

Oriental Republic of Uruguay
Judicial Power

Ruling No. 150/2022

IUE 2-54452/2022

Montevideo, October 19, 2022

SUBJECT: For final decision the following rulings entitled: "SOCIEDAD URUGUAYA DE TABACOLOGIA C/ ESTADO PODER EJECUTIVO - AMPARO" IUE: 2-54452/2022. AMPARO" IUE: 2-54452/2022.

CONSIDERING:

I) On October 11, 2022, Adriana Rodríguez García in her capacity as President, and Sandra Luz Peña Miraldo in her capacity as General Secretary, acting in the name and on behalf of the SOCIEDAD URUGUAYA DE TABACOLOGIA-SUT filed an amparo action against the State - Executive Power.

They expressed, in summary, that smoking is a global epidemic as defined by the WHO itself. It is undeniable that it has a serious impact on the health of children and adolescents, even from the stage of gestation.

Thus, in 2003, the international community agreed on the main instrument for the protection of health and the fight against the tobacco epidemic, through the Framework Convention, ratified by Uruguay by law 17.793, as well as the Protocol for the Elimination of Illicit Trade in Tobacco Products through law 19.259.

In turn, there are guidelines for the implementation of the Framework Convention, which are developed through a broad intergovernmental consultation process established by the Convention's governing body, the Conference of the Parties (COP).

Uruguayan legislation, harmonized with the provisions of the Framework Convention, establishes the total prohibition of advertising, promotion and sponsorship of tobacco products and packaging or labeling with a neutral or generic design as the core of health protection. However, the recent modification to the regulation of the law introduced by Decree 282/2022 blatantly contravenes Public Order legislation.

Uruguay's academia and scientific community have unanimously expressed concern about the reversal of health policy and its imminent impact on the health of the population, particularly the most vulnerable: children and adolescents.

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This led the plaintiff to file an administrative action against Decree 282/2022, in order to have it reviewed by the Administration itself.

The right to the enjoyment of the highest attainable standard of health, to an environment free of tobacco smoke and to special protection of children and adolescents by the State with respect to tobacco consumption are enshrined in the highest legal hierarchy (Art. 44 of the National Constitution, Art. 1 of Law 18.256, Art. 8 of Law 17.828, Art. 12 of the International Covenant on Economic, Social and Cultural Rights, Art. 10 of the Additional Protocol to the American Convention on Human Rights, Art. 24 of the Convention on the Rights of the Child). The protection of the environment is rooted in the Constitution (section 47 of the Constitution) and in the Conventions (section 11 of the Protocol of San Salvador) and specifically in section 1 of Law 18.828.

The special vulnerability of children and adolescents to tobacco consumption and exposure to tobacco smoke has been included in Article 15 of the Childhood and Adolescence Code.

In order to comply with the legal obligation, measures have been adopted through the **total prohibition of advertising, promotion, and sponsorship of tobacco products and packaging or labeling of neutral or generic design**. Law 18.256 establishes that such measures are of Public Order.

Regarding the legal standing, it is based on art. 42 of the General Code of the Process which establishes the possibility of promoting the action in defense of diffuse interests (art. 196 of the Code of Childhood and Adolescence). On the other hand, art. 195 of the Childhood and Adolescence Code establishes a broad legal standing, which grants the possibility that the action may be brought by the Public Prosecutor's Office, any interested party and by social organizations.

According to Article 2 of the SUT's bylaws, the plaintiff has a broad mission that refers to the overall development, monitoring and supervision of the elaboration, monitoring and surveillance of tobacco control policies in line with the Framework Convention.

SUT points out that Art. 4.7 of the Convention states that "*the participation of civil society is essential to achieve the purpose of the Convention and its protocols.*" Art. 3 of the Framework Convention includes among the objectives of the Convention that of protecting **present and future generations** from the devastating consequences of smoking.

SUT adds that it has been appointed member of the Advisory Commission of the Center for International Cooperation on Tobacco Control and member of the Inter-Institutional Advisory Commission for Tobacco Control, according to order of the Ministry of Public Health No. 254 of 2015.

In relation to the passive standing, it argued that the Executive Branch has enacted Decree 282/2022, which introduces changes in the legal regime of neutral packaging, in a way that implies a setback in the sanitary policy and its imminent impact on the health of the most vulnerable: children and adolescents.

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In terms of competence, the action is framed within the scope of the protection of the rights of children and adolescents, falling under the jurisdiction of the Family Courts.

It argues that the lawsuit was filed on time, considering that the decree was published on September 9, 2022. Likewise, it states that the Executive Branch violates the rights of children and adolescents since it omits to regulate aspects that a Public Order law requires it to do.

Overt illegitimacy is evidenced by the actions of the state in clear breach of its obligations in relation to the human rights of children and adolescents, in addition to constituting a clear disregard for the imperative of the best interests of the child and a clear case of regression.

Decree 282/022:

1. Eliminates the prohibition on the use of any material other than cardboard for cigarette packages.
2. Eliminates the provision regarding the characteristics with which the inside of the package had to comply.
3. Eliminates the prohibition to include any other element in the packages.
4. Allows the incorporation of distinctive elements on the cigarette and inside the package, including the incorporation of the cigarette brand.
5. It leaves to the free discretion of the manufacturers the determination of the packaging inside.
6. It contravenes the regulations in that the identification elements must be established in "...packages and containers and any external packaging of cigarettes..."
7. Contravenes the rule that determines the way in which such identifications shall be made: through "...unique, secure and indelible identification marks such as codes or stamps..."

That Decree is in violation of Articles 7 and 8 of Law 18256, which establish all forms of advertising.

In addition, it establishes the possibility of introducing elements that may be distinctive brand elements.

The concept of advertising is regulated in the Framework Convention in art. 1.

In addition, the provisions of Article 8, as amended by Law 19,723, regulate the packaging, labeling and neutral or generic design of tobacco products, as well as the uniformity of the packaging of each type of product.

The Executive Power incurs in an illegitimate omission since it contravenes the obligation to regulate enshrined in a law of public order.

The law does not leave any margin of discretion to the Executive Branch, but rather mandates it to determine certain aspects that make the packaging neutral, generic and uniform.

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After the modifications introduced by the aforementioned decree, packages will only maintain the following restrictions: the dimensions of the package (art. 7); the color of the cellophane (art. 8) and the color and material of the cigarette filter (art. 9), from which they ask the question: To what extent can this be considered neutral packaging? This breaks with the standardization of neutral packaging, which seeks to avoid the opportunity for differentiation that appeals to consumers.

The rules that contravene this new Decree have been established as a safeguard for the protection of the human rights of children and adolescents. There is evidence that tobacco companies use packaging as advertising and about the way how, in a homogeneous market, any opportunity for differentiation is used to promote the product.

The exposure of youth to tobacco advertising, promotion and sponsorship increases the risk of smoking initiation and continued use among tobacco users.

