Constitutional Court Judgment No. 154/2002, of July 18 (Unofficial translation)

Preamble:

The Plenum of the Tribunal Constitucional ("Constitutional Court"), made up of Mr. Manuel Jiménez de Parga y Cabrera, Presiding Judge, Mr. Tomás S Vives Antón, Mr. Pablo García Manzano, Mr. Pablo Cachón Villar, Mr. Vicente Conde Martín de Hijas, Mr. Guillermo Jiménez Sánchez, Ms. María Emilia Casas Baamonde, Mr. Javier Delgado Barrio, Ms. Elisa Pérez Vera and Mr. Eugeni Gay Montalvo, Judges, has pronounced

ON BEHALF OF THE KING

the following

JUDGMENT

In the recurso de amparo (individual appeal for protection of a fundamental right) number 3468/97, brought by Mr. Pedro Alegre Tomás and Ms. Lina Vallés Rausa, represented by the Procuradora [solicitor] Ms. Pilar Azorín-Albiñana López and assisted by the Abogado [counsel] Mr. Julio Ricote Garrido, against the Decisions, both – the first and second – of the same date, 27 June 1997, and with the same number, 950/1997, pronounced by the Criminal Division of the Supreme Court in the appeal for cassation number 3248/96, which settled the appeal for cassation brought against the Decision of 20 November 1996 from Huesca Provincial Court, in case number 2/95, for an offence of homicide, originating from Fraga Court of Instruction. The Public Prosecutor has intervened. The Judge-Rapporteur was Mr. Pablo Cachón Villar, who gives the Court's opinion.

Grounds:

II. Points of law

1. This claim for protection is against the two Decisions, both dated 27 June 1997, pronounced by the Criminal Division of the Supreme Court in the appeal for cassation number 3248/96. The first upholds the appeal for cassation brought by the Public Prosecutor against the Decision of Huesca Provincial Court, dated 20 November 1996, which had acquitted those appealing herein of the offence of homicide by omission of which they were accused. The second Decision, as a result of the appeal being upheld, convicts them "as perpetrators of an offence of homicide, with the very determining concurrence of the mitigating factors of bewilderment or state of passion, to the sentence of two years and six months in prison".

The essential details referred to in the transcribed terms of the decision are the following: a) first, the person for whose death the appellants for protection were convicted was their 13-year-old son; b) secondly, the conviction is due to omission of the conduct required of the parents of the minor, given their condition of guardians of his health (condition which is currently expressly contained in article 11 in relation to article 138, both of the 1995 Código Penal ("Criminal Code"); c) thirdly, the omitted conduct consisted either in an action by current appellants for protection aimed at dissuading their son from his refusal to allow a blood transfusion, or their authorisation to allow the blood transfusion to the minor; and d) fourthly, the cause for the parents' action (exactly, the reason why they omitted the conduct which was due) is based on their religious beliefs, namely that due to their being Jehovah's Witnesses it is their view, relying on various passages from the Holy Books, that blood transfusions are prohibited by the law of God.

2. The appeal for protection invokes infringement of the fundamental rights to religious freedom

(article 16.1 of the Spanish Constitution) and to physical and psychological integrity and not to suffer torture or inhumane or degrading treatment (article 15 of the Spanish Constitution).

Those fundamental rights are expressly attributed in the appeal for protection to both the deceased minor and to his parents, those now appealing. First of all, such attribution is made to the minor in relation to the declared irrelevancy of his opposition to the transfusion: thus, in the appeal for protection (in fine Legal Ground II) it says that "the infringement is clear of the rights guaranteed to the minor in articles 16.1 [and] 15 of the Spanish Constitution, denying validity and relevance to his free and conscious will and consent and thereby transferring the centre of the accusation for his death to the parents against all rational, moral, constitutional and legal logic." Secondly, the attribution to the parents of the said rights, invoking their infringement, is done in relation to the requirement of the dissuasive conduct or of the authorisation of the blood transfusion, as referred to above.

Given that the individual appeal for protection of a fundamental right is against the conviction of the parents of the minor, it must be understood that the constitutional infringement claimed in the appeal for protection is that of the fundamental right to the religious freedom of the minor's parents. And this is regardless of the fact that the conduct required of them in the appealed Decision may involve, according to the terms of the claim for protection, the failure to recognise the rights of the minor (in this case, respect for his beliefs and for his physical and psychological integrity). For such reason the reference to the minor's rights must be understood as made within this framework and according to the effectiveness of the parents' rights. In any event, it should be made clear that there is no doubt that they based their attitude of omission – which was criminally punished – on the said right to religious freedom and on their beliefs on this matter, which they duly invoked for such purpose.

The above exposition of the specific subject-matter of this individual appeal for protection of a fundamental right is completed with the reference to the relevance, for the purposes of the appeal, of article 25.1 of the Spanish Constitution, relating to the principle of criminal legality, as resolved by the Plenum of the Court in the procedural decision of 12 December 2001, making use of the power granted by article 84 of the Organic Law of the Constitutional Court.

