



Case STS 21-6-2010

Country: Spain

Region: Europe

Year: 2010

Court: Supreme Court

Health Topics: Controlled substances, Prisons, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom of expression, Freedom of religion

Facts

The applicants, Mr. Eulalio and Mrs. Ariadna worked as nurses at the Prison of Albacete. The prison had, allegedly, implemented the so-called Syringe Exchange Program (‘Programa’), a public health program developed by the Penitentiary Health General Sub-Directorate. The experimental Program was launched with the objective of preventing the transmission of diseases between inmates by, among other provisions, allowed for the disposal of syringes for drug-addicted inmates.

The applicants objected to the Program and, hoping to be exonerated from it, alleged an infringement of Article 16 of the Constitution EDL 1978/3879, which pertained to the fundamental right to conscientious objection, and Article 22 of the Spanish Nursery Code of Ethics (Código Deontológico de la Enfermería Española), Resolution 32/1998 of the General Council of Official Nursery Colleges (Consejo General de Colegios Oficiales de Enfermería).

The Litigation Chamber of the Superior Court of Justice of Castilla-La Mancha, the Penitentiary Institutions Directorate and the Penitentiary Health General Sub-Directorate all dismissed the objection.

Decision and Reasoning

The Supreme Court decided against the applicants.

According to the Court, the ordinary legislator could recognize the possibility of exoneration in specific duties for conscience reasons, so long as such legislator respects the principle of equality. This, however, was a purely legislative matter, and not a constitutional one.

The Court determined that there was no general right to conscientious objection based on Article 16 of the Constitution, as that provision did not state that religious and ideological freedom guaranteed the right to act in accordance with our own beliefs in every area of life. Rather, these freedoms were limited by their compatibility with other constitutionally guaranteed rights, and further were explicitly limited by Article 16 of the Constitution, for the ‘maintenance of public order protected by law’. Moreover, the Constitution specifically subjected citizens to the law and recognition of a general scope of conscientious objection would mean ‘that the efficiency of law would depend on the conformity of each individual with those rules.’

The Court noted that the Constitutional Court had solely applied the doctrine of conscientious objection in cases of medical abortion. There was no basis in the Spanish Constitutional jurisprudence that established a general right of conscientious objection. Moreover, a broader right to conscientious objection was neither recognized by international regulations nor the jurisprudence of the European Court of Human Rights; only Article 10.2 of the Charter of Fundamental Rights of the European Union addressed conscientious objection, stating, ‘the conscientious objection right shall be regulated by national law’.

Although the Court found the applicants’ dissatisfaction was understandable from an ethical point of view, as was questioning the Program’s efficiency in preventing disease and disease, this dissatisfaction did not, however, give rise to a right of conscientious objection, which would exonerate the applicants from taking part in the Program and fulfilling their duties as government employees.

Decision Excerpts

“Of course, the ordinary legislator can, as long as he respects the principle of equality, recognize the possibility of exoneration in specific duties for conscience reasons. But, this right would be a purely legislative right, not constitutional, and therefore, would be based on the freedom of definition of the law system that the democratic legislator has, who could create, modify or erase that right where appropriate.”

The basic idea of whoever supports this idea is, that religion and ideological freedom implies not only believing in whatever one considers best, but also the right to act in accordance to those beliefs in every aspect of life. But this is a very problematic idea, at least, for two reasons: Firstly, a systematic interpretation of the constitution does, in no way, lead to that conclusion . . . a general conscientious objection right, based on article 16, would not make much sense, as the aforementioned provision does not say that religion and ideological freedom give us the right to act in every area of life by our own beliefs. Religious and ideological freedom are not only limited by the compatibility with all other constitutionally guaranteed rights and goods, which is applicable to every single fundamental right, but is also specifically and explicitly limited by Article 16.1 of the Constitution EDL 1978/3779: “maintenance of public order protected by law”.

To sum up, we can say that there is no base in the Spanish Constitutional jurisprudence in order to establish the existence of a general scope conscientious right. And, regarding international agreements, only Article 10.2 of the Charter of Fundamental Rights of the European Union addresses conscientious objection, stating the following: “The conscientious objection right shall be regulated by national law”.

The fact that there is no applicable legal norm which recognizes and regulates the conscientious objection in the appellant’s activity, would be enough to dismiss their appeal. Article 22 of the Spanish Nursery Code of Ethics (judgment number 32/1998 of the General Council of Official Nursery Colleges) cannot be invoked, since it is not a regulation of legal scope. Moreover, the aforementioned article does not define the scope and content of conscientious objection, it acknowledges it in a general way, based on Article 16.1 of the Constitution 1978/3879, which, as we just pointed out, cannot affirm that conscientious objection is a general scope right.