



## JCAG 362/2010

**Country:** Spain

**Region:** Europe

**Year:** 2010

**Court:** Administrative Litigation Chamber of Granada

**Health Topics:** Child and adolescent health, Disasters and emergencies, Infectious diseases, Informed consent, Medicines, Public safety

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity

### Facts

An outbreak of measles occurred in the city of Granada, beginning on October 9, 2010, with two children in the neighborhood of Albayc n. Due to low vaccination coverage among children in the neighborhood, especially those attending the public school Colegio P blico G mez Moreno, the disease spread. By November 18th, 36 cases had been reported.

In response to the outbreak, the Andalusian Health Department concluded that the only way to control the epidemic would be to vaccinate almost all of the children over 15 months of age in Albayc n, particularly those attending Colegio P blico G mez Moreno. Letters were sent to the parents of 215 children at the school between the ages of 3 and 15, which requested that all unvaccinated children be vaccinated and that records of each child's vaccination be sent to the school. As of November 15th, 53 parents had not answered and 5 had expressly refused.

On November 22nd, the Health Department requested compulsory vaccination for the 35 children who had expressly refused the vaccine or had not completed the documentation to get the MMR vaccine.

### Decision and Reasoning

The Court authorized the compulsory vaccination requested by the Andalusian Health Department, requiring the vaccination to be carried out by medical specialists. The Court also authorized the Health Authority to seek assistance from state security forces if necessary.

In authorizing the compulsory vaccination, the Court relied on Article 8.6 (2) of the LJCA (the Spanish Administrative Jurisdiction Law), which permitted an administrative court to authorize or ratify measures regarded as urgent and needed for public health by the health authorities and which entail deprivation or restriction of liberty or any other fundamental right. The Court also drew support from Section 43(2) of the Spanish Constitution, which bestowed responsibility upon public authorities to monitor and protect public health by means of preventive measures. Examples of measures permitted under Article 8.6 (2) of the LJCA included: medical examination, treatments, and hospitalization.

After finding explicit support for authorizing the compulsory vaccination, the Court also held that when the right to physical integrity was at issue, the Constitutional Court must establish the necessary requirements to justify the constitutionality of the measure. The measure must pursue a constitutionally lawful aim and be proportionate and its adoption must be covered by a legal rule (principle of legality). The Court also added that the measure should respect the dignity of the person and not constitute inhumane or degrading treatment.

A compulsory vaccination was found to be in accordance with these requirements and not inhuman or degrading treatment. In regards to proportionality, the Court stressed that whereas only 10% of the vaccinated children experienced general discomfort and fever between 5 or 12 days, symptoms of contracting the disease could be severe. The risk of high hospital admission rates and the fatality rate of 1 per thousand cases were also considered in the Court's assessment.

### Decision Excerpts

Public Administrations are authorized, without overstepping its competences, to adopt certain measures

when required by needed or urgent sanitary reasons.â€• Page 4.

â€œWhen the right to physical integrity is stated to be at risk, the Constitutional Court is responsible to set out the necessary requirements to justify the constitutionality of the measure . . . so that the suitable and necessary measure implemented to pursue constitutionally lawful aims is not an excessive sacrifice.â€• Page 4.

â€œâ€™[T]he performance of the intervention must be carried out with respect for the dignity of the person, and the intervention shall not constitute, itself or by how it is performed, inhuman or degrading treatment, aspects absolutely prohibitedâ€™ (Sections 10.1 and 15, Spanish Constitution).â€•Page 4.

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