On the other hand, the Public Prosecutor applies for the appeal to be rejected, insisting on the legal incapacity of the minor to adopt an important decision about his life which, in the performance of their guardianship, his parents were bound to safeguard. The Public Prosecutor argues that, as a factual issue which has already been settled, this appeal should not question the inobservance by the parents of their position as guarantors of their son's life. And the Public Prosecutor also indicates, specifically referring to the case in question and to the said position of guarantor, that the right to life, insofar as it refers to a third party over whom there is a special relationship of responsibility deriving from guardianship, constitutes an effective limit on religious freedom.

3. The determination of the subject-matter and scope of the claim for protection requires that beforehand we determine the specific facts upon which the legal-constitutional issues are based and what was the response of the appealed Decisions to such facts.

The second section of the background of this Judgment contains the list of facts by virtue of which current appellants were convicted. Below are the substantial parts of those facts:

a) The minor Marcos, the thirteen-year-old son of current appellants, was injured after falling off his bicycle, as a result of which his parents took him to the Hospital Arnáu de Vilanova, in Lérida, on Thursday, 8 September 1994 at about nine or ten in the evening. After the minor was examined by the doctors, they reported that he was at high risk of haemorrhage and therefore needed a blood transfusion. The parents opposed the transfusion on religious grounds and, after being informed by the doctors that there was no alternative treatment, requested the discharge of their son in order to bring him to another health centre. The hospital, instead of consenting to the discharge as they considered that the minor's life was at risk if he did not

receive the transfusion, applied to the duty court (at about 4.30 am on the 9th) for authorisation to carry out the transfusion which was then granted in the event that it was essential for the life of the minor.

b) The parents complied with the judicial authorisation. When the doctors were about to carry out the transfusion, the minor, without any intervention from the parents, rejected it "in genuine terror, reacting agitatedly and violently in a state of great excitement, which the doctors considered very counterproductive as it could cause cerebral haemorrhaging." Therefore, the doctors, after having tried on various occasions without success to convince the minor to consent to the transfusion, gave up.

c) The hospital staff then asked the parents to try to convince the minor. They refused on the said religious grounds, although they wanted their son to be cured. The doctors rejected the possibility of performing the transfusion against the will of the minor because they considered that it would be counterproductive, also rejecting "the use for such purpose of any anaesthetic, as they did not consider it ethically or medically correct at that time, due to the risks that it would entail." Hence, after "talking to the duty court on the telephone", on the morning of Friday the ninth, they agreed to grant the voluntary discharge.

d) The medical history of the minor was handed over at two o'clock in the afternoon to the parents, who had started, "helped by persons of their same religion, to seek who they considered to be one of the best specialists on the matter, and it was their wish that their son remain in hospital until the new medical specialist was found." In any event, the minor left hospital in the afternoon of Friday the ninth, and they continued with the process of locating the new specialist, finally arranging an appointment with him for Monday, 12 September at the Vall D'Hebron Maternal-Infant University Hospital in Barcelona.

e) At 10 o'clock in the morning of 12 September the minor was admitted to this Hospital. After the examination the doctors considered that a blood transfusion was urgent to neutralise the risk of haemorrhaging and anaemia in order to then perform the appropriate diagnostic tests. The minor and his parents stated that their religious beliefs prevented them from accepting the transfusion, and the latter signed a document on that matter. On the other hand, nobody in the centre considered it appropriate to request judicial authorisation in order to carry out the transfusion or try to perform it (whether using the authorisation granted by Lerida court or on decision of the doctors). Things being as they were, the minor's parents went with him to the Hospital General de Cataluña, a private centre whose services must be paid by private individuals directly.

f) The medical decision-makers of the Hospital General, just like the previous centres, considered the transfusion necessary as there was no alternative treatment. The transfusion was again rejected on religious grounds by the minor and his parents. Nobody at the centre took the decision to either perform the transfusion, either on their own decision or on account of the authorisation granted by the judge in Lerida (which was known in this medical centre), or by requesting a new authorisation, this time from the relevant court in Barcelona. As a result of all of this the parents, as they did not know of any other centre where they could go, returned to their home with the minor, where they arrived at about one o'clock in the morning of Tuesday, 13 September.

g) The parents and the minor remained home all of the 13th without any care other than the visits of the general practitioner of the town of Ballobar, Huesca province, who considered that he could not contribute anything which was not already in the hospital report. On Wednesday 14 September, the Juzgado de Instrucción de Fraga (Fraga court of instruction) (Huesca), after receiving a document from the Ayuntamiento de Ballobar (Ballobar local council) together with a report from the general practitioner, authorised entry into the minor's home for medical care on such terms as the doctor and the forensic doctor deemed appropriate, including a transfusion.

h) The officers of the court then visited the home of the minor, who was by now severely

mentally and physically deteriorated, and the parents complied with the court's decision – after stating their religious convictions – and it was his father who took him downstairs to the ambulance in which he was taken to Barbastro Hospital. The minor arrived in a deep coma to this Hospital where the blood transfusion was performed, against the will but without the opposition of the parents. He was then taken to Hospital Miguel Servet, in Zaragoza, where he arrived at about 11.30 pm on the same day, the 14th, with clinical signs of brain damage due to cerebral haemorrhage. The minor died in this hospital at 9.30 pm on 15 September.