Decree 282/022 is also in violation of the Protocol for the Elimination of Illicit Tobacco Trade, in particular, art. 8.

According to the Protocol and the Law on traceability, the identification of the product must be made standard and on the external packaging of the product. The Decree, however, leaves it up to the tobacco industry to define the traceability method and provides for it to be on the inside of the box and on the cigarette itself.

However, it is up to the State to define the conditions for traceability. The proliferation of different traceability systems created and implemented by the industry itself hinders the State's ability to carry out such monitoring.

It further adds that the motivation of the Decree is manifestly illegitimate, and that the regulation responds to commercial reasons and that the academia, the scientific community, and other organizations specialized in the subject that the Administration itself created to advise it on the matter such as the Interinstitutional Advisory Commission on Tobacco Control were not consulted beforehand.

Such motivation is illegitimate and contravenes the provisions of Art. 5.3 of the Framework Convention, which states that Parties shall protect their tobacco control policies from tobacco industry interests.

The actions of the Executive Branch contravene the principle of non-regression, set forth in Art. 2.1 of the ICESCR, which prohibits adopting policies and measures that worsen the situation of economic, social and cultural rights such as the right to health. This principle should be understood as a limit to the decisions of government bodies and, in turn, a guarantee in favor of the individual.

Regarding the actual or imminent harm, it states that there is strong scientific evidence pointing to the high impact of the marketing on children and adolescents and the very serious implications

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of early onset of tobacco use, as reported by the Interinstitutional Commission for Tobacco Control, dated September 8, 2022.

This is confirmed by the most recent statistics kept by the National Drugs Board, which show that the prevalence of drug use among young people between the ages of 13 and 17 has decreased from 30.2% in 2003 to 9% in 2021.

It offered evidence, substantiated its right and requested that the court rule recognizing that the implementation of Decree 282/022 as currently in force is in violation and regressive in the protection of the fundamental rights of children and adolescents and that the Executive Branch be ordered to regulate Law 18256 in line with the provisions Decree 120/019. Should it not do so, it requested that the immediate suspension of the execution of the administrative act be ordered until such time as the Administrative Court issues a ruling.

II) By Order No. 4155/2022 dated October 11, 2022, the parties were summoned to a hearing held on October 14, at 1:00 p.m.

III) The hearing was carried out with the results shown on page 99 et seq. The plaintiff, duly assisted, and the representative of the State, Executive Branch, attended.

IV) On that occasion, the latter answered the lawsuit by means of a brief filed at the hearing.

It held that based on articles 16.011 of Law 16.011, which regulates the exceptional procedure of the amparo action and relying on the case law quoted, in the light of the claims presented by the plaintiff, the State considered that they should be dismissed because the action is absolutely and manifestly inadmissible.

It raised a plea of lack of jurisdiction and expressed that the Court does not have jurisdiction to hear and rule on the claims, since the regulations that allegedly cause the supposed harms refer to market issues, conceived for the purpose of controlling the illicit trade of tobacco products.

These regulations have not modified the prohibition of sale to minors, which remains in full force and effect. Since the sale of the products covered by the regulation is prohibited to children and adolescents, it is clear that the family courts have no jurisdiction to decide on the plaintiff's claims.

It filed a plea of lack of standing to sue. It argued that the plaintiff lacks standing to sue since its bylaws do not establish explicit competence to file legal actions or to attempt to regulate rules in the interest of children and adolescents. Legal entities can only carry out what is the object of their bylaws so that in the absence of such mandates it is apparent that the plaintiff cannot pursue the claims stated in the lawsuit.

In addition, it argues that it is absurd for it to claim to have standing in defense of the interests of children and adolescents and request the regulation of law 18.256, which establishes measures for tobacco control, and, as an alternative, request the suspension of the application of Decree No. 282/022, since tobacco is not even sold to young people because its sale to minors under 18

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years of age is prohibited by Decree 284/008. On the contrary, the decree is aimed at illicit, illegal and anti-regulatory activities of unscrupulous actors who sell cigarettes to minors and who have done so under the rule of Law 18.256 and Decree 120/019.

It also alleged the manifest inadmissibility of the amparo action filed. The claim that the State should be ordered to regulate law 18,256 is not subject to an amparo action.

This is so because the regulation of the law is a power granted to the Executive Branch by art. 168 number 4 of the Constitution and cannot be the result of a mandate from the Judiciary. In order to demand the regulation of law 18256, the plaintiff should have made use of her right of petition (art. the plaintiff should have made use of her right to petition (art. 30 Const.), which in this particular should have been presented to the Executive Branch, instead of promoting it through a proceeding with narrow limits as the one in question.

Nor is it the appropriate way to request the regulation of a law.

The regulation of the decree in conformity with Decree No. 120/019 is already underway and is being studied by the appropriate means. 120/019, namely the administrative appeal filed by the plaintiff.

It adds that what the promoter conspicuously failed to do was, when challenging the aforementioned Decree, to request the provisional suspension of the act as authorized by Article 150 of Decree 500/991.

The examination of the alleged "omission to regulate in the prescribed sense" invoked by the plaintiff is far from apparent and will be substantiated within the scope of the Administration when ruling on the challenge raised and will be decided and settled by the Administrative Court, as stated by the plaintiff in its brief.

It also invokes the existence of alternative means to the amparo claim, referring to the requirements established by Article 2 of Law 16.011. In this case, the plaintiff filed an appeal for revocation against Decree 282/022, in a writ filed on 19/9/022, which gave rise to file 2022-2-1-0001258. In that appeal, the plaintiff did not request the suspension of the Decree she appealed against, as authorized by art. 150 of Decree 500/991.

In short, it understands that the plaintiff had alternative means to seek not only the revocation of Decree 282/022, but also the suspension of the execution. The same is true with respect to the main claim, inasmuch as the constitutional order allows the plaintiff the right of petition (art. 30 of the Constitution) before any public authority, so that, in the exercise of that right, it could perfectly well have requested to regulate the law 18.256 in the way that it considered right to do so, however it did not do it.

On the other hand, no act, omission or fact carried out by the Executive Power that injures, restricts, alters or threatens with manifest illegitimacy and in an actual or imminent manner (or indeed in any other manner) rights and freedoms recognized to children and adolescents by the constitution was not found.

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It considers that the challenged decree is in line with the international instruments mentioned by the plaintiff as well as with the national regulations on the matter since its main purpose is to protect the health of all individuals in the national territory.

The defendant claims that the plaintiff is wrong in arguing that the Decree contravenes Article 8 of Law 18256, when the article itself establishes in its third paragraph that the regulation shall determine the shape, color, material, size and design of all packages and wrappers of tobacco products in their exterior and interior. The regulation itself assigned to the Executive Branch the power to decide on certain aspects of the packaging and labeling of tobacco products. The characteristics that are modified are those that the regulation itself allows to be modified by a subsequent Decree.

