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Constitutional Human Rights Ruling T-724/03

Country:

[Colombia](#)

Thematic Focus:

[Equality and Nondiscrimination](#)
[Life \(Right to\)](#)
[Work \(Right to\)](#)

Forum and Date of Decision:

Constitutional Court of Colombia

2003-08-20

Nature of the Case:

Writ of Protection (Tutela) in a case argued by a public interest litigator and filed by leaders of organized waste pickers in Bogota (ARB), seeking the inclusion of informal, traditional waste collectors (recyclers) in the privatization process of waste management in Bogota. Alleged violations of the rights to equality, due process, and work. Substantive equality. Affirmative action.

Summary:

In Bogota, recyclable materials have traditionally been collected and sold by individuals and families organized into recycling associations. Recyclers are among the poorest, most marginalized members of society.

After realizing its potential profitability, the city decided to formalize and privatize waste collection and recycling. The recyclers were excluded from the bidding process for this privatization for various reasons, including the development of incredibly narrow terms of reference which de facto excluded all the recycling associations. Thus, the recyclers were excluded from entering the formal economy of waste collection and also denied their traditional form of subsistence.

A tutela was filed requesting the bidding process be suspended until measures of affirmative action protecting the recyclers were included. The tutela was denied at the municipal and circuit court level. The case litigator and waste pickers plead and gathered a double insistence that granted them a Certiorari. The Constitutional Court affirmed that article 13 of the Colombian Constitution requires the State to promote conditions of real equality in favor of marginalized groups. In failing to protect the recyclers, a vulnerable and marginalized population, UESP violated their rights under that article. Because the bidding process had concluded by the time the Constitutional Court issued its decision, T-724 could not guarantee the inclusion of recyclers in that process. However, the Court ordered the UESP to include affirmative measures to protect informal recyclers in future municipal contracts on waste management.

Enforcement of the Decision and Outcomes:

The enforcement of the decision has been mixed. Bogota never built the infrastructure necessary to support inclusion of the recyclers. The city implemented a pilot project for waste classification and granted its operation to the ARB, but this was largely ineffective, as most waste collectors continued to sell their recyclables to informal intermediary warehouses. Additionally, although extensive resources have been funneled into NGOs to assist with implementation, results have been minimal. However, after the Court's decision in 2003, the Court continued to supervise future bidding processes of the Executive Unit of Public Services based on this ruling and a 2009 ruling (T/291-09) that reaffirmed their inclusion but as service providers. In May, 2010 a representative of a recycler's association requested that the Court declare the Unit's noncompliance with the Court's 2003 ruling with respect to the administration of a landfill in Bogota. In response, the Court issued Auto 091/10, in which it suspended the bidding process that was underway, and requested that the parties submit information regarding the Unit's compliance with inclusion orders. In July 2010, the Court issued Auto 268/10, declaring that the bidding process did not comply with the inclusion requirements. It ordered the Unit to develop a new bidding process to better protect the

Related Resources

Secondary Literature

[Adriana Ruiz Restrepo, "Broadening Access to Organizations of the Poor: Strengthening NPOs through](#)

[CMSOL. Summary of Auto -268-10 \(re T-724\).](#)

[CMSOL. Summary of Auto -275-11 \(re T-724\).](#)

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recyclers, which it did. In December 2011, in a new and separate process of supervision of waste privatization, the Court declared Bogota's new bidding process for privatizing trash collection, street cleaning, and grass cutting ineffective through Auto 275. (Please see the summaries of the autos under the "secondary literature" for this summary.)

Significance of the Case:

This case and its follow up orders are important in developing and applying the criteria the Court will use to determine when a group or population is considered vulnerable and marginalized, and thus entitled to special constitutional protection. In addition, it develops the Court's jurisprudence on equality between citizens, and the positive steps the State must take to compensate for material inequality between groups, rather than limiting itself to a definition of equality before the law premised on state abstention. This decision also discusses the role and types of positive discrimination that State agencies must adopt within programs and policies in order to protect vulnerable and marginalized groups subject to special constitutional protection. Finally, the case spurred the recyclers' movement, and also attracted international attention and economic support to the ARB.

Featured Attachments:

 [T-724-03.docx](#)

Groups involved in the case:

CMISOL (through its founder)

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