It is also recorded in the proven facts that "if the minor had received the transfusions that he needed on time he would have had in the short and medium term a high possibility of survival, and in the long term it would depend on the specific illness that he suffered from which could not be diagnosed."

4. The questions surrounding such facts were answered in varying ways at the different levels of the ordinary jurisdiction. Hence, although the Audiencia Provincial de Huesca ("Huesca Provincial Court") acquitted, considering that "the facts declared proven …. do not constitute any offence" (First Legal Ground of the trial Decision), the Criminal Division of the Tribunal Supremo ("Supreme Court") convicted the appellants in the terms and with the scope mentioned above, as it considered that "the actus reus and mens rea requirements are satisfied of the offence of homicide committed by omission" (single legal ground of the second Decision).

a) The Decision of the Provincial Court, in relation to the so-called 'patient's right to self-determination', asked about the time after which "the minor who remains conscious may decide whether certain treatment is applied or not, if when he ceases to be one (minor) on reaching the legal age, or .. when he has sufficient decision (which in our law can even arise before they reach twelve years old, article 92 of the Civil Code), or when they can consent to a sexual relationship (twelve years old for article 191 of the current Criminal Code), etc. ...". And in relation to this, it indicates (for the case when the minor is refused such rights) the possibility of a breach or violation of article 15 of the Spanish Constitution, according to the reaction observed in the case in question by the son of the appellants faced with the possibility of a transfusion, which he opposed by "a reaction of real terror which could not be overcome or neutralised despite all the force of persuasion deployed, with dedication, by all of the health staff."

That Decision also states that the parents are not required to behave (whether asking for or approving the transfusion, or convincing their son to accept it) in a manner which is against their conscience or religious convictions and "the teachings which, in a regular, normal and ordinary use and exercise of their religious freedom have been transmitted to their son for a long time before the accident took place or the first symptoms of the illness became evident." The Decision also affirms that, once society is given the effective opportunity of replacing the parents for such purpose, by claiming medical assistance via the conventional channels, they "then lose their condition as guarantors, although they do not approve thus in testimony, in an act of faith, without trying to prevent a blood transfusion (in the case that somebody decides to perform it)".

b) On the other hand, the first of the Decisions of the Criminal Division of the Supreme Court states (single legal ground) that it rests with the parents, in the performance of their powers as holders of the guardianship, to safeguard the minor's health, of which they were guarantors. Hence, according to that Decision, they had the moral and legal duty to do everything possible in order to avoid any situation which put his health or his life in danger, and were "obliged to provide their son with the medical attention that he required."

The Decision considers that the parents had not lost the condition of guarantors, a condition which is not affected either by the fact that "they claimed medical care via the conventional channels, giving society the effective opportunity to replace them" or due to the fact that the minor also opposed the blood transfusion. It bases such conclusion on the fact that they continued exercising the functions and duties of the guardianship "at the times when it was

crucial for the child's life as shown by their rejection of the transfusion, which they put in writing before the doctors of the Vall D'Hebron Hospital in Barcelona when they informed them of the urgency of the transfusion, and which they again refused when requested by the doctors of the Hospital General de Cataluña when they repeated that there was no alternative treatment and that the transfusion was necessary, facts which confirm that they remained as guarantors at times when they could save their son's life, and that they also exercised it when they took their son home, where he remained between 9 to 12 September when they took him to Barcelona."

According to the said Decision the parents of the deceased minor "were fully aware of the situation which led to their duty to act", and that "the duty to provide to their son the medical attention which was necessary in order to save his life was not concealed from them." And on the matter it indicates that "they were given and knew of their capacity to act, in other words, the possibility of authorising a transfusion which would have avoided their son's death", and that also "they were aware of the circumstances on which their position of guarantor was based …. in other words, of the circumstances from which arose their duty to prevent the occurrence of the outcome."

Hence the Decision considers that "the parents, by not authorising the blood transfusion, did not avoid, as is required of them, a result of death which, had they provided their consent, would not have occurred," so that with such omission "a situation was generated equivalent to causing the typical result."

Besides, as they knew that there was no alternative treatment to the transfusion, "the knowledge and awareness with the highest degree of probability that their son's death would actually occur is therefore like accepting it, by rejecting the only alternative which could save him, although it is prohibited for them on religious grounds, maintaining such refusal when the life of their son could still have been saved." Therefore the Decision concludes that "the presence of possible criminal intent must be affirmed, and is not excluded due to the vehement desire that the result of death would not be produced."