On the other hand, the plaintiff incurs in a false opposition by interpreting that by regulating a commercial market subject, issues related to health policies are necessarily violated.

The Protocol for the Elimination of Illicit Trade in Tobacco Products itself, incorporated into our legal system by Law No. 19,259 of August 28, 2014, in its Art. 1 defines illicit trade as "...any practice or conduct prohibited by law, relating to the production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity." There is no doubt that smuggling falls within the aforementioned definition. And according to information published in the press, the purchase of cigarettes in the illegal market in Uruguay represents 36% of the total commercialization.

It concludes that there is no contradiction or conflict between two rights or focal points, such as health and trade. On the contrary, there is a right to health protected by specific rules on the matter and, on the other hand, the regulation deals with a market issue (fighting the illegal market, i.e.: smuggling and counterfeiting), which does not entail any contradiction, since it presents new safeguards for the right to health enshrined in the law.

Decree 282/022 is clearly aimed at reinforcing the aspects concerning the traceability of tobacco products.

The amendments introduced do not address the issue of advertising; there is no reference in the decree that these are in themselves elements that induce individuals to be attracted to the cigarette product.

In short, it argues that Decree 282/022 does not harm, restrict, alter or threaten with manifest illegitimacy and in an actual or imminent manner, rights and freedoms recognized by the constitution to children and adolescents.

On the contrary, it is intended to mitigate the devastating socially and economically harmful impacts on the health of the population as a whole (not only children and adolescents) caused by the counterfeiting and smuggling of tobacco products.

Therefore, in short, it requests the rejection of the amparo action filed.

V) The plaintiff filed the objections at the hearing (page 100). It argued that the objection of lack of jurisdiction of the Court should be rejected because this case involves a violation of constitutional rights of children and adolescents, quite contrary to what the defendant considers in this case, there are no market issues or commercial interests at stake, therefore the family courts are legally competent according to the provisions of sections 195 and 196 of the Code for Children and Adolescents. In relation to the lack of legal standing, reference is made to the aforementioned articles, which establish that the Public Prosecutor's Office, any interested party or social organization may appear on behalf of general interests.

VI) The legally foreseen stages were completed, the evidence was submitted, parties substantiated their claims and a hearing for the reading of the decision was summoned for October 19 of this year, at 1:00 pm.

CONSIDERING

The President and Secretary of the Uruguayan Society of Tobacology (SUT) filed an amparo action against the State, Executive Branch, due to the modifications introduced by Decree 282/022, which they understand violates the rights of children and adolescents recognized in International Treaties ratified by our country.

They added that they filed an administrative appeal against that Decree, in order to have that regulation reviewed by the Administration itself.

On the other hand, the representative of the State, Executive Branch, objected to the lack of jurisdiction of this court, the lack of standing of the plaintiff, answered the complaint opposing the arguments contained in the complaint and requested that it be dismissed.

II) The case must be analyzed in the light of the provisions of Article 195 of the Code for Children and Adolescents, which establishes a special amparo action for the protection of the rights of children and adolescents. Likewise, it is provided that it shall proceed in all cases, except when there are pending jurisdictional proceedings, assuming, unless there is evidence to the contrary, that other legal means of protection are ineffective. This action must be filed within thirty days from the date on which the act, fact or omission against which it is being appealed occurred. And with regard to the competence, that action is assigned to the Family Law Judges.

As stated by Dr. Gustavo Mirabal Bentos: "Access to the amparo action is greater than that of the common system, since -on the one hand- it proceeds, generically and unrestrictedly, for the protection of the rights of children and adolescents, unlike what is stated by Law 16011 which provides that the action corresponds in those cases in which any of the rights and freedoms expressly or tacitly recognized by the Constitution of the Republic are injured, restricted, altered or threatened.

In other words, it establishes a relative presumption that the other legal means of protection are ineffective. With a clear intention of broadening the protection established by the remedy...With these characteristics, the amparo action in family matters ceases to be the exceptional remedy

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provided for by law 16.011" (Author cit. "Código de la Niñez y la Adolescencia..." page 571, 3rd edition, Editorial La Ley, 2021).

On the other hand, it should be borne in mind that the protection of the rights of children and adolescents is a specialized field, which implies the application of the general principles that govern it, as well as the criteria for the interpretation and application of the rules contained in articles 1 to 7 of the Code of Children and Adolescents, which form the so-called Doctrine of the Integral Protection of the Rights of Children and Adolescents, which follows the guidelines of the Convention on the Rights of the Child.

The amparo is an action that guarantees both civil and political rights as well as economic, social and cultural rights.

The pro homine principle dominates in this matter, which establishes that the most protective norm must be applied, the most extensive interpretation if it is a matter of recognizing protected rights, and this is the way provided for children and adolescents, to guarantee them those rights.

As Dr. Clara Leite Alvez stated: *"An ideal of a free human being, free from fear and misery, can only be conceived if conditions are created that allow each person to enjoy his economic, social and cultural rights, as well as his civil and political rights, therefore, it must be privileged, preferred, selected, favor, protect and therefore adopt the application of the norm that best protects the fundamental rights of the human being" (Amparo action as a generic protection mechanism for the rights of minors" Manual for the legal defense of the human rights of children". Unicef, 2012 p. 119).*

Dr. Martín Risso Ferrand, for his part, points out: *"The unquestionable remedial principle, in matters of human rights, is that they can be invoked directly by the inhabitants who may claim the corresponding jurisdictional protection. The development of fundamental rights led to the need to establish legal institutions (guarantees) to ensure their real effectiveness in practice. The State does not assume a passive role in the face of this problem but must act with the special objective of seeking and obtaining the effective protection of all inhabitants in the enjoyment of constitutional rights. In this sense, article 7 of the Constitution, when it enshrines the right of the inhabitants to the enjoyment of pre-existing rights, already establishes the principle of protection, to the extent that the inhabitants can demand from the State the corresponding protection and, obviously, this must protect the inhabitants against any circumstance that prevents or hinders the full enjoyment of such rights". (Author cit. "La Acción de Amparo" RUDP Procesos Constitucionales, FCU, 1st Ed. 2018, pg. 117)*

When examining specifically amparo in Family Law, Dr. Klett and Dr. Baluga stated that: *"Within the complex and vast world of human rights guarantees we find amparo, habeas corpus and, more recently, habeas data. Without them, human rights would be illusory platonic declarations, insofar as they provide protection at the most dramatic moment, when the aggression, which may cause irreparable damage, is immediate and it is not possible to wait for the slow progress of the current prevention procedures" (Aut . cit: "RUDP-Procesos de Familia" FCU, 1st Ed. 2014, p. 341).*

Analysis of the competence of the Family Court.

