

**Exp:** 03-007202-0007-CO

**Res:** 2003-08587

**CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF COSTA RICA.**  
San José, at the sixteenth hour and twenty-three minutes of August 19, 2003.

Writ of protection interposed by MANUEL A. BRENES CORRALES, of legal age, married, citizenship card number 3-203-250, neighbor of Recreo de Turrialba, against THE HEALTH MINISTRY, THE ENVIRONMENT AND ENERGY MINISTRY, THE PUBLIC WORKS AND TRANSPORT MINISTRY, COSTA RICAN SOCIAL SECURITY, LA TABACALERA COSTARRICENSE S.A." AND "BRITISH AMERICAN TOBACCO S.A."

**Resulting in:**

1. By letter received by the Secretary of the Chamber at the eleventh hour and forty-five minutes of July 2, 2003 (page 1), the petitioner brought a writ of protection against The Health Ministry, The Environment and Energy Ministry, The Public Works and Transport Ministry, Costa Rican Social Security, La Tabacalera Costarricense S.A." and "British American Tobacco S.A." and states that from a medical point of view it has been established, without a doubt, that tobacco produces dependency and negatively affects health. That he is totally against the appealed companies engaged in the marketing of cigarettes. That they have allowed the promotion and marketing of an activity – like smoking- that is harmful to people's health, omitting a public policy matter that protects the fundamental rights to life, health, and to a non-polluted environment. He requests that his petition stand, with the legal consequences that may imply.
2. Article 9 of the Law of Constitutional Jurisdiction empowers the Chamber to reject, at any time, including from its presentation, any matter that is presented to its knowledge that proves to be manifestly inadmissible, or when it considers that enough judgement materials exist to reject it, or that it is a simple reiteration or reproduction of a same matter that was already rejected.

Justice **Armijo Sancho** writes; and,

**Considering:**

- I.** This Chamber has had the opportunity to refer to the issue concerning the marketing and consumption of cigarettes, as well as regulations for smoking. In ruling number 6251-99 of the fifteenth hour and thirty-six minutes of August 11, 1999, it considered that:

“II.-

As the Attorney General’s Office of the Republic correctly points out, the competence and legal powers that this Constitutional Chamber has defined in the Constitution and in the Law, state a clearly defined scope concerning the way the matter of omissions in the positive norm must be handled, as was indicated in the already quoted resolution number 06856-98 of the sixteenth hour and twenty-four minutes of September 24, 1988. In the sub lite, the petitioners sustain that in article 9 of the tobacco regulation act there is an omission since it only regulates and restricts, instead of banning, cigar and cigarette publicity, as should be done to properly protect the rights to life, health and to living in an ecologically balanced environment. That is to say, what they attack is not the content of the rule but the choice of passing it in one way instead of another, which they feel is the correct one. The repair is, then, not directed at what the legal text says but to what it – in the petitioners opinions - did not say. From this perspective, it is obvious that even in the event that the Writ was accepted and the rule was declared unconstitutional, the rule would not be replaced by another, which the petitioners propose. Naturally, this Chamber cannot dictate it either, nor would it be correct to ask the legislator to do so, because the Constitution – which collects and reaffirms the principle of separation and independence of State powers – gives no such power to this Court. Furthermore, it is important to remember, anyway, that declaring the inapplicability of the questioned article could not, per se, have the result of creating a prohibition of the challenged advertising activity, because – dealing with a particular activity, of the private sphere, ruled by the principles of liberty and freewill- such prohibition can only come from a rule that explicitly creates it and that exists under the parameters that the Constitution points out for the restriction of fundamental rights such as trade, as the Attorney General’s Office also points out. This circumstance makes the matter inadmissible, since in no case can the interest of the case be satisfied.

III.-

It is also necessary to insist that regulations for smokers like the ones in the Law subject to revision are perfectly viable, to the extent that the legislator has established them using its sovereign powers, within the area of competence provided by the Constitution. The exact terms in which the regulation is declared, under the framework of all possible solutions to the matter, is a sole competence of the legislator. Moreover, agreeing with it or not, the truth is that the activity of marketing and consumption of cigarettes is entirely legal. From that perspective, the

regulation measures appear as reasonable and proportionate, as a total prohibition like the one the petitioners propose could not be, given that – as it is well known- as long as the rights of others are not affected, we cannot restrict the exercise of fundamental freedoms of people who choose to smoke. The Constitution does not restrict the legislator from opting for a radical prohibition in relation to tobacco publicity. This confirms the necessity of declaring the inadmissibility of what was requested...”

- II.** Given that in quoted ruling resolved all the arguments from the petitioner’s writ, the next step is to reject the writ, as indeed it is declared.

**So:**

The writ of protection is rejected.

Carlos M. Arguedas R.  
President

Adrián Vargas B. Gilbert Armijo S.

Ernesto Jinesta L. Rosa María Abdelnour G.

Federico Sosto L. Fabián Volio E.