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Constitutional Ruling C-741 /03

Country:

[Colombia](#)

Thematic Focus:

[Development](#)
[Equality and Nondiscrimination](#)

Forum and Date of Decision:

Constitutional Court of Colombia
2003-08-28

Nature of the Case:

Petition for review of certain expressions in the Public Domestic Utilities Act (Law 142/94) argued by public interest litigators and filed by leaders of waste collectors, given that the expressions violated constitutional protections regarding equality, participatory democracy, freedom of association, free competition as well as the strengthening of solidarity-based property and solidarity-based economy, the contracting capacity of non-profit organizations, State intervention in the economy for the promotion of an equitable distribution of opportunities, and Congress' regulatory power regarding public utilities.

Summary:

In 2002/2003, as the city of Bogota began the process of privatizing its waste collection services, recycling organizations in Bogota attempted to participate in a bidding process to compete for a waste collection and transportation contracts with the city. The recyclers were de jure precluded from competing for these contracts in big cities because they were not equity-owned, "share held corporations" as required by the law for public procurement, but rather, non-profit cooperatives of informal working poor. Thus, under the Public Domestic Utilities Act, their operation was restricted to "minor municipalities in rural zones and in specific areas or urban zones".

The Constitutional Court conditioned the constitutionality of the expressions in question on an interpretation that was compatible with the right to equality and permitted non-profit organizations to compete in public bidding processes in municipalities of any size just as any for-profit legal person.

Enforcement of the Decision and Outcomes:

Cases regarding the recyclers' participation in the privatization of waste collection began with decision [T-724-03](#), and developed and crystallized with decision [T-291-09](#). The Court continued to monitor implementation through judicial orders: Auto 268-10 and Auto 275-11. Thus, any implementation and impact regarding this decision must be considered in conjunction with the aforementioned decisions. In any event, as a result of this case, the right of not-for-profit organizations and not-equity owned enterprises to access and compete in public bidding processes has been established, as the Public Contracting Statute (Law 1150 of 2007) has been amended to include such a provision.

Significance of the Case:

This ruling removed the legal barriers that restricted the bidding of non-profit organizations in tenders for providing public domiciliary utilities thus improving the possibility of the vulnerable population participate in the formal economy.

Featured Attachments:

[C-741-03.rtf](#)

Groups involved in the case:

Independent lawyers and CIVISOL (through its founder)

Related Resources

Secondary Literature

[Ruiz-Restrepo. Making the Law work for everyone. Commission on Legal Empowerment of the Poor, 2008](#)

[IDB. Recycling: an opportunity for change in Colombia. Feb 14, 2011. Available at:](#)

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