



Torrillo, Atilio Amadeo et al. v. Gulf Oil Argentina S.A. et al.

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Country: Argentina

Region: Americas

Year: 2009

Court: Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

Health Topics: Health systems and financing, Occupational health

Human Rights: Freedom from discrimination, Right to bodily integrity, Right to favorable working conditions, Right to health

Facts

The Plaintiffs, parents of a worker who died in a fire at his workplace, sued their son's employer for damages. They alleged that the employer had not implemented appropriate measures to deal with situations of emergency such as the fire that caused their son's death. The lower court accepted the claim of the Plaintiffs, awarding damages based on the Civil Code against the occupational health insurance company "Aseguradora de Riesgos del Trabajo S.A." (ART) attached to the employer. The ART brought an appeal on behalf of the employer before the National Supreme Court of Justice, arguing that the law that governed occupational health and safety "Ley Riesgo de Trabajo" (LRT) did not allow for damages under the Civil Code and that the lower court's decision was therefore arbitrary.

Decision and Reasoning

The Court upheld the Plaintiffs' claim. It first held that the ART could not rely on its claim of arbitrariness because such a concept was a common law principle with no place in Argentinian federal law.

It then went on to reject the claim that the LRT did not allow for damages under the Civil Code, by interpreting the LRT in light of its policy aims and human rights law. According to the Court, ensuring the right to safe and healthy working conditions was a key aim of the LRT, and the importance of this right had further been recognized in both the National Constitution and a number of international instruments, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the American Convention on Human Rights and its optional protocols, and numerous declarations and other decisions or documents of the International Labor Organization, World Health Organization, human rights treaty bodies, and the Inter-American Court of Human Rights. The LRT created a normative scheme designed to uphold these rights, and to improve the enforcement of occupational health and safety regulations.

ARTs were a key part of this normative scheme, with responsibilities for preventing workplace hazards through training, investigating, reporting on, and providing assistance in occupational health and safety matters. In discharging these functions, the ARTs were designed to help uphold the rights to health, life, and safe working conditions required under the National Constitution and international human rights instruments, and to help remedy the gaps in the implementation of these rights noted by human rights treaty bodies.

The Court therefore saw no reason to leave an ART out of the responsibility structure envisaged by the Civil Code. ARTs could not remain indifferent to breaches of occupational health and safety rules simply because they did not have coercive powers over employers. They were obligated to report on and prevent risks to occupational health.

The President of the Court dissented, stating that the LRT had its own system of remedies that was separate from those of the Civil Code, and that conflating the two merely because of the importance of protecting workers' rights was arbitrary. The President therefore considered it inappropriate to place liability on the ARTs given that the relevant basis for a duty to remedy the wrong was not present. Two other judges also dissented, considering the application inadmissible.

Decision Excerpts

In the first place, the prevention of hazards protects the constitutionally-based rights of each and every one of

the individual workers to psychophysical integrity, to health and to life, among other rights. And, as the link between the first two and the last is indivisible [...], prevention refers to the first natural right of the human being preexisting all positive legislation guaranteed by the National Constitution [...] . The human being, of course, is at the center of the entire justice system and an end in itself "beyond one's natural transcendental nature" "one's body is sacred and constitutes a fundamental value, with respect to which the remaining rights always have an instrumental nature [...], particularly when the right to life is understood not only as the right to not be deprived of life arbitrarily, but also as the right to not be impeded from access to the conditions that guarantee a "dignified existence" [...]â€• Translation paragraph 7).

En primer t rmino, el individual, de todos y cada uno de los trabajadores, puesto que, por v a de la prevenci n de los riesgos de  stos, se protegen, naturalmente, sus derechos de raigambre constitucional a la integridad psicof sica, a la salud y a la vida, entre otros. Y, al ser inescindible el v nculo entre los dos primeros y el  ltimo

[...],   la prevenci n remite al primer derecho natural de la persona humana preexistente a toda legislaci n positiva que resulta garantizado por la Constituci n Nacional [...]. El ser humano, desde luego, es eje y centro de todo el sistema jur dico y en tanto fin en s  mismo m s all  de su naturaleza trascendente   su persona es inviolable y constituye valor fundamental con respecto al cual los restantes valores tienen siempre car cter instrumental [...], mayormente cuando el derecho a la vida comprende no s lo el derecho a no ser privado de  sta arbitrariamente, sino tambi n el derecho a que no se le impida a la persona el acceso a las condiciones que le garanticen una "existencia digna" [...]" Paragraph 7)

 œThat, in sum, there is no reason to leave an ART out of the responsibility structure envisaged by the Civil Code for the harm to a worker caused by an occupational accident or illness when the basis for the accident or illness is demonstrated, which includes as much an illicit act and accusation as an adequate causal nexus (exclusive or not) between said harms and the omission or deficient compliance by the former of their legal obligations. Nor is there a reason, when the aforementioned requirements are satisfied, given the variety of these obligations, for the alluded to exemption to apply due to the sole fact that the ART cannot obligate the insured employers to comply with certain safety norms or prevent them from carrying out their work for not implementing certain safety conditions when they are incapable of sanctioning or closing down establishments. This position, frankly, will lead to a general and permanent exemption, insofar as it is based on limitations no less general and permanent.â€• Translation paragraph 8)

Que, en suma, no existe raz n alguna para poner a una ART al margen del r gimen de responsabilidad previsto por el C digo Civil, por los da os a la persona de un trabajador derivados de un accidente o enfermedad laboral, en el caso en que se demuestren los presupuestos de aqu l, que incluyen tanto el acto il cito y la   imputaci n, cuanto el nexo causal adecuado (excluyente o no) entre dichos da os y la omisi n o el cumplimiento deficiente por parte de la primera de sus deberes legales. Tampoco las hay, dada la variedad de estos deberes, para que la aludida exenci n, satisfechos los mentados presupuestos, encuentre motivo en el solo hecho que las ART no pueden obligar a las empleadoras aseguradas a cumplir determinadas normas de seguridad, ni impedir a  stas que ejecuten sus trabajos por no alcanzar ciertas condiciones de resguardo al no estar facultadas para sancionar ni para clausurar establecimientos. Esta postura, sin rebozos, conducir  a una exenci n general y permanente   [...]" Paragraph 8)