

RULING NO. T-411/94

FREEDOM OF RELIGION-Limits/FUNDAMENTAL RIGHTS- Infringement/RIGHT TO LIFE-Under age person/EVANGELICALS/CONTITUTIONAL ACTION INITIATED BY DOCTOR ON BEHALF OF UNDERAGE PERSON

It is inconceivable that by arguing freedom of religion, a person steps over the right of another person. Therefore, one cannot exclude a minor from the protection of the State and of Society, under the pretext of respecting the religious beliefs of his parents, as pure as they might be. Legally, it is inconceivable that a person is treated – in this case, a minor-like an object of its parent's property, given that its ontological statute states that the minor should be recognized the right to its legal personality, the latter which involves the ownership of fundamental rights, and mainly, the right to life, to physical integrity, to health and to free development of one's personality. The religious beliefs of a person cannot lead to the absurd of thinking that, based on same, one can dispose of another person's life, risk their health and their physical integrity; especially, when we are talking about a minor, whose defenselessness makes the State grant him a special protection.

PREVALENCE OF CHILDREN'S RIGHTS - Conflicts of rights

This case must not only be examined under the perspective of the right to religious freedom of the parents, but also, in a special manner, from the point of view of the inalienable rights of the minor. The Political Constitution is unequivocal when it states that "the rights of the children prevail over the rights of others". The essential reason of this prevalence is not other than the defenselessness in which the infant is placed with respect to society, and therefore, the greater protection that must be given to him by the State as well as society. For this Chamber is clear, that the fundamental rights to life and health of the child, and in this case, prevail with no condition, over the right to religious belief of her parents.

RIGHTS OF THE PARTENTS TO CHOOSE THE TRAINING OF THEIR CHILDREN – Limits

The Chamber considers it appropriate to clarify that although it is true that parents have the right to choose the kind of education for their minor children, this does not imply power over the ontological status of the child. This is under the care of the parents, but not under their absolute control. Religious conviction, moreover, cannot be synonymous with imposition, among other reasons, because children have the right to freely express themselves.

RELIGIOUS MORAL

The religious moral is not an imposition, but a calling, they are different. A calling belongs freely to a person, and only that person, not his parents, can act in accordance to the guidelines that signal their religious creed. Guiding and not obliging is the parent's job in faith matters. The contrary would be a nonsense that would lead to obscurantism and to subjugation, in aspects that conflict with the philosophy of the Political Letter. One must

not forget that religious faith is protected under the understanding that it does not imply acts of extreme irrationality, because faith is at the service of life. Legally speaking, one cannot legitimate the sacrifice of another, given that evil, by action or omission, will never be a legally protected object.

RIGHT TO HEALTH- Inalienable

The right to health is inalienable and therefore there is no legal basis for the claims such as those contained in the case concerning the pressure of certain religious groups on its members not to receive indispensable reasonable minimum treatment that health and the right to life require to be inherent in human nature.

Ref. File T-38362

Claimant: Juan Manuel Robledo

Origin: Caldono Mixed Municipal Judge (Cauca)

Presiding Judge: Dr. VLADIMIRO NARANJO MESA

Subject: *right to religious freedom and children's rights.*

Bogotá, D.C., nineteenth (19) of September of nineteen nintey-four (1994).

The Ninth Appellate Chamber of the Constitutional Court, made up of magistrates Vladimiro Naranjo Mesa -President of the Chamber-, Jorge Arango Mejía and Antonio Barrera Carbonell,

**IN THE NAME OF THE PEOPLE
AND
BY THE CONSTITUTION'S MANDATE**

issued the following

RULING

In the process of a Constitutional Action filed under dossier number T-38362, initiated by Juan Manuel Robledo, who acted as ex officio agent of the minor Floralba Fernández Chocué, against Maria Elvira Chocué and Sebastián Fernández, parents of the minor.

I. PRECEDENTS

Based on articles 86 of the Political Constitution and 33 of Decree 2591 of 1991, the Selection chamber of the Constitutional Court chose this Constitutional Action, for its revision.

As per article 34 of Decree 25291 of 1991, this Revision Chamber of the Court dictates the following revision ruling.

1.1 Claim

The citizen Juan Manuel Robledo, acting as ex officio agent of the minor Floralba Fernández Chocué, filed before the Caldono Mixed Municipal Judge (Cauca), a Constitutional Action against the parents of the minor, Maria Elvira Chocué and Sebastian Fernández, with the objective of protecting the right to life of the minor, as provided in articles 11 and 44 of the Political Constitution.

1.2 Facts

The citizen Juan Manuel Robledo states that he is the doctor of the community of Pueblo Nuevo (Cauca), that on April 28, 1994 Mrs. María Elvira Chocué went to his office in order for him to examine her daughter Floralba, who was 10 months old. After the corresponding medical exam, the plaintiff diagnosed the minor with lobar pneumonia, undernourishment and dehydration, and therefore advised Mrs. Chocué that her daughter had to be hospitalized immediately, given that her critical health state was putting her life at risk.

