



Corte costituzionale



## JUDGMENT NO. 28 OF 2009

*GIOVANNI MARIA FLICK, President*

*UGO DE SIERVO, Author of the Judgment*



## JUDGMENT NO. 28 YEAR 2009

**In this case the Court considered a challenge to a law which granted compensation to persons infected with HIV following compulsory vaccinations, transfusions or administration of blood or blood derivatives, but did not provide for analogous compensation for infection with hepatitis. Although judgment No. 476 of 2002 had extended such protection to persons infected with hepatitis following blood transfusions, those infected following the administration of blood derivatives still lacked cover. The Court accordingly read the provision as providing compensation also for those infected with hepatitis following the administration of blood derivatives, on equality grounds (Article 3) since there was no justification for the unreasonable difference in treatment.**

### THE CONSTITUTIONAL COURT

Composed of: President: Giovanni Maria FLICK; Judges: Francesco AMIRANTE, Ugo DE SIERVO, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO, Giuseppe FRIGO, Alessandro CRISCUOLO, gives the following

### JUDGMENT

in proceedings concerning the constitutionality of Article 1(2) of law No. 210 of 25 February 1992 (Compensation for individuals harmed by irreversible complications resulting from compulsory vaccinations, transfusions and administrations), commenced pursuant to the referral order of 15 November 2007 from the *Tribunale di Palermo*, employment law division, in the civil proceedings pending between F.F. and the Ministry of Health, registered as No. 275 in the Register of Orders 2008 and published in the *Official Journal of the Republic*, first special series 2008.

*Having heard* the judge rapporteur Ugo De Siervo in chambers on 14 January 2009.

### *The facts of the case*

1. – During the course of proceedings concerning a request for compensation for damages suffered following the “administration of an intramuscular anti-tetanus injection”, by the referral order of 15 November 2007 the *Tribunale di Palermo*, employment law division, raised the question of the constitutionality of Article 1(2) of law No. 210 of 25 February 1992 (Compensation for individuals harmed by irreversible complications resulting from compulsory vaccinations, transfusions and administrations) with reference to Articles 2, 3, 32 and 38 of the Constitution, “insofar as it does not provide that the benefits provided for under law No. 210 should also be awarded to individuals who have suffered irreversible harm as a result of hepatitis contracted following the administration of blood derivatives”.

The court states that on 4 November 1983 the plaintiff had been administered “with an intramuscular anti-tetanus injection” and that in March 2000 he had been diagnosed with “an HCV related hepatic cirrhosis”, allegedly contracted following the administration of human immunoglobulin.

The plaintiff had requested compensation for the illness suffered, but the competent hospital medical board had not recognised the causal link between the administration of immunoglobulin and the HCV illness.

Following an appeal to the ordinary courts, the Ministry of Health, which entered an appearance, claimed that the application was not well founded, pointing to the absence of a causal link between the administration of blood derivatives and the illness from which the plaintiff was found to have been suffering.

During the course of proceedings an expert's technical report was ordered *ex officio*, which ascertained the existence of a causal link between the administration of the anti-tetanus injection in 1983 and the HCV hepatitis contracted. The court appointed expert also went on to clarify that “the anti-tetanus immunoglobulins are obtained by a complex mechanism involving the filtration of human blood” and that in 1983, when the injection was administered to the plaintiff, “the viral pathogen agent for hepatitis C, identified only in 1989, had not yet been discovered, with the result that at the time, screening for the HCV

antibody in blood to be used for the anti-tetanus injection was not yet possible, thereby rendering the likelihood of infection high”.

Accepting the application by the plaintiff, the lower court accordingly raised a question concerning the constitutionality of Article 1(2) of law No. 210 of 1992.

As regards the relevance of the question, the court notes that once it has ascertained the existence of a causal link between the hepatitis from which the plaintiff suffers and the administration of the blood derivative, the acceptance of the application for compensation depends on the outcome of the proceedings before the Constitutional Court, since there are no “further objections to the acceptance of the application”.

The question is claimed not to be manifestly groundless with regard to Articles 2, 3, 32 and 38 of the Constitution.

Given the status of compensation awarded to injured parties as a measures of assistance, for the purposes of Articles 2 and 38 of the Constitution, there are no reasons why the protection of health and the related social assistance should be precluded for individuals who suffer irreversible harm as a result of hepatitis contracted following the administration of blood derivatives.

The compensation is also claimed to be due pursuant to the obligation to protect health provided for under Article 32 of the Constitution.