The defendant raised the objection of lack of competence of the Family Court on the grounds that the regulations invoked by the plaintiff refer to market issues with the purpose of controlling the illicit trade of tobacco products.

It also argued that tobacco is not sold to minors under 18 years of age since its sale is prohibited by Decree 284/008, and therefore, excluding minors under 18 years of age from consumption, the Family Court has no jurisdiction.

Three clarifications should be made to these arguments: firstly, the amparo action has not been based on issues related to the market of tobacco products, but on the violation of the right to health of children and adolescents.

On the other hand, although it is true that article 11 of Law 18256 prohibiting the sale of tobacco products to minors under 18 years of age is in force, the amparo filed by the SUT does not refer to the sale but to the effects that the modifications introduced by Decree 282/022 may have on the consumption by children and adolescents.

As it appears from the national survey on drug use among high school students (between 13 and 17 years old) conducted by the National Drug Board in 2021 and which is attached at page 22, 15.3% of young people use tobacco. The witnesses also agreed on the high percentage of children and adolescents who consume tobacco, despite the prohibition of sale to minors under 18 years of age that is in force. And of particular importance was the fact that the percentage of adult smokers who started using tobacco before the age of 18 varies between 70% and 80% (pages 109 and 119).

Thirdly, it is important to underscore the impact on the health of children and young people who grow up in environments with adult smokers. This generates damage to their health because they are passive smokers and because they are exposed to what experts call "second-hand smoke".

Therefore, contrary to what the plaintiff claims, the jurisdiction of the Family Court clearly arises from the aforementioned article 195 of the Children and Adolescents Code, and there are no doubts in this regard since it is an injunction aimed at seeking to protect the rights of children and adolescents, in particular the right to health, to the protection of the environment free of tobacco smoke and to special protection against the encouragement of tobacco consumption, as clearly stated in the complaint, and no commercial argument has been invoked.

As it has been aptly expressed: "*The exclusive competence for the amparo actions that have as their purpose the protection of the rights of children and adolescents is assigned to the Family Law Judges. Regarding this point, Klett and Baluga stated that: "It has been argued that what the legislator intended was to assign to the Family Courts all the cases in which a special amparo is under review, i.e., those in which an injury to the rights of children and adolescents is invoked. This solution is applied regardless of who the defendant is...because what is prioritized is the specialty of the object of protection and the subjects of protection, that is to say, that the injury or threat of injury to the fundamental rights of children and adolescents is alleged"*

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("Código de la Niñez y la Adolescencia Comentado, Anotado y Concordado", Mirabal Bentos, Gustavo, 3ª.Ed, La Ley, 2021, page 573).

Analysis of standing to sue

With respect to the standing to bring an action, art. 195 of the Code of Children and Adolescents is clear in stating that the action may be brought by "***any interested party or the institutions or associations of social interest that according to the law, or in the opinion of the Court, guarantee an adequate defense of the rights involved***". Likewise, the provisions of art. 196 of the Code of Children and Adolescents should be borne in mind as it provides: "***(General interests). The provisions of art. 42 of the General Procedural Code are extended to the defense of the rights of children and adolescents***".

The rule is clear and grants standing to any interested party, establishing a broad protection of rights, by giving the possibility to several parties, be they individuals, groups or those seeking to protect general rights. But it also delegates to the Court the assessment of the institutions or associations that guarantee the adequate defense of the rights of children and adolescents. In this way, it is understood that, in this case, the plaintiff, Sociedad Uruguaya de Tabacología (SUT) complies with the requirement. That is, as is clear from its bylaws, its corporate purpose is to bring together tobacco control specialists from all over the country, promote their training, work in the broad field of tobacco control activities, promote measures aimed at continuously reducing the prevalence of tobacco consumption and exposure to second-hand tobacco smoke.

Likewise, the SUT is also a member of: a) the Interinstitutional Advisory Commission for Tobacco Control, which operates within the orbit of the General Directorate of Health (page 3); b) the Center for International Cooperation on Tobacco Control, as an advisory body for cooperation directly dependent on the Ministry of Public Health (pages 5 to 9); c) the Alianza ENT (Alliance of Non-Communicable Diseases) (page 12).

From this, it is concluded that it has the necessary technical and scientific knowledge to exercise the defense of the rights of children and adolescents required by the legal norm.

In relation to the institutions or associations of social interest, Viera said: "*because of the collective, mass character of general interests, it is for their defense that all kinds of groups have been formed, according to the interest to be protected... Associations for the defense of peace, of human rights, of the environment, of the ecological balance, the protection of historical monuments or the protection of consumers. Their importance is so significant that it is safe to say that they are largely responsible, as sources of spontaneously organized public opinion, for the fervor for the protection of human rights that is evident everywhere in the civilized world. And they undoubtedly influence the adoption of norms for the protection of such rights and their practical application.*

It is a manifestation of effective participatory democracy, born, many times, outside of any official impulse, by the sole initiative of its founders. Law has not ignored this unique phenomenon of our troubled times. On the contrary, it tries to use it as one of the most important means (for me the best) for the protection of general interests. Art. 42 in fine of the new General

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Code of Procedure proves it". And further on Viera adds "in its purpose of facilitating the access to Justice of the intermediate bodies for the protection of general interests, the Code has not worried about whether or not they have legal personality" ("Los intereses difusos y la garantía del amparo" Vas.Jornadas Nacionales de Derecho procesal, 1989, p. 205).

On this point, Véscovi stated: *"In relation to corporations or associations, the conception is also very broad since, following the French Royer law, it admits all those that guarantee the adequate defense according to the law, in each case. But it is also added to the judgment of the court, which allows the admission of claims filed by associations that have not been recognized by state bodies (i.e. that lack legal status, for example), being sufficient for the court to consider them qualified (legitimized)". ("La participación de la Sociedad Civil en el Proceso. La Defensa del Interés Colectivo y difuso. Las nuevas formas de legitimación" RUDP 1/2000, page 25).*

Santiago Pereira Campos, referring to institutions or associations of social interest, said: *"The initiative to give prestige to the performance of institutions or associations has a very important significance from a political-social point of view, mainly in a context of revival and development of democratic mechanisms. As Barbosa Moreira points out, there is not and cannot be a stable democracy without the presence of strong and active social groups, which fill the gap between the individual and the State...These intermediate groups, in matters of general interests, are now called upon to give a strong voice to the common man for the expression of his concerns and aspirations, to defend his rights, and to warn of existing dangers. Without such a conduit, the common men would probably not succeed in making themselves heard with sufficient intensity."* (" Los procesos colectivos en Uruguay", pg. 779.)

Expiration of the action

It is understood that the expiration of the action has not occurred, since Decree 282/022 was approved on September 2 and published on September 9 of the current year, while the amparo action was filed on October 11.