The taking into consideration of the religious grounds for the conduct being judged brings this Court not to exonerate it – as at trial – but to mitigate the criminal liability of the appellants, whose conduct is subsumed – given their condition as guarantors – in the criminal classification of the offence of homicide (article 138 of the Criminal Code), in its mode of commission by omission (article 11.a) of the Criminal Code),with a very determining mitigating factor of bewilderment or state of passion, rejecting consanguinity as an aggravating feature and showing a favourable disposition towards a pardon.

5. The third legal ground specifies the factual circumstances on which our examination and our pronouncement are projected.

The fourth legal ground specifies the legal issues which, from a constitutional perspective, in relation to the alleged violation of fundamental rights, are set out in this appeal. We now refer to this point.

The rationale of the conviction is the attributed breach by the parents of the deceased minor – the appellants in the individual appeal for protection of a fundamental right – of the obligations arising from their attributed condition of guarantors as holders of the guardianship, specifically in this case in relation to the minor's right to life, condition which directly results from article 39.3 of the Spanish Constitution. Hence, given the terms of the individual appeal for protection of a fundamental right, as explained in the second legal ground, the object of the appeal – object which limits the scope of our examination – is focused on the relationship that may exist (and which, in any event, must be specified) between the condition of guarantor (in the stated terms) and the fundamental right to religious freedom and, if applicable, the effect on such relationship of the principle of legality, solely from the constitutional perspective with which this Court is concerned.

In order to proceed to the aforementioned examination we must previously set out, first of all,

according to our doctrine, the content and limitations on the right to religious freedom and, secondly, the specific characteristics of the case in question which may affect – and, if applicable, how – the exercise of the right to their religious freedom by the appellants for constitutional protection. We will refer to all of this in the following five points of law.

6. Article 16 of the Spanish Constitution recognises religious freedom, guaranteeing it for both individuals and for communities "without more limitation, in its manifestations, than is necessary in order to maintain the public order protected by the law" (article 16.1 of the Spanish Constitution).

In its subject matter, religious freedom involves a double requirement, as referred to in article 16.3 of the Spanish Constitution: on the one hand that of the neutrality of the public authorities stemming from the non-denominational character of the State; on the other hand, the public authorities maintaining relationships of cooperation with the different churches. On this matter, we already stated in the Constitutional Court Judgment 46/2001, of 15 February, Point of law 4, that "article 16.3 of the Constitution, after making a declaration of neutrality (the Constitutional Court Judgments 340/1993, of 16 November, and 177/1996, of 11 November) considers the religious component perceptible in the Spanish society and orders the public authorities to maintain the "resulting relations of cooperation with the Catholic Church and with other denominations", thereby introducing an idea of non-denominational or positive secularism which "bans any type of confusion between religious and state functions" (the Constitutional Court Judgment 177/1996)".

As regards the subjective right, religious freedom has a double dimension, internal and external. Thus, as we stated in the Constitutional Court Judgment 177/1996, Point of law 9, religious freedom "guarantees the existence of an intimate cloister of beliefs and, as such, a space of intellectual self-determination vis-à-vis the religious phenomena, linked to individual personality and dignity," and furthermore, "together with this internal dimension, this freedom … also includes an external dimension of agere licere which authorises citizens to act in accordance with their own convictions and to maintain them vis-à-vis third parties (the Constitutional Court Judgments 19/1985, Point of law 2; 120/1990, Point of law 10, and 137/1990, Point of law 8)." This recognition of an area of freedom and a sphere of agere licere is "fully immune from coercion from the State or from any social groups" (the Constitutional Court Judgment 46/2001, Point of law 4, and, along the same lines, the Constitutional Court Judgments 24/1982, of 13 May, and 166/1996, of 28 October) and is completed, in its negative dimension, by the provision of article 16.2 of the Spanish Constitution that "nobody may be forced to disclose their ideology, religion or beliefs".

The external dimension of religious freedom also translates into "the possibility of exercising, immune from any coercion from the public authorities, those activities which constitute manifestations or expressions of the religious phenomena" (the Constitutional Court Judgment 46/2001), such as those listed in article 2.1 of the Ley Orgánica 7/1980, de libertad religiosa (LOLR) (Religious Freedom Organic Law 7/1980), relating, amongst other issues, to the acts of worship, religious education, assemblying or public demonstration for religious purpose, and association in order for the community development of these types of activity.