The contested provision is moreover claimed to violate the principle of equality, since it provides for compensation only for individuals who have contracted HIV, and hence not also for those infected with hepatitis following the administration of blood derivatives; by contrast, following judgment No. 476 of 2002 of the Constitutional Court, the same law provides for compensation also to individuals infected with hepatitis (treating them as equivalent to those infected with HIV) only where the infection occurs following the administration of blood (Article 1(2) and (3)).

The failure to provide compensation for individuals infected with hepatitis following the administration of blood derivatives results in an unjustified difference in treatment also in view of the strong similarities between HIV and hepatitis infection.

### *Conclusions on points of law*

1. – The *Tribunale di Palermo*, employment law section, questions the constitutionality of Article 1(2) of law No. 210 of 25 February 1992 (Compensation for individuals harmed by irreversible complications resulting from compulsory vaccinations, transfusions and administrations), insofar as it does not provide that the benefits recognised under law No. 210 “should also be awarded to individuals who have suffered irreversible harm as a result of hepatitis contracted following the administration of blood derivatives”.

This provision is argued to violate Article 3 of the Constitution due to the unreasonable difference in treatment which it causes between individuals who have contracted hepatitis following the administration of blood derivatives, for whom no compensation is recognised, and those who have been infected with HIV for the same reason, to whom the law by contrast awards the benefit.

The referring court moreover claims that Articles 2, 32 and 38 of the Constitution have been violated since there are no reasons why the protection of health and the related social assistance should be precluded for individuals who suffer irreversible harm resulting from hepatitis contracted following the administration of blood derivatives.

2. – The question is well founded.

Article 1(2) and (3) of law No. 210 of 1992 recognise a level of economic support to individuals who have suffered harm following certain treatment.

In particular, the law provides compensation for those who have been infected with HIV following the administration of blood and blood derivatives, as well as for healthcare professionals who have contracted the same infection through contact with blood or blood derivatives.

Article 1(3) of law No. 210 also awards compensation to those who have suffered irreversible harm from hepatitis contracted following a transfusion. In judgment No. 476 of 2002, this Court recognised a similar benefit also to healthcare professionals who have suffered permanent harm during the course of their service resulting from infections contracted following contact with blood or blood derivatives originating from individuals suffering from hepatitis.

Therefore, it is clear from the 1992 law as a whole that, whilst compensation is always awarded to individuals who have contracted the HIV infection, regardless of whether this results from the administration of blood or blood derivatives, the benefit is awarded to individuals who have contracted hepatitis only in cases in which the illness was contracted as a result of a transfusion or, for healthcare professionals, in cases involving contact with blood or blood derivatives.

By contrast, no protection is provided in the case before the lower court, in which the infection from hepatitis was a result of the administration of blood derivatives. Therefore, for the purposes of this case, the analogy with the legislation enacted in favour of individuals infected with HIV (judgment No. 476 of 2002) no longer applies.

As this Court has already held, the benefit provided for under Article 1(2) and (3) of law No. 210 of 1992 consists in a measure of financial support based on collective solidarity guaranteed to citizens, in accordance with Articles 2 and 38 of the Constitution, when confronted with events which give rise to situations of need (judgments No. 342 of 2006, No. 226 of 2000 and No. 118 of 1996).

This benefit is grounded on the “inadequacy of the medical controls in place until that time” in this specific sector (judgment No. 476 of 2002), and as such must be awarded also to those who, according to the law as currently in force, have been unreasonably refused compensation, in spite of the fact that the same rationale indicated above applies.

The failure to grant compensation to those who have contracted hepatitis following the administration of blood derivatives cannot be supported by any reasonable justification since, without any reason whatsoever, such cases are devoid of protection.

The Court must therefore rule the contested legislation unconstitutional due to violation of Article 3 of the Constitution.

The additional grounds for challenge are moot.

It must also be stated that, whilst the referring court specifically contested Article 1(2) of law No. 210 of 1992, the challenges should strictly speaking be taken to refer to subsection 3 of the same article, which governs compensation for hepatitis, whereas subsection 2 by contrast concerns harm resulting from infection with HIV. Accordingly – since

it is a material error – it is sub-section 3 which must be the object of the declaration of unconstitutionality.

on those grounds

THE CONSTITUTIONAL COURT

*declares* that Article 1(3) of law No. 210 of 25 February 1992 (Compensation for individuals harmed by irreversible complications resulting from compulsory vaccinations, transfusions and administrations) is unconstitutional insofar as it does not provide that the benefits recognised under law No. 210 should also be awarded to individuals who have suffered irreversible harm as a result of hepatitis contracted following the administration of blood derivatives.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 26 January 2009.

Signed:

Giovanni Maria FLICK, President

Ugo DE SIERVO, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 6 February 2009.

The Director of the Registry

Signed: DI PAOLA