According to the ex officio agent of the minor, Mrs. Chocué, after consulting with her husband, “said that they are evangelical and that their religious cult does not allow them to take the boy (sic) to the hospital, and therefore it was impossible to transport the minor, to provide the attention she deserved.”

The plaintiff highlights the fact that in that same religious sect, there was a case in which a woman was diagnosed with appendicitis and that, for the same reason, her hospitalization was not allowed and she “died as they prayed.”

II. PROCEDURE

2.1 First Instance Ruling

By means of ruling dated April 29, 1994, the Caldono Mixed Municipal Judge (Cauca) “without formal considerations and without conducting any previous investigation, based on the faculty granted by article 18 of Decree 2591 of 1991,” decided to protect the right to life and health of the minor Floralba Fernández Chocué, and consequently ordered her parents to take the minor to the Municipal Hospital of Caldono “with the objective of providing her with qualified medical attention.”

Likewise, it granted the Hospital's Director the right of "performing all acts that he considers pertinent with the aim of accomplishing what is ordered in this ruling, including, requesting the help of the public forces, if necessary."

Likewise, it ordered the parents to cover all costs of the medical services, proportionate to their economic capacity, and ordered them in the future to abstain from any similar conduct that risks the life or any other of the minor's fundamental rights.

Finally, the judge ordered copies of this case to be sent to the Police Inspector of Pueblo Nuevo, so that she initiate an administrative process in order to obtain a declaration of the dangerous state in which the minor was in, in the terms of article 36 and subsequent articles, of Decree 2737 of 1989 (Minor's Code).

The abovementioned decision was not challenged.

IV. CONSIDERATIONS OF THE CHAMBER

4.1 Competency

According to that which is established in articles 86 and 241, number 9 of the Political Constitution, and articles 31 to 36 of Decree 2591 of 1991, this Court is competent to hear the referenced ruling.

4.2 The Matter

1. The nature of the right to religious freedom and its reach

The tendency of men to exteriorize their spiritual beliefs has been a characteristic of all cultures. Such beliefs are aimed at their particular conception of good and evil and towards the adoration of a superior being who provides divine rewards or punishments to those who act under its precepts, or who break them. Men seek, through their beliefs, to transcend into a spiritual life and thus, in the temporal life, to choose means that abide to the mandates of the belief to which they are affiliated. In a final instance, one can state, as signaled by Aristotle, that good moves one's will; according to the philosopher, the possession of the desired good implies the attainment of happiness, even if it is limited and sporadic. Accordingly, happiness appears as men's last purpose. As human nature is organized towards said objective, reason tends towards the election of means to reach happiness, and religious faith shows up as the rational act per excellence, given that men are the only being that believes in something superior and inclines, by essence, to transcendence.

Because of his liberty, man is a being who commits; therefore it is reasonable that the person acts believing in a higher power, and that is where the essence of religion resides in, in the complete commitment of the person to a higher power.

In the exercise of freedom therein lies a social responsibility that mandates a consideration of other people's rights, and solidarity duties, alongside the principle of the common good.

As such, the right of religious freedom is a personal right, but with a clear social implication, this right is exercised under some legal provisions and, in all cases, it is limited by public order and the common good. Accordingly, the State and civil society have the right to repel any deviation that might present itself in the abuse of a misunderstood religious freedom. The exercise of that right is limited, because all judicial pretensions must coexist in harmony with the valid expressions of thought of others. The right, then, implies a correlative duty that is proportional to itself, so that there is no power against an inherent duty. If not so, it would be impossible to achieve a just social order, which comprises the harmony of judicially protected interests that fall in together, inspired in justice.

Religious freedom, in its exercise, cannot harm another person's right. What is the reason for this? The answer lies in the integral aspect of social order, thus as Kant pointed out, there is categorical imperative according to which everybody's free will coexists with one another, according to the universal law of freedom. In other words, the legal system, by imposing limits on free expression at the same time, and from another approach, securing the efficiency of human's free will. Thus, *verbi gratia*, in the framework of legal relationships, the power of an individual reaches only until another person's begins, for the sake of the principle of equality that generates the obligation of solidarity. The State, therefore, in its ordering function, has to limit freedoms, so that they can coexist with each other, creating legal harmony, meaning, a just social order that is precisely a guiding principle of the Constitution and one of its purposes (Cfr. Art. 2 C.P.)

However, Rudolf Stammler, points out some maxims of legal coexistence, named by him "maxims of mutual respect and participation", that can be summarized in three points; first the neighbor is a being of purpose; second, no one can be excluded from society; and third, no one can be treated like an object. Regarding the conception that the neighbor is a being of purpose, this maxim states that one's own rights cannot go against those rights of other parties. It is obvious that this happens because rights coexist, and are not excluded, among other reasons, because they form a legal union that is founded on order, as an expression of the harmony among people. This demonstrates that it is inconceivable that by arguing freedom of religion, a person steps on the right of another person. Therefore, one cannot exclude a minor from the protection of the State and of Society, under the pretext of respecting the religious beliefs of his parents, as pure as they might be. Legally, it is inconceivable that a person is treated – in this case, a minor- like an object of her parent's property, given that its ontological status states that the minor should be recognized as having a right to his legal personality (art. 14 C.P), the latter involving the ownership of fundamental rights, and mainly, the right to life, to physical integrity, to health and to free development of one's personality.