7. The appearance of legal conflicts due to religious beliefs should not surprise a society which proclaims individuals' and communities' freedom of beliefs and worship as well as the secularism and neutrality of the State. The constitutional response to the critical situation resulting from the so-called dispensation or exemption from complying with legal duties, in the attempt to adapt conduct to the ethical guide or life plan which results from their religious beliefs, can only result from a pondered decision which deals with the specific circumstances of each case. Such decision has to establish the scope of the right – which is not unlimited or absolute – in view of the impact that its exercise may have over other holders of constitutionally protected rights and goods and over the elements of public order protected by the Law which,

according to article 16.1 of the Spanish Constitution, limits its manifestations.
As we stated in the Constitutional Court Judgment 141/2000, of 29 May, Point of law 4, “the believer’s right to believe and personally behave according to his or her convictions is not subject to more limitations than those that are imposed by respect for the fundamental rights of others and other constitutionally protected interests”.
On this matter, and implementing the aforementioned constitutional precept, article 3.1 of the Religious Freedom Organic Law prescribes that “the exercise of the rights deriving from religious freedom and the freedom to worship is only limited by the protection of other people’s right to exercise their public freedoms and fundamental rights, as well as safeguarding public security, health and morals, which are elements constituting the public order protected by the law within a democratic society”.
It is this limitation which also results from the texts corresponding to the international treaties and agreements which, as stated in article 10.2 of the Spanish Constitution, must be considered by this Court when specifying the meaning and scope of the fundamental rights. Thus, article 9.2 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), of 4 November 1950, prescribes that "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morale, or for the protection of the rights and freedoms of others." On the other hand, article 18.3 of the International Covenant on Civil and Political Rights (ICCPR), of 19 December 1966, states that “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”.
8. The aforementioned existence of limits on the exercise of the fundamental right of freedom of religion shows that, in general, the fundamental rights are not absolute. Thus we have stated in the Constitutional Court Judgment 57/1994, of 28 February, Point of law 6, cited for the purpose by the Constitutional Court Judgment 58/1998, of 16 March, Point of law 3, that “the fundamental rights recognised by the Constitution can only give way to the limits that the Constitution itself expressly imposes, or before those which in a mediate or indirect manner are inferred from it by being justified due to the need to preserve other legally protected rights or interests (the Constitutional Court Judgments 11/1981, Point of law 7, and 1/1982, Point of law 5, amongst others)”, and that, “in any event, the limitations that are established may not unreasonably obstruct the fundamental rights (the Constitutional Court Judgment 53/1986, Point of law 3)”.
From the above it is seen, as affirmed by the aforementioned Judgments, that “every act or decision which limits fundamental rights must ensure that the limiting measures are necessary in order to achieve the intended objective (the Constitutional Court Judgments 69/1982, Point of law 5, and 13/1985, Point of law 2), must satisfy proportionality between sacrificing the right and the situation of the person on whom it is imposed (the Constitutional Court Judgment 37/1989, Point of law 7), and, in any event, it must respect its essential content (the Constitutional Court Judgments 11/1981, Point of law 10; 196/1987, Point of law 4 to 6; 12/1990, Point of law 8, and 137/1990, Point of law 6)”.
9. Having stated the fundamental points about the content and limits of the right to freedom of religion, we must now go on to examine those issues which, within the framework of that right, offer peculiar or special aspects which singularise the case in question and which may also affect in some way the exercise, by current appellants, of their right to freedom of religion and of duties arising from their condition as guarantors. Hence, the fact that the affected person (affected even to the point of his death) was a minor aged thirteen years old who decisively opposed the blood transfusion, also on religious grounds.
All of this must be considered in relation to three specific issues: firstly, if the minor may be the

holder of the right to freedom of religion; secondly, the constitutional significance of the minor's opposition to the prescribed medical treatment; thirdly, the relevance which, if applicable, the minor's opposition may have. The first two issues are examined below and the third in the next legal ground.

a) The minor is the holder of the right to religious freedom.

Starting with the generic recognition in article 16.1 of the Spanish Constitution, in relation to the rights and freedoms, in favour of "individuals and communities", without further specifications, it must be confirmed that minors also hold the right to freedom of religion and worship. The Religious Freedom Organic Law, implementing said constitutional precept, confirms this criterion and recognises such right for "every person" (article 2.1).

This conclusion is confirmed, given the terms of article 10.2 of the Spanish Constitution, by the Convention on the Rights of the Child, of 20 November 1989 (Ratification Instrument of 30 November, published in the Boletín Oficial del Estado – "Official State Gazette" on 31 December 1990), by virtue of which the State parties are bound to respect "the right of the child to freedom of thought, conscience and religion" (article 14.1), without prejudice to the "the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." (art. 14.2). Furthermore, article 14.3 of that Convention prescribes that "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.".

In the internal order, Ley Orgánica 1/1996, de 15 de enero, de protección
jurídica del menor (Organic Law 1/1996, of 15 January, on the legal protection of minors), along the same lines, penalises any possible discrimination against minors (under eighteen years old) on the grounds of religion (article 3) and expressly acknowledges their "right to freedom of ideology, conscience and religion" (article 6.1), the exercise of which "only has the limitations prescribed by law and the respect for the fundamental rights and freedoms of others" (article 6.2).

