



Case 54/2004 (XII.13.)

Country: Hungary

Region: Europe

Year: 2004

Court: Constitutional Court

Health Topics: Child and adolescent health, Controlled substances

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to health, Right to liberty and security of person, Right to life, Right to privacy

Facts

Five petitions brought separate challenges to Act IV of 1978 on the Hungarian Criminal Code (â€œActâ€•) related to the misuse of narcotic drugs. They argued that the Parliament had failed to ensure the exercise of the right to self-determination when it ordered the punishment of the production and cultivation of a small amount of narcotic drugs for personal consumption. That is, they argue that the right to human dignity guaranteed under Article 54 of the Hungarian Constitution included the right to self-determination, and that the Stateâ€™s interference with privacy should be prohibited in cases where citizens use consciousness-altering substances that are harmful to their health. According to the petitioners, because an individualâ€™s self-damaging conduct only harms the individual and does not endanger the rights of others, the fundamental right enshrined in Article 54 should enjoy primacy over the Stateâ€™s obligation resulting from Article 70/D of the Constitution to guarantee the right to the highest level of physical and mental health for Hungarians.

Another petitioner challenged the Act based as in violation of the Hungarian Constitutionâ€™s ban on torture and cruel punishment, arguing that any person of law is entitled to destroy himself or herself because the individual is the owner of his or her body and has a primary right to dispose over his or her â€œunhealthyâ€™ state. Furthermore, the regulation is also considered unconstitutional on account of the legislator not making a distinction between those narcotic drugs that cause addiction and the ones that do not.

The petitioners further claimed that the provisions on exemption from criminal liability contained in the Act violated the regulatory systems of international treaties - the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Single Convention on Narcotic Drugs, and the Convention on the Rights of the Child - and that the Act failed to adequately protect minors from narcotic drug use.

Decision and Reasoning

The Court held that the text â€œwithout the licence of an authorityâ€• and the text â€œto a person without the licence of an authorityâ€• were unconstitutional. The Court reasoned that the definition of â€œthe licence of an authorityâ€• was not in the Act, and thus a person could not identify the organ competent to issue the licence, the content of the licence, and the manner in which citizens can familiarize themselves therewith.

The Court further held that an unconstitutional situation violating international treaties had resulted from the failure of the Parliament to adopt regulations in relation to certain cases of misusing narcotic drugs in order to enforce the provisions of the Convention on the Rights of the Child.

The Court rejected the claim that the Act violated Hungarians' right to self-determination, reasoning that the State could permissibly criminalize narcotics under its duty to protect the right to health. To the Court, the legislature had the power to determine that the public interest in protecting health by criminalizing narcotics use outweighed the individual's right to self-determination.

Decision Excerpts

"As detailed above, the condition resulting from the consumption of narcotic drugs in fact takes away part of the consumerâ€™s human dignity, through limiting his or her autonomy by subjecting his or her discretionary capacity to an external factor. However, this is a situation where the Stateâ€™s obligation of institutional

protection appears in connection with the enforcement of the right to health and the protection of personal integrity, as provided under Article 70/D para. (1) of the Constitution. With regard to the consumer of drugs, this means that his or her positive right to self-determination is by limited his or her own rights to physical and mental health and the preservation of the freedom of action, rather than by any other person's right. Permitting the consumption of narcotic drugs would in fact eliminate the affected person's right to self-determination, as it would represent unconcern towards the limitation of the discretionary capacity of the person under the effect of and addicted to a narcotic substance. The importance of the action taken by the State lies in the fact that it safeguards the central core of the consumer's right to human dignity – beyond the reach of all others, whereby the human being remains a subject, not amenable to transformation into an instrument or object. [Decision 64/1991 (XII. 17.) AB, ABH 1991, 297, 308] Consequently, the right to human dignity can only be fully enforced if the decision-making related to the right to self-determination is not disturbed by artificial and uncontrolled influences." Pages 45-46.

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