Freedom of religion is limited by social order and the common wealth, the first as a legal expression of social harmony, and the second as the realization of the joint conditions of social life that make possible associations between free men and to each one of them the accomplishments of their own perfection.

2. The Concrete Case

In the case that is the object of appeal, the chamber finds a conflict of rights: from one side, the right to freedom of religion of the parents, and from the other side, the right to life and health of the minor. In the present case it is obvious that the right to life and health of the minor is predominant.

The religious beliefs of a person cannot lead to the absurd thinking that, based on the same, one can dispose of another person's life, risk their health and their physical integrity; especially when we are talking about a minor, whose defenselessness makes the State grant him a special protection, according to article 13 of the Constitution. The essence of religion in general, and especially Christianity, is to maintain life, physical integrity, and health of the human being; but from this, it is paradoxical that the faithful can evoke their religious beliefs, as in this case, to obstruct the opportune intervention of science towards the health of their child. There are not enough reasonable principles that can place a determined religious creed in opposition of such fundamental rights of an individual such as life and health.

This case must not only be examined under the perspective of the right to religious freedom of the parents, but also, in a special manner, from the point of view of the inalienable rights of the minor. The Political Constitution is unequivocal when it states that "the rights of children prevail over the rights of others" (art. 44 C.P). The essential reason for this prevalence is none other than the defenselessness in which the infant is placed with respect to society, and therefore, the greater protection that must be given to him by the State as well as society. For this Chamber it is clear that the fundamental rights to life and health of the child, in this case, prevail with no condition over the right to religious belief of her parents. They have no legal right to decide about fundamental rights such as life, and health, which, according to the legal system, are personal, belong to one's self, and are not the subject of another person's property. One of the bases of civilization consists in not submitting the weak, but instead promoting and defending their dignity and their preferential treatment that must be given in virtue of proportionality, the essence of distributive justice, which consists of giving to each one according to their needs. This does not mean that it breaks the principle of equality, but exactly the opposite, in the just proportion, or the proportional equivalent that mitigates the shortcomings of those who are unconditionally the subject of rights, and not objects of the election of their parents. The weakness of an infant is no denial of the right but the affirmation of his need and the worthy basis of a preferential attitude towards him.

The chamber finds it convenient to clarify that even if it is true that the parents have the right to choose the type of education of their underage children, this does not imply power over the ontological status of the infant. This is under the care of the parents, but not under their full control.

Religious formation cannot be synonymous with imposition because children have the right to express their opinions freely (Art. 44 P.L). In addition, it is not taught with dogmatism, but with the example of life. Educators from all streams, from Plato to today, jointly affirm the autonomy of free will, so that the teacher educating is motivated by living to the highest values, but is not a determination of the conduct of the minor, because he has his right of freedom of development of personality (Art. 16 P.L).

Religious morality, they insist, is not an imposition but a vocation, which is different. A person responds freely to a vocation and just to himself, not to his parents, and can act according to the guideline of behavior that indicates a religious creed. Orienting and not forcing is the duty of the parents with respect to religious faith. The opposite is nonsense that leads to the dark ages and to submission, aspects that at odds with the philosophy of the Constitution. We cannot forget that religious faith is protected under the understanding that it does not imply acts of extreme irrationality, because faith is at the service of life. Legally speaking, the sacrifice of the other cannot be legitimized, because evil, by action or omission, can never be the object of that which is legally protected.

Finally, this chamber reminds that the right to health is inalienable and therefore the claims such as those that lie with the record have no legal basis, relative to the pressure of certain religious groups over their members to not receive reasonable the minimum treatment that health and the right to life demand, as these are inalienable and undeniable because they are inherent to human nature.

In virtue of the above, the chamber has to confirm the ruling of the date 29 of April 1994, announced by Caldono Mixed Municipal Judge (Cauca), given the considerations of this ruling.

DECISION

In virtue of the aforementioned, the ninth chamber of revision of the Constitutional Court, in the name of the people and by mandate of the Constitution

RESOLVES:

First, CONFIRM in its totality, by the reasons here exposed, the ruling of the date 29 of April 1994, issued by Caldono Mixed Municipal Judge (Cauca) by which it protected the right to life and to health of the minor Floralba Fernández Chocué

So ordered, served, and published in the Gazette of the Constitutional Court.

VLADIMIRO NARANJO MESA

Magistrate

JOSE ARANGO MEJIA

Magistrate

ANTONIO BECERRA CARBONELL

Magistrate

MARTHA VICTORIA SÁCHICA DE MONCALEANO

Secretary General