In relation to this right article 6.3 states that "the parents or guardians have the right and the duty to cooperate so that the minor exercises this freedom so that it contributes to their integral development".

In relation to this we have stated in the Constitutional Court Judgment 141/2000, Point of law 5, that "from the perspective of article 16 of the Spanish Constitution minors are full holders of their fundamental rights, in this case of their rights to freedom of beliefs and to their moral integrity, without their exercise and the power over them being completely abandoned to what may be decided on the matter by those attributed with their custody or, as in this case, their guardianship, whose impact over the minor's enjoyment of their fundamental rights will vary according to the child's maturity and the different stages in which the legislation graduates their capacity to act (articles 162.1, 322 and 323 Código Civil ("Civil Code") or article 30 of the Ley 30/1992, de 26 de noviembre, de régimen jurídico de las
Administraciones públicas y del procedimiento administrativo común (Act 30/1992, of 26 November, on the legal regime of the public Administrations and the common administrative procedure)". And, we concluded in that Judgment, as regards this issue, that as a result "it is public authorities, and in particular the courts, which have the duty of ensuring that the exercise of such legal authority by the parents or guardians, or by those attributed with their protection and defence, is done in the interests of the minor, and not in the service of other interests which, as legal and respectable as they may be, must de deferred vis-à-vis the "higher" interests of the child (the Constitutional Court Judgments 215/1994, of 14 July; 260/1994, of 3 October; 60/1995, of 17 March; 134/1999, of 15 July; Decision of the ECHR of 23 June 1993, Hoffmann)".

b) Constitutional significance of the minor's opposition to the prescribed medical treatment.

In the case brought before us the minor clearly expressed, exercising his right to freedom of religion and beliefs, a wish, coinciding with that of his parents, to exclude certain medical treatment. This must be taken into account and under no circumstances be deemed irrelevant, and takes on special importance due to the lack of alternative treatments to the one prescribed.

However, what is essential is to emphasise the fact itself of the exclusion of the prescribed medical treatment, regardless of the reasons upon which said decision was based. Beyond the religious reasons which led to the minor's opposition, and without prejudice to its particular importance (insofar as based on a public freedom recognised by the Constitution), the fact is particularly interesting that when the minor opposed interference over his own body, he was exercising a right to self-determination over the body – which is different from the right to health or life – and which is translated into the constitutional framework as a fundamental right to physical integrity (article 15 of the Spanish Constitution).

10. We now go on to consider the relevance which, if applicable, the minor's opposition to the prescribed medical treatment may have.

In the individual appeal for protection of a fundamental right it is precisely pleaded, as we have already indicated, the error in the challenged Decision when it establishes "the irrelevance of the consent or opposition of a thirteen-year-old minor, particularly when, as in this case, his own life is in play".

It is true that the legal system grants relevance to certain acts or legal situations of the minor. This is particularly appreciated – paying attention to the regulations which may regulate the relations between the people affected by the issue in question – both in the Compilación del Derecho civil

de Aragón ("Aragon Compilation of Civil Law") (applicable to this case, as the appellants had their legal residence in Aragon) and, if applicable, in the Civil Code. Hence, the acts relating to the personal rights (precisely including that of physical integrity), which exclude the parents' power of legal representation as holders of the guardianship, as expressly proclaimed in article 162.1 of the Civil Code (a precept without express correlation in the Compilation); such exclusion on the other hand does not cover the duty to safeguard and care for the minor and his interests. Different acts can also be indicated leading to the creation of legal effects or to the formalisation of certain legal acts, like for example those relating to the capacity to enter into matrimony, to make a will, to testify, to be heard in order to grant their guardianship or custody to one of the parents. And also, in the criminal ambit, in order to be guilty of certain offences.

However, the exceptional recognition of the minor's capacity as regards certain legal acts, like those mentioned above, is not sufficient in order, by way of comparison, to recognise the legal effectiveness of an act – like the one being considered here – which, as it negatively affects life, has, as essential notes, to be definitive and therefore irreparable.

From the above considerations it can be concluded that, in order to examine the case in question, different issues must be taken into account. First of all the fact that the minor exercised certain fundamental rights that he held: the right to freedom of religion and the right to physical integrity. Secondly, the consideration that, in any event, the minor's interest is prevalent, in the charge of the parents and, if appropriate, the courts. Thirdly, the value of life, insofar as it is affected by the minor's decision: as we have stated, life "in its objective element is 'a higher value of the constitutional legal system' and an 'ontological assumption without which the other rights can not possibly exist' (the Constitutional Court Judgment 53/1985)" (the Constitutional Court Judgment 120/1990, of 27 June, Point of law 8). Fourthly, the foreseeable effects of the minor's decision: such decision is definitive and irreparable insofar as it leads, in all probability, to the loss of life.