Existence of an act, fact or omission

Taking into account the reference made by Article 195 to Law 16.011, Article 1 of the mentioned norm establishes that the amparo action proceeds: *"against any act, omission or fact of the state or parastatal authorities, as well as of individuals that in an actual or imminent manner, in their judgment, restricts, alters or threatens, with manifest illegitimacy any of their rights and freedoms expressly or implicitly recognized in the Constitution (Article 72)..."*.

Thus, the challenged rule is Decree No.282/022 dated 9/2/2022, which replaces articles 7, 8 and 10 of Decree No. 120/019 dated April 29, 2019.

Injury or threat of injury

The law provides that the act, fact or omission must be actual and imminent, that is, it must injure, restrict, alter or threaten the rights that are the object of protection.

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At this point, the preventive function of the Amparo should not be forgotten, since it is also intended to avoid the damage, as well as its continuity.

It is because of this that serious indications are required of the injury that may be caused if measures are not taken immediately, in order to prevent such injury from becoming irreparable.

As Viera has stated: "... *due to its importance for the human race, the protection of general interests must be fundamentally preventive, that is to say that such protection must anticipate the injury, or, once it has begun, try to eliminate it for the future in order to prevent it from becoming irreparable, all of which leads us to the need for immediate action. It can be seen, then, how the amparo, which is given precisely when this prompt action is needed, without delay, is the procedurally adequate instrument for the preventive protection of such interests*" (Author Cit, ob cit. Page 205).

At this point, it is appropriate to dwell on the analysis of the challenged decree and the regulations governing the matter, for the purpose of verifying the existence of the affectation or threat to the rights of children and adolescents.

Decree 282/022 replaced articles 7, 8 and 10 of Decree No. 120/019 of April 29, 2019. This constitutes a threat to the right to Health of children and adolescents, in a clear violation of art. 15 of the Code of Childhood and Adolescence in that it violates the protection against the encouragement of tobacco consumption.

With respect to article 7, it eliminates the provisions of the previous decree in that it regulates "*The opening of cigarette packages shall be of the folding or "flip top" type*".

With respect to article 8, it eliminated the provision that "All cigarette packages shall be made of cardboard, and the use of any other type of material is prohibited".

Likewise, it eliminated the final part of the aforementioned article, which stated: "The inside of the cigarette package must be plain white with a matte finish and may only contain a plain silver-colored metalized paper cover, and the inclusion of any other element is prohibited".

And with respect to article 10, the following provisions were eliminated: "The cigarette wrapper shall only be made of plain white paper, and it is therefore forbidden to include any kind of logo or any other design feature or element, legend, inscription or writing". Likewise, the prohibition to incorporate a legend or inscription on the filter, or any other element that identifies the brand, was eliminated, as well as the prohibition to include any decorative element.

On the other hand, Article 10 adds that: "The manufacturer may incorporate **distinctive elements** on the cigarette or inside the box to determine the authenticity of the product or its traceability in order to detect and combat its diversion or adulteration". Regarding the filter, it establishes that the identification of the brand may be incorporated into it.

At this point, it is worth asking how these modifications, which at first glance seem minor, can affect the health of children and adolescents.

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The issue lies in the fact that by eliminating the prohibition to use any material other than the cardboard on cigarette packages, by eliminating the distinctions that could be contained inside the package as well as any other element, and in turn, by allowing the inclusion of distinctive elements on the cigarette and inside the box, as well as incorporating the brand on the cigarette, the manufacturers are left free to act in relation to the inside of the packaging.

Therefore, Decree 282/022 does not comply with the neutral labeling provisions of the following regulations:

First of all, the WHO Framework Convention on Tobacco Control, ratified by law 17.793, should be taken into account. This Convention was adopted by the 56th World Health Assembly on May 21, 2003.

It recognizes that the spread of the tobacco epidemic is a global problem with serious public health consequences, as is the increase in the number of smokers and users of tobacco in other forms among children and adolescents worldwide, and particularly the fact that smoking is starting at an increasingly younger age. They also recognize the concern about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the consumption of tobacco products.

Article 3 defines the objective of the Convention as “to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.”

In its turn, Art. 5 states: " In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

In turn, Law 18256, of public order, as stated in Article 2, regulates the protection of the right to a smoke-free environment and its consumption, in line with the WHO Framework Convention on Tobacco Control. Article 8 (as amended by Law 19,723) provides for "the packaging, labeling and neutral or generic design of all tobacco products and the uniformity of the packaging of each type of product, with the aim of reducing the attractiveness of the product for the consumer" and establishes that the regulation shall determine all aspects related to the packaging and wrapping of tobacco products, both on the outside and inside, in order to comply with the objectives pursued by the same law.

The provisions of article 15 of the Code of Children and Adolescents are of special importance as it provides: "(Special Protection). The State has the obligation to especially protect children and adolescents from all forms of:.. E) Encouragement to the consumption of tobacco, alcohol, inhalants and drugs".

Unofficial Translation

There is a breach of the related regulations, inasmuch as, as can be seen from art. 5 of the WHO Framework Convention ratified by Law 17,793, the States committed to act in order to protect policies on public health related to tobacco control against the commercial interests of the tobacco industry. It should not be overlooked that from the considerations of the challenged Decree, it can be seen that the reasons that led to the modification of the previous decree are the possibility of competing with the boxes that enter the country through smuggling and the severe impact on the collection of taxes, both of which affects the Administration's public policies. But there is no mention of the possible impact on the right to health.

At this point, it is worth asking: how does packaging influence consumption?

On page 12 there is a communiqué to the public opinion issued by the ENT Alliance, which reads: "*we express our concern and rejection to the measures adopted by the Executive Power that disarticulate the tobacco control policies. In particular, the neutral packaging is left without effect, but also the award of the judgment that Uruguay won against Philip Morris is not respected, as it is possible to have more than one presentation per brand.... Under no circumstances is it reasonable to disarticulate a Public Health policy to fight smuggling...*"

On its part, the Interinstitutional Advisory Commission for Tobacco Control in a report dated September 8, 2022 concluded: "*the replacement of Articles 7, 8 and 10 proposed by Decree 282/022 do not entail measures to combat illicit trade and allows cigarettes to be more attractive through design techniques used by the tobacco industry, eliminates the uniformity of the packaging. It contravenes the WHO Framework Convention on Tobacco Control ratified by Law 17.793, the Protocol for the Elimination of Illicit Trade in Tobacco Products ratified by Law 19.259, Law 18256 and its amendments, Law 19244, 19723, as well as Law 13751. Therefore, the immediate repeal of Decree 282/022 is required.*"

In turn, the Society of Medical and Pediatric Oncology of Uruguay stated: "*...we are concerned and reject this decision of the Executive Power that contravenes the Framework Agreement signed by our country and violates the policies implemented for several years. We consider that it is based on commercial arguments to the detriment of the prioritization of health promotion and prevention of diseases related to the use of tobacco, which constitutes an important scourge in our society*" (page 19).

