



Balderas Woolrich v. Mexico

D. 587. XLIII

Country: Mexico

Region: Americas

Year: 2011

Court: Supreme Court

Health Topics: Controlled substances, Tobacco

Human Rights: Freedom from discrimination, Right of access to information, Right to health, Right to life

Facts

The plaintiff, a Mexican national, presented an appeal for legal protection against Mexico, arguing that modifications of the General Health Law (Ley General de Salud), which controlled and regulated tobacco advertising, constituted a violation of the constitutional right to health, as enshrined in Article 4 of the Constitution and falling within the scope of Article 26 (Progressive Development) of the American Convention on Human Rights.

Further, the plaintiff claimed that the current tobacco control law "General Law for Tobacco Control" (Ley General para el Control del Tabaco) does not establish sufficient protections for the right to health and does not comply with the minimum levels of protection required by the Framework Convention on Tobacco Control. The plaintiff alleged violations of the right to access information and the right to consumer protection regarding the consequences of tobacco consumption and its addictive nature. Therefore, the plaintiff argued that the only way to avoid misinformation was to completely ban tobacco advertising.

Finally, the plaintiff argued that the impugned provisions violated Article 1 (freedom from discrimination) of the Constitution insofar as it established a distinction between children and adults and excluded workers from the tobacco industry for whom advertisement was not prohibited.

Decision and Reasoning

The Court held that the claims did affect the legal interest of the plaintiff and recognized the right to health as a fundamental principle. The Court observed that Article 4 of the Constitution establishes the State's obligation to provide the necessary institutions, infrastructure, and services essential to protect the health of individuals and of the community. According to the Court, this includes protection from misleading and inappropriate advertisements about tobacco use.

Further, the Court found that the General Law of Tobacco Control did not adequately and sufficiently protect the right to health because it authorized advertisements in magazines for adults, as well as electronic advertisements and advertisements in establishments accessible exclusively to adults.

The Court held that the exceptions for advertisements directed at workers from the tobacco industry and at adults were discriminatory because it violated human dignity and did not pursue a valid and reasonable objective.

However, the Court dismissed the case on procedural grounds.

Decision Excerpts

"Entonces, considera que, a contrario sensu, las acciones tendientes a desproteger la salud de las personas constituyen un incumplimiento del derecho a la salud. En todo caso, considera que si bien es cierto que el Estado no puede obligar a los individuos a no realizar una acción perjudicial "como lo es el consumo del tabaco" Este debe ofrecer a todas las personas los servicios e infraestructura que los proteja de la publicidad engañosa o inapropiada que se divulgue en los medios de información acerca del tabaco." page 8.

"El derecho a la salud constituye un principio fundamental de la Constitución. La misma no defina de manera concreta y específica cómo debe protegerse. Sin embargo, las obligaciones concretas se desprenden del resto de las normas del sistema "incluyendo tratados internacionales". page 11.

"El quejoso subraya la obligación de satisfacción progresiva contenida en el artículo 26 del Pacto de San José en relación con las normas económicas, sociales y sobre educación, ciencia y cultura, lo cual implica que el Estado no puede adoptar medidas normativas o fácticas que perjudiquen o que obstaculicen su efectiva aplicación. La obligación de progresividad, se estima, se satisface de distintas maneras de acuerdo con el derecho de que se trate, pero en principio un Estado tiene la obligación positiva "de hacer" cuando promueve o brinda las prestaciones necesarias para hacer efectivo el derecho a la salud, y tiene la obligación, como parte de las obligaciones negativas que también derivan de los derechos económicos, sociales y culturales, de abstenerse de dañar la salud y evitar las conductas de terceros que permitan la realización de ese daño." page 52

Copyright © 2015 www.GlobalHealthRights.org