



Case 2158-2009

Case No. 2158-2009, Corte de Constitucionalidad de la República de Guatemala [Constitutional Court of the Republic of Guatemala] (2009).

Country: Guatemala

Region: Americas

Year: 2009

Court: Constitutional Court

Health Topics: Tobacco

Human Rights: Right to health, Right to life

Facts

The petitioner, the Guatemala Chamber of Commerce, filed a petition challenging the constitutionality of Articles 3, 4 and 6 of the Law for the Creation of Tobacco Smoke Free Environments, which prohibited smoking in any enclosed space except for hotels and motels and established pecuniary penalties for offenders. The petitioner claimed that the challenged provisions violated the freedom of industry and commerce as enshrined in Article 43 of the Political Constitution of the Republic. The petitioner argued that the provisions amount to an absolute ban, where consumption of tobacco products would be limited to private homes.

Further, the petitioner claimed that the provisions were contrary to the principle of legal security as established in Article 2 of the Constitution, as “enclosed public space” had not been defined in the law. Also, the petitioner alleged a breach of the principle of equality (Article 4 of the Constitution) because privilege was granted to the owners of hotels and motels.

The respondents argued that the law did not prohibit the production of tobacco and tobacco products but sought to protect non-smokers from the damages caused by second-hand smoke. Further, it claimed that the absence of definition of “enclosed public space” did not amount to a lack of legal certainty. Finally it alleged that the principle of equality is not violated because the law lists places where smokers may consume tobacco with no restrictions.

Decision and Reasoning

The Court upheld the law, referencing the Framework Convention on Tobacco Control (FCTC) and a number of international human rights treaties, as well as emphasizing that the Guatemala Constitution recognizes health as a fundamental right of every person and that the right to health is related to the fundamental rights to life and dignity. The Court concluded that the purpose of the challenged provisions was to regulate tobacco consumption to protect the right to health of the users, not to limit the sale of tobacco products. Therefore, the law did not limit the freedom of industry and commerce.

Further, the Court observed that the absence of definition of “enclosed public places” was not a ground of unconstitutionality as long as the meaning can be inferred from the text and purpose of the law. Finally, the Court noted that the right to equality implies that the “laws must afford equal treatment to equals in equal circumstances”. In this case, the Court found that the exception to the general prohibition was not arbitrary or unreasonable but clearly established.

The Court found that the provisions contained in the Guatemala's smoke free law were not unconstitutional and that the action should be dismissed.

Decision Excerpts

"The right to health also implies that the people have control over their body and health. The right to health compels the States to generate conditions in which all may live as healthily as possible. Such conditions include the guaranteed availability of health services, healthy and safe working conditions, adequate housing and nutritional foods. In conclusion, the right to health is not limited to the right to be healthy. The right to health is established in numerous international and regional human rights treaties and in the constitutions of countries of around the world." (Part IV, p.13)

"The right to health relates to the fundamental right of all persons to life and to live with dignity. It means that the people are entitled to enjoy the highest possible level of health, but it is not limited solely to that. The World Health Organization defines the right to health as "a state of complete physical, mental and social welfare" which "consists not only of access to medical attention, but also access to all goods and services that are essential to a healthy life, or that are conducive thereto". A safe household, a clean environment, proper nutrition and correct information on the prevention of diseases are the bases of a healthy life. The right to health also implies that the people have control over their body and health. The right to health compels the States to generate conditions in which all may live as healthily as possible. Such conditions include the guaranteed availability of health services, healthy and safe working conditions, adequate housing and nutritional foods. In conclusion, the right to health is not limited to the right to be healthy. The right to health is established in numerous international and regional human rights treaties and in the constitutions of countries of around the world. As examples of treaties of the United Nations on human rights we shall mention the following: the International Covenant on Economic, Social and Cultural Rights of 1966; the Convention on the elimination of all forms of discrimination against women of 1979; the Convention on the Rights of the Child of 1989. As examples of regional human rights treaties, the following may be mentioned: The European Social Charter of 1961; the African Charter on Human and People's Rights of 1981; the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) of 1988. Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966 establishes that, among the measures that must be adopted by the States to ensure the full effectiveness of the right to health, it shall be necessary to include those necessary for the reduction of mortality and child mortality, and the sound development of the children; the improvement of workplace and environmental hygiene; the prevention and treatment of epidemic, endemic, professional and other such diseases and the fight against them; and the creation of conditions ensuring access to healthcare by all." (part IV, p.13-14)

"The Guatemalan State has recognized in the Political Constitution of the Republic that health is a fundamental right of the human being, without any sort of discrimination whatsoever; it also considers the health of the people of the Nation to be a public good and has assumed as its obligation the oversight of the health and social welfare of all inhabitants through the development of actions of prevention, promotion, recovery, rehabilitation, coordination and any relevant complementary actions to grant them the most complete physical, mental and social welfare (Articles 93, 94 and 95 of the Political Constitution of the Republic). To comply with the mandate by the constitutional framers, State authorities have laid down a series of public policies which include, for instance, the signature and ratification of the Framework Convention of the World Health Organization on Tobacco Control." (part IV, p.14)