The University of the Republic of Uruguay, Faculty of Medicine through the Dean Dr. Miguel Martínez Asuaga and the Representative of the Faculty of Medicine in the Interinstitutional Advisory Commission on Tobacco Control, Dr. Laura Llambí, have also expressed their opinion in the same line. They referred to the World Health Organization Framework Convention on Tobacco Control and the policy followed by Uruguay and expressed: "*In particular, the adoption of the Neutral Packaging and the requirement of a single presentation per brand are measures aimed at increasing consumers' perception of risk, avoiding misleading messages about the unfounded differences in the risks of a given product with respect to another, or of a different presentation of the same brand. International and national studies affirm that cigarette packages and cigarettes themselves are a key communication element between the tobacco industry and its current or future customers, even more so in countries with restrictions on advertising, promotion and sponsorship...*"

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The same conclusions can be drawn from the testimonial statements of the qualified witnesses offered by the plaintiff. Dr. Laura Roballo, a physician, member of the SUT, has specific training in tobacco control policies, worked for many years in intervention programs for smoking dependence, was the founder of the smoking unit of the Central Hospital of the Armed Forces, a unit she directed for more than 10 years, founding member of the FNR (National Resources Fund) assistance program for tobacco control and of the FNR outpatient treatment program, and was a member of the FNR teaching team. She is a founding member of the Tobacco Epidemic Research Center, which she currently chairs. She is a delegate of the honorary committee for cardiovascular health in the institutional advisory committee of the national tobacco control program of the Ministry of Public Health.

When asked about the impact of the modifications introduced by the decree, she understood that it will have a very direct impact on the right to health and the life of children and adolescents. *"Inasmuch as this modification will enable the tobacco company to exercise marketing maneuvers aimed at this population as it has historically done...it has an impact since the law on neutral packaging removed any possibility of introducing design elements that could lead to lower risk exposure or make it more attractive to children and adolescents. ...specifically, explicit text was eliminated that prohibited the introduction of identifying elements, design elements on the cigarette itself or inside the box...With respect to any other element, only one type of material can be used in relation to the perception of harm, there are studies that indicate that there is a perception of less harm with the softbox in relation to the hard box".*

She added that cigarettes are being marketed with distinctive *"in the design of the cigarette itself that allow the identification of flavoring capsules. These flavorings are part of the tobacco industry's marketing strategy to encourage consumption among young people"*.

She stated that the basis for arguing the infringement of the right to health of children and adolescents is *"based on the international scientific evidence contained in the Framework Convention on Tobacco Control supported by international scientific evidence that is not based on the prohibition of sales to minors under 18 years of age; it does not say this in a personal capacity, it is explicitly included in the Framework Convention that our country is obliged to comply with...in our country the average age of onset of tobacco consumption is around 12-14 years old and to avoid the onset of this consumption, which is addictive and generates harm quickly in these minors is that tobacco control policies must be strengthened in a comprehensive manner based on the available scientific evidence..... Tobacco consumption by children and adolescents is around 10%"* (emphasis added).

Dr. Eduardo Blanco, physician, cardiology specialist, master in addictive behaviors, expert in smoking treatment certified by the Mayo Clinic in the United States, spoke about the importance of the package as an advertising strategy for the tobacco industry. He pointed out that when tobacco companies have a total ban on advertising and promotion, *"the main promotional vehicle is the pack...The cigarette pack plays a fundamental role as an advertising element to attract young people. The package is everything, what is on the outside, the colors, the numbers, the design...inside the package with the cigarette they also influence...Flavored capsules have been added...for young people...If they already have flavorings in the filter...we allow them to recover*

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the possibility in the package to use it as marketing, we run a serious risk that those advances we have had in the decrease of consumption of children and adolescents will be lost and consumption will increase.... The decree... leaves it to the free will of the tobacco industry what they are going to do with these modifications in the package, this is done with a business criterion to increase sales, both in adults and in young people... 9%, 10% of young people in school consume, they buy in kiosks in front of schools, which should not be allowed to be sold, they steal it from their parents, or they share it. Despite the fact that there are signs, they are sold."

The witness clearly stated that with the measures applied by Uruguay, tobacco consumption dropped rapidly to one-third (page 111), which indicates that they were effective. Likewise, he expressed that there should be no possibility of being able to include marketing strategies because the tobacco industry uses any strategy. And further on he added that "*if it is allowed to put brand labels and other modifications that are at the discretion of the tobacco industry, "Not only does it lose the standardization of the package but it also gives again the opportunity to market to young people"* (page 112).

For his part, Diego Rodriguez, master in sociology, partner of the SUT and member of the research center for the tobacco epidemic and who participates in the advisory commission on tobacco control CIET (Research Center for the Epidemic of Tobacco), stated that: "*the modification of the decree affects children and adolescents, in the first place, the distinctions on the cigarette, the brands, you are allowed to include distinctions on the cigarette, two little dots are placed on the filter, which indicate the flavors, they must be pressed, they can be mint, strawberry, the flavorings were always focused on the young public...international statistics ITC (International Trade Center) show that 70% of smokers started before the age of 17, 23% started before 13". He adds that flavoring is one possibility for distinctiveness, but there are others, colored ribbons, advertising on boxes, branding that goes against the law, distinctiveness is so broad that 'it can be anything. "The neuromarketing used by the industry seeks to increase sales, which increases consumption in children and adolescents, and in particular if they use flavorings it increases consumption in children and adolescents. On the other hand, the effect on the entire population, the marketing is generic, children who live with new smokers will be exposed to secondhand smoke, they will be passive smokers"*.

The more recent figure he remembers for children and adolescents smoking is 10%. Regarding the way in which young people have access to cigarettes, there are various ways: "*one is through people who buy from them, through peer groups, there are stores that sell to kids...the stores that sell until late sell alcohol, cigarettes, the State does not control since they have 3 supervisors...there are three for the 19 departments...The World Bank did a survey that resulted in 12% of contraband products, if we take that figure to youth consumption we could estimate that the maximum consumption of contraband is 12%, the remaining percentage is legal. Flavorings are focused on the beginning of consumption. 70% start before the age of 17."*

On the other hand, according to what was expressed in the Cancer Council of Victoria, Australia, in 2011, a publication that compiles more than 24 experimental studies in relation to "*plain or neutral cigarette packaging*", three main characteristics stand out in terms of how it influences people's consumption: A) Packaging is part of the "*marketing mix*", that is, of the set of elements

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that an organization uses to try to modify the behavior of its target audience. Therefore, beyond the actual result when it comes to modifying the behavior of the final audience, it is clear that its use responds to a clear intention to modify that behavior, whether this is achieved or not.

