de libertad fumar dentro del Centro Penitenciario, siendo que existe una autorización

expresa que les permite hacerlo, razón por la cual conforme lo exige el principio de reserva de ley, no se puede variar este criterio, si no es con una ley posterior que lo prohíba.

V.- De esta manera, lo procedente es declarar sin lugar el recurso, habida cuenta que amparados en la Ley Reguladora del Fumado y su Reglamento, los privados de libertad tienen autorización para fumar dentro de las instalaciones del sistema penitenciario. Sin embargo, deberán tomar nota las autoridades de lo dicho en el considerando cuarto de esta resolución, a efecto de proteger el derecho a la salud de los no fumadores."

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)