In any event, and also starting out from the above considerations, there are not enough details in order to conclude with certainty – and this is held by the Decisions now being appealed – that the deceased minor, son of the appellants, who was thirteen years old, had sufficiently mature

judgment in order to assume a vital judgment, like the one we are dealing with. Now then, the minor's decision did not bind the parents as regards the decision that they, for the purposes being considered, had to adopt.
However, the minor's reaction to the attempts at medical action – described in the proven facts – shows that in that decision there were certain convictions and an awareness of the decision assumed by him which, without doubt, could not have been ignored either by the parents, when it came to responding to the requests later made to them, or by the judicial authority when it came to valuing the its requirement to them to collaborate.
11. Having set out the above, we must establish whether the condition of guarantors, attributed by the appealed Decisions to current appellants, is affected – and, if so, how – by their right to freedom of religion. It is clear that this involves the need to take into account the singular circumstances concurrent in the case in question, as mentioned above.
A preliminary consideration is required. It has already been indicated (legal ground two) that the Public Prosecutor denies that – as an already settled factual issue – the parents' failure to observe the position of guarantors of the son's life must be questioned on individual appeal for protection of a fundamental right. The Public Prosecutor states on the issue that "the concept of guarantor applied to the perpetrators by the judgment arises, and as such belongs to the field of ordinary legality, from the facts, consisting in the child's generation and lack of age, in the legal regulations regulating guardianship", and that "this is done by the court in a reasoned manner and grounded in law, which is the only one which in law may and must do so". The Public Prosecutor's argument concludes by stating that "The Supreme Court studies this situation and reasonably declares that the appellants never lost the control of the situation of guarantors, and this affirmation constitutes a factual issue which, legally resolved by the court, lacks a constitutional dimension".
The stated thesis cannot be accepted, in its radicalism, as in fact it makes an assumption of the issue subject to debate. The rights and obligations which arise in the ambit of human relations – specified by the rules structured in the so-called ordinary legality – are valid and effective insofar as their content does not exceed the constitutional framework, respecting the limits of the fundamental rights.
Hence, as regards the object of this individual appeal for protection of a fundamental right, an affirmation must be made from the constitutional perspective which corresponds to us: the courts may not configure the content of the duties of guarantor leaving aside the fundamental rights, specifically – for the case in question – of the right to freedom of religion enshrined in article 16.1 of the Spanish Constitution. This is the issue that we must now examine.
12. According to the stated consideration, we must point out that those mandates of action which, if breached, give rise to offences of omission (mandates which in themselves offer in this case special relevance), restrict freedom more than prohibitions on action, the breach of which generates offences of commission. From this perspective the specific actions required of those accused of the breach of their duties of guarantor must be judged. In other words, after analysing whether there has been proper deliberation of the conflicting legally protected interests, we have to examine whether the performance of the specific actions which have been required of the parents in the specific case in question – particularly restrictive of their freedom of religion and freedom of conscience – is necessary in order to satisfy the interest for which a dominant interest has been acknowledged.
As regards the first of these questions, it is undeniable that the deliberation was performed, as regards the issue of specific interest here, confronting the minor's right to life (article 15 of the Spanish Constitution) and the parents' right to freedom to religion and freedom of beliefs (article 16.1 of the Spanish Constitution). It is undisputable, on this matter, that the judicial decision authorising the transfusion in the interest of preserving the minor's life (once the parents refused to authorise it, invoking their religious beliefs) is not capable of any objection from the