B) Traditional packaging, through the use of different colors and typographies, is used to detract from regulated health risk warnings. C) Several packaging elements incorrectly guide towards the idea that some of the products are less harmful, by using misleading commercial terms such as the word "light" and other design strategies on the packaging. E) Studies in more than 5 countries show that plain or neutral packaging is less attractive to all populations and in particular to young populations who report that cigarettes with plain packaging are less satisfying, less attractive and of lower quality than those with traditional packaging" (<https://www.cancer.org.au/assets/pdf/plain-packaging-of-tobacco-products-a-review-of-the-evidence>).

Likewise, Dr. Eduardo Blanco referred in identical terms in a detailed article on "Las Estrategias para el control del tabaco y su racionalidad" ["Strategies for tobacco control and their rationality"], published in the Revista Uruguaya de Cardiología, 2005, pages 171-195 (www.scielo.edu.uy/scielo.php?pid=S1688-042020050003000068&script=sci_arttext).

To a constitutional right or freedom, except habeas corpus.

In the case at hand, it is invoked the protection of the right to health, to the protection of the environment free of tobacco smoke and therefore to the life of children and adolescents.

The right to health is inextricably linked to the right to life, since the failure to fully protect the former obviously has negative consequences on the latter. Witnesses have been clear in testifying about the consequences in the increase of tobacco consumption that will be generated with the modifications introduced by decree 282/022. This has been confirmed by the reports made by the School of Medicine of the UDELAR [Universidad de la República de Uruguay], the Interinstitutional Advisory Commission for Tobacco Control, and the Society of Medical and Pediatric Oncology of Uruguay (pages 14 to 21) and by the cited scientific studies.

On the other hand, the national survey conducted by the National Drug Board on drug use among high school students between 13 and 17 years of age (2021) shows that 15.3% use tobacco (page 22). This figure is very striking and causes alarm, in view of the existing prohibition on the sale of tobacco products to minors under 18 years of age.

Witnesses also stated that the starting age of consumption is between 12 and 14 years old. Likewise, 70% of all adult smokers started before the age of 17, and 23% before the age of 13.

Therefore, it must be considered that the non-enjoyment of the right to health necessarily compromises the right to human dignity, which affects the full psycho-physical development of children and young people, thus harming the "best interests of the child".

The following expressions are applicable: *"In order to reduce any differentiation that would diminish the effectiveness of Economic, Social and Cultural Rights, a category that includes the*

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right to health, it is appropriate to understand this right as one inherent to the human person, derived from the concept of dignity, and which, therefore, is endowed with every characterization as a fundamental right, whose fulfillment must be attended to and whose protection is the competence of the tribunals. The right to health is inextricably linked to the right to life and physical integrity. However, it implies a distinctive content that is defined by its own term, consisting of a series of actions aimed at achieving its meaning: healthy development, hygienic and environmental aspects, access to adequate means of prevention and treatment of diseases, and, in general, appropriate medical assistance, control and services. This right to health implies, therefore, that all subjects have the right to live in a preventive environment that ensures the healthy development of the person, as well as to have access to medical services that allow for controls, prevention and treatment in accordance with the required standards. Of course, the implementation of public policies and the effective protection of this right will entail an expense for the public treasury. This is the case, in general, with all fundamental rights". (María Paula Garat, "El tratamiento del derecho a la salud en la jurisprudencia de la Corte Interamericana de Derechos Humanos" [The approach to the right to health in the Inter-American Court of Human Rights' case law.] pg 61).

The Family Court of Appeal of 2nd Shift in judgment 1/2018 expressed: " Moving on to the merits of the case, it should be noted that articles 7 and 44 of the National Constitution enshrine, respectively, the right of every inhabitant of the Republic to be protected in the enjoyment of his life and the obligation of the State to legislate in all matters related to public health and hygiene, seeking the physical, moral and social improvement of all the inhabitants of the country.... This right is also set forth in Article 72 of the Constitution, being a right inherent to the human person.

It was recognized at the international level in article 25 of the Universal Declaration of Human Rights, which in numeral 1 states that "...everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...".

The International Covenant on Economic, Social and Cultural Rights, ratified by Law 13751, in its art. 12 provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; ...

The Convention on the Rights of the Child, approved by Law No. 16137, in its art. 24 num. I protects the right of the child to the enjoyment of the highest attainable standard of health...

Art. 10 of the Protocol of San Salvador, ratified by Law No. 16519 provides that everyone has the right to health, understood as the enjoyment of the highest attainable standard of physical, mental and social well-being, and States shall undertake to adopt measures to guarantee this right".

Article 24 of the Convention on the Rights of the Child establishes that children have the right to the enjoyment of the highest attainable standard of health. It also establishes that it is the obligation of the State to take the necessary measures aimed at the abolition of traditional practices harmful to the health of the child.

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Of particular interest is General Comment No. 4 of the Committee on the Rights of the Child in that it urges States Parties to "*regulate or prohibit information and marketing relating to substances such as ... tobacco, especially when directed at children and adolescents, as proposed in the WHO Framework Convention on Tobacco Control (2003)*".

Likewise, the plaintiff invokes the violation of the environment, which is included in art. 47 of the National Constitution, which establishes that: "*The protection of the environment is of general interest*".

Meanwhile, Art. 11 of the Protocol of San Salvador establishes: "*Everyone has the right to live in a healthy environment... States Parties shall promote the protection, preservation and improvement of the environment.*"

And particularly in the subject that concerns us, Law 18.256, on the Protection of the Right to an Environment Free of Tobacco Smoke and its Consumption, establishes in its Art. 1: "*All persons have the right to the enjoyment of the highest level of health, to the improvement in all aspects of work hygiene and of the environment.*"

Along the same lines, art. 15 of the Code of Childhood and Adolescence enshrines: "*The State has the obligation to especially protect children and adolescents with respect to all forms of: ... E) Encouragement of tobacco consumption...*"

As held by the Supreme Court of Justice: "Indeed, Public Health is an essential inherent duty of the State, and in cases such as the present one, the legislation on smoking is a superior legal good that has a public order status (art. 44 of the Constitution). (Ruling 1713/2010).

Manifest illegitimacy

The referred illegitimacy must be expressed in the claim and be clearly identifiable to the judge and must also be unequivocal. As Gelsi pointed out when referring to this requirement, "*it is clearly presented, to what everyone can notice; a result of knowledge that is reached spontaneously, without requiring long or specific reasoning*" (Quoted by Cecilia Baluga: "Procesos Constitucionales" [Constitutional Procedures] FCU 1st Ed., page 162.)

The existence of manifest illegitimacy is questioned by the defendant, inasmuch as it considers that it has acted in accordance with the law, fully respecting the rules that regulate its actions. It points out that the challenged act does not fail to comply with the international instruments as well as with the national regulations on the matter, having as a higher purpose the defense of the health of all individuals in the national territory. It considers that the opinions of academia and the scientific community of Uruguay are only a limited vision, a qualified opinion but without evidentiary or legal support.

