



17 December 2014

PRESS SUMMARY

Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland)
[2014] UKSC 68
On appeal from [2013 CSIH 36]

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Hughes, Lord Hodge

BACKGROUND TO THE APPEALS

The Abortion Act 1967 (as amended) ('the Act') sets out the circumstances in which the termination of a pregnancy can lawfully be brought about and requires the termination to take place in a National Health Service Hospital or approved clinic. Section 4(1) establishes a right of conscientious objection: it provides that 'no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection' unless, pursuant to subsection (2), it is 'necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman'. The issue arising in this appeal is the precise scope of this right.

The respondents are two experienced midwives employed at the Southern General Hospital in Glasgow as Labour Ward Co-ordinators. Both are practising Roman Catholics who have informed their employer of their conscientious objection to taking part in the termination of pregnancy. A small proportion of terminations take place in the Labour Ward rather than the Gynaecology Ward. A midwife will be assigned to give these patients one to one care. The Labour Ward Co-ordinator will book in patients, allocate staff in the ward, and supervise and support midwives. The respondents do not wish to undertake these tasks in connection with patients undergoing terminations. They were dissatisfied with the arrangements made to accommodate their objections and raised a grievance with their employer. The hospital took the view that delegation, supervision and support did not constitute 'participating' in the treatment and rejected the grievance.

The respondents brought proceedings for judicial review challenging the decision letters received as a result of the grievance procedure. They were unsuccessful before the Lord Ordinary but succeeded before an Extra Division of the Inner House, which granted a declarator that the scope of s 4(1) included 'the entitlement to refuse to delegate, supervise and/or support staff in the provision of care to patients' undergoing terminations save as required by s 4(2). This was a wide interpretation of the right, which was said to extend to 'any involvement in the process of treatment, the object of which is to terminate a pregnancy'. The respondents' employers appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal and sets aside the declarator made in the Inner House. Lady Hale gives the only substantive judgment, with which the other justices agree.

REASONS FOR THE JUDGMENT

- The only question in this case is one of pure statutory construction: the meaning of the words ‘to participate in any treatment authorised by this Act to which he has a conscientious objection’. It was common ground that ‘any treatment authorised by this Act’ meant the process of treatment in hospital for the termination of pregnancy and that ‘participating’ meant actually taking part in that process, rather than the extended meaning given to participation by the criminal law [11].
- Questions of whether the respondents’ rights to respect for their religious beliefs protected by Article 9 of the European Convention on Human Rights have been unlawfully restricted, or whether their employers have a duty to make reasonable adjustments to the requirements of their job to take account of their religious beliefs do not fall to be decided in this case, but are better suited to resolution in the proceedings which the respondents have also brought in the employment tribunal [23-24]. Nor does the Supreme Court have the evidence from which the impact on a safe and accessible abortion service of a wide or narrow interpretation of section 4(1) could be assessed [25-27].
- The course of treatment to which conscientious objection is permitted by s 4(1) is the whole course of medical treatment bringing about the termination of the pregnancy. It begins with the administration of the drugs designed to induce labour and normally ends with the ending of the pregnancy by delivery of the foetus, placenta and membrane. It also includes the medical and nursing care which is connected with the process of undergoing labour and giving birth – the monitoring of the progress of labour, the administration of pain relief, the giving of advice and support to the patient, the delivery of the foetus, the disposal of the foetus, placenta and membrane and any specific aftercare required as a result of the process of giving birth. But the ordinary nursing and pastoral care of a patient who has just given birth was not unlawful before the Abortion Act 1967 and thus not made lawful by it [34].
- A narrow meaning of the words ‘to participate in’ is more likely to have been in the contemplation of Parliament when the Act was passed, rather than the host of ancillary, administrative and managerial tasks associated with the acts being made lawful. ‘Participate’ means taking part in a hands-on capacity: actually performing the tasks involved in the course of treatment [37-38].
- Paragraph 39 sets out the list of tasks carried out by Labour Ward Co-ordinators like the respondents and indicates which specific elements will be within the scope of s 4(1). These include providing advice requested by a midwife connected with the care of a particular patient undergoing a termination (as opposed to ordinary monitoring of all patients); accompanying the obstetrician on ward visits to those patients; providing part of the treatment in response to requests for assistance from the patient or from the midwife caring for her (but not responding by itself to such requests and making a referral if necessary); providing break relief personally for those midwives; being present if medical intervention is required in connection with the treatment; and forming judgments about the progress of these patients personally.
- A necessary corollary of the duty of care owed to patients by members of the health care profession is that any conscientious objector is under an obligation to refer the case to a professional who does not share the objection [40].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>