

AI 840928 / SP - SAO PAULO INTERLOCUTORY APPEAL

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JUDGMENT: MARCH 30, 2011

Publication

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Parties

APPELLANTS: STATE OF SAO PAULO

ATTORNEY(S): ATTORNEY GENERAL FOR THE STATE OF SAO PAULO

APPELLEE(S): ATTORNEY GENERAL FOR JUSTICE OF THE STATE OF SAO PAULO

ATTORNEYS): PUBLIC MINISTRY FOR THE STATE OF SAO PAULO

JOINDER: MUNICIPALITY OF RIBERIAO PRETO

ATTORNEY(S): ATTORNEY GENERAL FOR THE MUNICIPALITY OF RIBERIAO PRETO

Decision

DECISION: reviewed, etc. This request relates to an interlocutory appeal questioning the validity of a decision that denied an extraordinary appeal based on article 102, line item "a", paragraph III, article 102 of the Republican Constitution, issued by the Sao Paulo State Justice Tribunal. The opinion recognized the Public Ministry's active standing to file a public civil suit in defense of an unalienable individual right. 2. As a result, the appealing party claims a violation of paragraph III, article 129 and article 134 of the Magna Carta. 3. I hold that the claim should not be admitted. The first instance court's understanding, in accordance with this Court's jurisprudence, recognizes the Public Ministry's standing to defend the right to health. 4. To that effect, human health is a fundamental right of a social nature (article 6 of the Federal Constitution) and constitutes one of the pillars of the Brazilian social security system (article 194 of the Federal Constitution). As stated in article 196 of the Federal Constitution, it is "a right granted to all and the State's duty, guaranteed through social and economic policies that aim to reduce the risk of disease and other conditions and to allow the universal and equal access to the actions and services that provide for the promotion, protection and rehabilitation of its citizens." Health actions and services may either be public in nature, integrated within a regional and hierarchical network constituting a single system (article 198 of the Federal Constitution), or private in nature and characterized as supplementary (article 199 of the Federal Constitution). Since it appears to be a separate category comprising of economic activity (article 170 of the Federal Constitution) and public services (article 175 of the Federal Constitution), the Brazilian Constitution of 1988 designates such actions and services as publicly relevant. For this reason, paragraph II of article 129 of the Magnum Text was written. This instrument thus originally states, "Article 129: It is the Public Ministry's institutional role: [...] II - to advocate for the effective compliance of public rights and the services publicly relevant to the rights guaranteed under this Constitution, using whatever means necessary to ensure its protect; [...]" 5. Thus, this instrument makes more profound the last part of article 127, header, of the Constitution of 1988, which states, "The Public Ministry is a permanent institution, essential to the State's judicial role, and it is its duty to defend the judicial order, the democratic regime and the unalienable social and individual rights". 6. As an unalienable two-pronged (social and individual), fundamental, constitutionally mandated right, the right to health fits within the ambit of the Public Ministry's role intended to defend such rights with its actions. With that said, and considering article 557, header, of the Code of Civil Procedure and section 1, article 21 of the Regulations of the Federal Supreme Court, I deny the request for interlocutory appeal. To be published. Brasilia, March 30, 2011. Minister AYRES BRITTO Author

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Legislation

LEG-FED CF ANO-1988 ART-00006 ART-00102 INC-00003 LET-A ART-00127 "CAPUT" ART-
00129 INC-00002 INC- 00003 ART-00134 ART-00194 ART-00196 ART-00198 ART-00199 CF-
1988 CONSTITUIÇÃO FEDERAL LEG-FED LEI-005869 ANO-1973 ART-00557 "CAPUT" CPC-
1973 CÓDIGO DE PROCESSO CIVIL LEG-FED RGI ANO-1980 ART-00021 PAR-00001
RISTF-1980 REGIMENTO INTERNO DO SUPREMO TRIBUNAL FEDERAL

Observations

Legislation issued by:(JRC).

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