But while it is true that article 8 of Law 18256 assigned to the Executive Power the power to decide on certain aspects of the packaging and labeling of tobacco products, it fails to mention that such regulation must follow the rule contained in the same article 8, paragraph 2, **which provides for the packaging, labeling and neutral or generic design of all tobacco products.**

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Likewise, the 3rd subsection clarifies that the referred regulation shall contain the necessary elements for the "**pursuit of the objectives pursued by the present law**". And at this point, it is worth noting that in the opinion of this judge, the amendments introduced by Decree 282/022 do not comply with those objectives, but on the contrary, they breach the aforementioned "neutral or generic" packaging design and labeling mandate.

It should be added that the defendant has not submitted any evidence to prove that the modification of the decree in question does not cause any harm to the health of children and adolescents.

On the other hand, it argues that it regulated a market issue, combating the illegal market, that is: smuggling and counterfeiting, which presents new defenses to the right to health enshrined. And it added that Decree 282/022 is aimed at reinforcing the aspects concerning the traceability of tobacco products.

This judge understands that the fight against smuggling and counterfeiting alleged by the defendant, which was the reason for the approval of Decree 282/022, was not carried out in compliance with the guidelines of neutral or generic packaging provided by Law 18256 and under the WHO Framework Convention. In other words, the measures adopted to stop the illicit activity affect the right to health of children and adolescents, because they tend or generate an increase in consumption, as has been explained by the academia and the qualified witnesses who testified in the proceedings.

And emphasis is again placed on the fact that no evidentiary means have been offered or filed to prove the non-infringement of such right, but the party has failed to comply with its burden of objection and of proving the facts constituting its claim.

Ineffectiveness of other legal means of protection.

The defendant argued that the plaintiff filed an appeal for revocation of Decree 282/022 on September 19, which led to the formation of file 2022-2-1-0001258. The appeal was not substantiated and no request was made for the suspension of the challenged Decree, a power granted to the plaintiff by art. 150 of Decree 500/991. This shows that the plaintiff had alternative means to seek the revocation of the act and the suspension of its execution. Likewise, with respect to the main claim, in accordance with Article 30 of the Constitution, the plaintiff could have petitioned the Executive Branch to regulate Law 18256 in the manner it considers should be carried out.

With respect to the amparo provided for in Article 195 of the Code for Children and Adolescents, a special regime is established that repeals Article 2 of Law 16011, thus the supplementary and residual nature of the amparo is not applicable.

"According to Cavalli, this conclusion is reinforced by the fact that art. 195 establishes a simple presumption of ineffectiveness of other means of protection, an issue that is precisely addressed by art. 2 of Law No. 16011.

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It is clear that art. 195 of the Code of Childhood and Adolescence has modified art. 2 of Law No. 16.011, which established that the protection of the amparo would only proceed when there are no other judicial or administrative means that would allow obtaining the same result or when, if they existed, they were, due to the circumstances, clearly ineffective for the protection of the right.

Therefore, in order to make the constitutional protection instrument effective, Article 195, paragraph 3, established a presumption: that any other legal remedy or means of protection would be ineffective. Therefore, if there are other remedies, both judicial and administrative, it is not appropriate to reject the amparo based solely on the existence of such remedies" (Selva Klett and Cecilia Baluga, ob cit, p. 382).

In the case at hand, it has been proven that the plaintiff has filed an appeal for revocation against the challenged decree without having requested the suspension of its execution.

But it is clear that the administrative remedy is ineffective to protect the right immediately due to the *"delay incurred by requiring the prior exhaustion of the administrative remedy pending its substantiation and through the filing of the pertinent administrative appeals and the resolution thereof"* (Legnani, Bernardo-*"Manual Básico de Derecho de Familia, Sociedad Conyugal y Sucesiones [Basic Manual of Family Law, Conjugal Society and Inheritance], La Ley, p. 253).*"

VI) Next, it is convenient to analyze the legal concept of "best interest of the child" in order to determine that in this specific case, the way to protect such interest is the suspension of the execution of Decree 282/022.

As the Inter-American Court of Human Rights held in the case of ATALA RIFFO AND DAUGHTERS VS. CHILE, Judgment of February 24, 2012:

"108. The general purpose of protecting the child's best interest is, in itself, a legitimate aim and is also an imperative. Accordingly, the Court reiterates that the regulating principle regarding children's rights is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential. Likewise, it should be noted that the preamble of the Convention on the Rights of the Child establishes that children require "special care" and Article 19 of the American Convention states that they must receive "special measures of protection." "

Of special interest for the resolution of the case are the provisions of article 3 of the Childhood and Adolescence Code, which regulates the principle of protection of rights and establishes that: "Every child and adolescent has the right to the special protection measures that his condition as a developing individual requires from his family, society and the State".

As the Family Court of Appeal 1° held in judgment No. 99/2018: *"Finally, the Convention on the Rights of the Child...provides in its art. 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". And art. 6 of the Childhood and Adolescence Code: "For the interpretation and integration of*

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this Code, the best interest of the child and adolescent, which consists in the recognition and respect of the rights inherent to their quality as human beings, shall be taken into account. Consequently, this principle may not be invoked to the detriment of such rights". As established in the Childhood and Adolescence Code, art. 6°, the best interest of the child is a tool for the interpretation and integration of the law. At the same time, through the principle of protection, we obtain a rule that allows the resolution of conflicts between two rights equally enshrined in the Convention on the Rights of the Child..."

From the foregoing, it is concluded that any measure adopted for whatever reason in relation to the packaging of cigarettes must always take into account the "best interest" of children and adolescents, avoiding the undermining of their right to health, to the protection of an environment free of tobacco smoke and to the special protection against the encouragement of tobacco consumption, all within the scope of the principle of protection of their rights.

VII) Finally, it is understood that this judge does not have the power to force the Executive Power to regulate a law, in accordance with the provisions of article 1678 numeral 4 of the Constitution of the Republic; therefore, this request will not be granted.

However, nothing prevents the adoption of the measure of suspension of the execution of the challenged act, which is the solution that will ultimately be adopted.

For the foregoing reasons, based on the cited legal norms and art. 195 of the Childhood and Adolescence Code, law 16.011, and arts. 197 and 198 of the General Procedural Code,

RULING:

TO PARTIALLY UPHOLD THE AMPARO CLAIM. ORDER THE IMMEDIATE SUSPENSION OF DECREE 282/022 UNTIL THE ADMINISTRATIVE ACT BECOMES FINAL, OR IN CASE OF PURSUING THE ANNULMENT PROCEDURE, UNTIL THE CONTENTIOUS ADMINISTRATIVE COURT ISSUES AN ENFORCEABLE SENTENCE.

WITHOUT SPECIAL PENALTY.

Dr. María Elena EMMENENENGGGER GIAMBIASSI
District Judge – Capital