



## Arnoldo Eleuterio de Jesús Benítez Castillo, et al. v. República Bolivariana de Venezuela s/ acción de amparo

Tribunal Supremo de Venezuela [Supreme Court of Venezuela], October 21, 2008, *Arnoldo Eleuterio de Jesús Benítez Castillo y otros v. República Bolivariana de Venezuela s/ acción de amparo*, Expediente No. 08-0520, Sentencia No. 1587.

**Country:** Venezuela

**Region:** Americas

**Year:** 2008

**Court:** Supreme Court

**Health Topics:** Controlled substances, Tobacco

**Human Rights:** Right to a clean environment

### Facts

Petitioners, among them the Federación Venezolana de Asociaciones de Consumidores y Usuarios (F.E.V.A.C.U) (Venezuelan Federation of Consumer and User Associations), filed an "action for collective and common interests" against the government, seeking judicial protection for the violation of their right as a society to an enjoyable life and a balanced, safe, and healthy environment. The petition was argued that tobacco caused various diseases to expectant mothers, children and passive smokers (including tobacco smokers in public spaces). According to the petitioners, passive smokers are eighty percent (80%) more exposed to respiratory-related cancers and heart diseases than non-smokers. They also argued that tobacco exposure can lead to sudden death of children. Consequently, the petitioners called for legislation needed for the adoption of the anti-tobacco proposals included in the Framework Convention by the World Health Organization, to which the Bolivarian Republic of Venezuela is a state party. In addition, the petitioners called for more active regulation from the Ministry of Health related to tobacco control and tobacco company monitoring.

### Decision and Reasoning

The Court admitted the case as an action "for collective and common interests," finding that the petitioners fulfilled the requirement of being a member of a general category (consumer, user, etc.) for purposes of the appeal for protection of their rights and showed a shared interest with the citizenry affected: an indivisible right (i.e the right to clean environment) to be executed by anyone who claims to be under a violation of their right.

The Court confirmed the obligation of the State to secure the activities that share social interest and that fosters the common wellbeing of its people.

### Decision Excerpts

"A tal efecto, se observa que el artículo 26 de la Constitución vigente consagra el derecho a la tutela judicial efectiva, conforme al cual toda persona tiene la facultad de acudir ante el órgano jurisdiccional competente para hacer valer sus derechos e intereses" incluso los colectivos y difusos" frente a intromisiones lesivas, generadas por la conducta positiva o negativa de un determinado agente de cualquier entidad."

"Ello asimismo, considera esta Sala que los demandantes poseen un interés difuso en que se restablezca la situación que denuncia como infringida; en virtud de lo cual y en reconocimiento del derecho a la tutela judicial efectiva de los actores, esta Sala considera suficiente la legitimidad de los mismos para incoar la presente demanda."