



SPANISH CONSTITUTIONAL COURT

Cabinet of the President

Press Office

**INFORMATION NOTE No. 11/2015**

**THE TC GRANTS PROTECTION TO A WOMAN WHO BECAME PREGNANT AFTER BEING FITTED WITH A CONTRACEPTIVE DEVICE**

Chamber One of the Spanish Constitutional Court (TC) has granted protection to a woman who, after being fitted with a contraceptive device in a public hospital in Badalona (Barcelona), became pregnant and gave birth to a baby girl with a 70% disability, acknowledged by the Government of Catalonia. The State Prosecution appearing before the Constitutional Court was in favour of granting constitutional protection. The President of the Court, Judge Francisco Pérez de los Cobos, acted as Reporting Judge.

The Court repeals two rulings from the Contentious-Administrative Chamber of the Supreme Court, which rejected the financial liability claim filed by the appellant against the Institut Català de la Salut, as well as the nullity of actions subsequently filed; likewise, the Supreme Court is required to deliver a new judgment which is respectful with the breached right, namely, the right to judicial protection regarding the right to obtain a reasoned resolution which is founded in law (Art. 24.1 of the Spanish Constitution – CE).

The judgment explains that, according to constitutional case-law, the courts' duty to reason their decisions does not demand "*an exhaustive and detailed reasoning*" on all the evidence provided. It will suffice with explicitly or implicitly providing a clear explanation of the legal criteria and reasons on which the decision is based.

In this case, the Supreme Court does not conduct "*an explicit analysis*" and the judgment also fails to include a tacit response on the evidence which, according to the appellant, would prove that the contraceptive device was not implanted. Among those pieces of evidence, there are medical reports that prove that the implant was not found in the patient's arm through the –rays and ultrasounds performed after she became aware of her pregnancy and studies on the high effectiveness of the device and the "*almost zero chance of pregnancy*" if the device is implanted correctly. According to the TC, the Supreme Court "*places the appellant in a situation of evidentiary impossibility which is completely irrational*".

In fact, the Court states, the entire legal reasoning of the challenged judgment does not clarify the reasons why the Supreme Court did not consider the evidence provided by the appellant. Notwithstanding the fact that "*an external analysis of the evidence, the valuation of which is omitted, shows sufficient consistency to expect the court to conduct a detailed analysis of this evidence to back up the appellant's claim*", whereby her pregnancy is clear proof that the device was not implanted, given its proven high level of effectiveness. "*Its consideration (...) –it adds- might have led to the appreciation of a causal relationship which is legally required in order to be able to hold the Healthcare Administration financially liable, examined in the suit, upholding the indemnification claimed*".

Furthermore, the Court adds, "*the evidence on which the judgment bases its dismissal of the appeal (...) is not as convincing as the challenged judgment declares it to be*". On the one hand, it involves a witness statement from a doctor "*who claims to remember nothing*" and who "*has not declared that the device was implanted in this case, but has limited his statement*".

*to the usual procedure used to fit the device” and, on the other hand, of the Emergency Service report, provided by the Institut Catalá de la Salut, which states that the “device was inserted without incidents and the patient is informed of the medical act to be performed”; however, the author is unknown and “the plaintiff’s signature is not included either”.*

Madrid, 11 February 2015