



Miroslav Grcev and Stamen Filipov to the Constitutional Court

261/2008-0-0

Country: Macedonia

Region: Europe

Year: 2009

Court: Constitutional Court

Health Topics: Child and adolescent health, Environmental health, Health information, Tobacco

Human Rights: Freedom from discrimination, Freedom of expression, Freedom of movement and residence, Right to health, Right to life

Facts

This case was heard together with case 70/2009-0-0. The Petitioners, Miroslav Grcev and Stamen Filipov, challenged the constitutionality of the Anti-Smoking Law (the Law). The Law banned smoking in public premises, advertising cigarettes, and selling cigarettes to persons under the age of 16. Public premises included institutions for education, health, state administration, Å public transport, and sports, as well as commercial catering facilities such as restaurants and cafes. The law also provided that smoking in commercial accommodation such as hotels and guest-houses was to be limited to separate rooms amounting to no more than 30% of the total rooms of the facility.

The Petitioners contended that these provisions violated the constitutional right to equal legal position, freedom of the market, and freedom of movement. They argued that the Law clearly treated smoking as a "legal and legitimate" activity undertaken as a result of the free choice of the smoker, and aimed only to protect the health of non-smokers and the environment. Its provisions, however, did not effectively achieve these goals, as it did not institute protective measures or prohibit the smoking or production of tobacco, nor did it aim to spatially separate smokers from non-smokers to protect the latter from the effects of second-hand smoking. Instead, the Law imposed a disproportionate ban on smoking in public places, which included a number of private sector enterprises such as hotels and catering facilities, and imposed an arbitrary limit on the number of smoking areas within such facilities. The Petitioners argued that in doing so, it limited the right to free movement and expression of smokers and the right to equal legal position and freedom of the market of commercial facilities in a discriminatory manner. They also argued that the law was arbitrary because it had been amended five times since enactment.

Decision and Reasoning

The Court rejected the Petitioner's claims. It found that the Law did not limit the right of an individual to smoke, but aimed to protect the environment and the life and the health of other persons. Certain civil and political rights in the constitution, including the right to freedom of movement and the free market, could be limited to protect the environment and health.

The court examined the WHO Constitution, the International Covenant on Economic, Social and Cultural Rights, and the Framework Convention on Tobacco Control, and concluded that the Law was aimed to implement these international obligations. The Law was proportional to these aims; it granted an adjustment period allowing businesses to prepare for any economic effects, and did not interfere with an individual's decision to smoke. It merely required that smokers adjust their behavior in public places to avoid impairing the life and health of other citizens, which was a constitutional duty. The Court considered the limitation on an individual's choice to smoke in a way that "irresponsibly" harmed the health of non-smokers to be in no way comparable to a restriction on the constitutional rights to free movement, free expression, privacy, equality or freedom of belief, as alleged by the Petitioners. Thus, the legislature had a legitimate right to limit the free market for these purposes through a ban on smoking in public places and restrictions on the sale and advertising of tobacco. The legislature also had a right to determine the means of achieving a legitimate goal, including stipulating a maximum limit on the number of separate smoking areas.

The Court also rejected the argument that the law was vague because of the number of amendments it had gone through, concluding that an examination of the legislative process in this manner was beyond its jurisdiction.

Decision Excerpts

“According to the opinion of the Court, the contested provisions and the law in its entirety do not have the goal nor do they represent a limitation of the choice of an individual to smoke, but are directed towards the protection of the life and the health of the other persons as greater values which may be jeopardised by the irresponsible behaviour of the smokers, and because of this it cannot be said that discrimination of smokers compared to the non-smokers is taking place.” Section 4.

“the legislator has the legitimate right to stipulate the relations in the separate areas of the social life, and it is in this sense that it stipulates the issue of the prohibition of smoking in catering facilities without any exceptions, and towards protection of the health of people.” Section 4.

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