constitutional perspective, according to which life is a "higher value in the constitutional legal system" (the Constitutional Court Judgments 53/1985, of 11 April, and 120/1990, of 27 June). It should also be pointed out, as we stated in the Constitutional Court Judgments 120/1990, of 27 June, Point of law 7, and
137/1990, of 19 July, Point of law 5, that the fundamental right to life has "a positive protection content which prevents it from being configured as a right of freedom which includes the right to one's own death". In short, the decision to face one's own death is not a fundamental right but rather only a manifestation of the general principle of freedom which informs our constitutional text, so that it cannot be allowed that the minor enjoys without reservation such a great power of self-disposition over his own self.
Within the framework of such limitation of the rights in conflict the consequences of the decision formulated by the court should not be extended to depriving the parents of the exercise of their fundamental right to religious freedom and freedom of conscience. And this is because, as a general rule, when dealing with a conflict between fundamental rights, the principle of practical concordance requires that the sacrifice of the right which is to give way does not go beyond the requirements of the dominant right (as regards this principle of proportionality between fundamental rights, the Constitutional Court Judgments 199/1987, of 16 December, Point of law 7, and 60/1991, of 14 March, Point of law 5). And it is clear that in this case the effectiveness of this dominant right to life of the minor was not impeded by the attitude of his parents, in view of the fact that from the beginning they acquiesced to the judicial decision which authorised the transfusion. As far as the rest goes, neither the probable effect of the parents' dissuasive conduct has been proven nor that, independently of their behaviour, there were no less costly alternatives which would allow the transfusion to be performed.
13. After performing that deliberation there was not now any other element defining the limits on the exercise of the freedom of religion. Specifically, article 16.1 of the Spanish Constitution sets public order as the limit on the manifestations of this right. Viewing such limit from a constitutional standpoint, in conflicts between fundamental rights their preservation is guaranteed by limiting them, as done in this case.
After articles 9.2 of the ECHR and 18.3 ICCPR, cited above, we can also integrate public security, health and morals in this notion of public order (as is done in article 3.1 of the Religious Freedom Organic Law). It is clear that in the case in question there was no impact on public security or morals. And neither as regards health as the international texts, which serve as the guidelines for the interpretation of our regulations (article 10.2 of the Spanish Constitution) refer in those precepts to public health, understood with reference to the risks to health in general.
14. Having dealt with the above issues, we proceed to examine which specific actions were required of the parents, in the case before us, in relation to the provision of the medical treatment authorised by the judicial decision.
Firstly, they were required to persuade their son so that he would consent to the blood transfusion. This involves the requirement of a concrete and specific action by the parents which is radically opposed to their religious convictions. What is more, action which is contradictory, from the perception of its recipient, with the teachings which were transmitted to him during the thirteen years of his life. And this is on the basis of a mere hypothesis about the effectiveness and possibilities of success that such attempt to convince would have against the education transmitted during said years.
Secondly, they were required to authorise the transfusion which the minor had opposed at the time. This means, just like in the previous case, demanding a concrete and specific action which is radically opposed to their religious convictions, as well as also being against the - clearly manifested - will of the minor. On the other hand it involves transferring to the parents the taking of a decision rejected by the doctors and even by the judicial authority - once the minor's reaction was known -, according to the terms stated in paragraph three of the proven facts in

the trial decision [background 2 b) and third legal ground, section c), both from this judgment].
Thirdly, it should be mentioned that the parents, here the appellants, took their son to hospital, submitted him to medical care, never opposed the public authorities in their act to safeguard his life and even complied from the beginning with the judicial decision which authorised the transfusion, albeit that it took place belatedly (specifically when the second judicial authorisation was granted, various days after the first one). The risks to the minor's life increased, it is true, as the days passed without the transfusion being performed, as no alternative solutions were known, although it is in any event recorded that the parents continued to procure medical attention for the minor.
15. From the stated considerations it can be concluded that the requirement on the parents for dissuasive action or permissive action towards the transfusion is, in fact, an action which negatively affects the very core or centre of their religious convictions. And it can also be concluded that, in addition, their coherence with such convictions was not an obstacle for them placing the minor at the effective disposal so that guardianship could be performed by the public authorities for his safeguard, guardianship which they did not any time oppose.
In short, having commented the real situation in the stated terms, we have to consider that the stated requirement on the parties of a dissuasive action or which is permissive towards the transfusion, once they allowed without reservation the possibility of the guardianship of the public authorities for the protection of the minor, conflicts to the very core with their right to freedom of religion and goes beyond the duty which is required of them by virtue of their special legal position with regards to the underage son. On such matters, and in this case, the parents' condition of guarantor did not extend to complying with such requirements.
Thus we must conclude that the action of current appellants is protected by the fundamental right to freedom of religion (article 16.1 of the Spanish Constitution). Hence such right must be held as infringed by the Decisions appealed for constitutional protection.
16. We must now examine whether there has been a violation of the principle of criminal legality (right to criminal legality) which is proclaimed in article 25.1 of the Spanish Constitution. In this case the violation of the principle of legality is inherent to the violation of the right to freedom of religion, and as such there is no need to pronounce on this matter.
17. As already stated, in this case the parents of the deceased minor invoked their right to freedom of religion as the basis for their attitude of omission and, at the same time, they made the guardianship of the public authorities possible without reservation in order to protect the minor.
Hence the requested protection is granted due to the infringement of the fundamental right to freedom of religion (article 16.1 of the Spanish Constitution), with the resulting quashing of the challenged judicial Decisions.
Judgement:

JUDGMENT

In view of that stated above, the Constitutional Court, BY THE AUTHORITY CONFERRED ON IT BY THE CONSTITUTION OF THE SPANISH NATION,
Has decided
To grant the requested protection and, as a result:
1. To recognise that the appellants for protection of a fundamental right have had their fundamental right to freedom of religion (article 16.1 of the Spanish Constitution) violated.
2. To restore the appellants in their right and, for such purpose, to quash the Decisions of the Criminal Division of the Supreme Court, both – first and second – dated 27 June 1997, numbered 950/1997, pronounced in the appeal for cassation number 3248/96.
Publish this Judgment in the Boletín Oficial del Estado - Official State Gazette.

Carried out in Madrid, this eighteenth day of July, two thousand and two.