

Corte Costituzionale - RULING 149/88

RULING 149/88. ILLEGAL EXERCISE OF A PROFESSION - PROHIBITION - EXERCISE OF CHIROPRACTIC WITHOUT A LEGAL QUALIFICATION - DEMONSTRATED INADMISSIBILITY OF THE MATTER. PENAL CODE ART. 348 - CONSTITUTION ART. 10 and 25.

Text

Until the State decides to regulate the exercise of the profession by requiring specific training, "Chiropractic" constitutes professional work governed in all its forms and applications (ex art. 35, para. 1 of the Constitution) and free private enterprise

Ruling 149/1988 Maxim number 10348 Judgement: INTERIM JUDGEMENT ON CONSTITUTIONAL LEGITIMACY President: SAJA Referee: GALLO Cabinet Meeting: 16/12/1987

Decision of: 27/01/1988 Filed: 02/02/1988 Publication in the Official Gazette: 17/02/1988 Ruling referred to: 809/1985 Title RULING 149/88. ILLEGAL EXERCISE OF A PROFESSION - PROHIBITION - EXERCISE OF CHIROPRACTIC WITHOUT A LEGAL QUALIFICATION - DEMONSTRATED INADMISSIBILITY OF THE MATTER. PENAL CODE ART. 348 - CONSTITUTION ART. 10 and 25. Text

Until the State decides to regulate the exercise of the profession by requiring specific training, "Chiropractic" constitutes professional work governed in all its forms and applications (ex art. 35, para. 1 of the Constitution) and free private enterprise (ex art. 41 of the Constitution); therefore Penal Code article 348 (which punishes the illegal exercise of a profession for which specific training is required by the State) is absolutely inapplicable in this judgement and the question concerned in such a case is irrelevant. (Demonstrated inadmissibility of the question of the constitutional legitimacy of Penal Code article 348 raised in reference to articles 10 and 25 of the Constitution).

Constitutional framework

Regulations referred to

Penal Code, article 348 No. 149 Ruling of 27 January - 2 February 1988 Interim judgement on constitutional legitimacy Illegal exercise of a profession - Protection of Chiropractors - Demonstrated inadmissibility (Penal Code, article 348) (Constitution, articles 10 and 25) THE CONSTITUTIONAL COURT Consisting of: President: Dr Francesco SAJA Judges: Prof. Giovanni CONSO, Prof. Ettore GALLO, Dr Aldo CORASANITI, Prof. Giuseppe BORZELLINO, Dr Francesco GRECO, Prof. Renato DELL'ANDRO, Prof. Gabriele PESCATORE, Avv. Ugo SPAGNOLI, Prof. Francesco P. CASAVOLA, Prof. Antonio BALDASSARRE, Prof. Vincenzo CAIANIELLO, Avv. Mauro FERRI, Prof. Luigi MENGONI, Prof. Enzo CHELLI; has pronounced the following RULING in judging the constitutional legitimacy of Penal Code article 348, enforced by the ruling issued on 10 July 1985 by the Prefect of Catania, listed at no. 809 in the 1985 register of rulings and published in the Official Gazette no. 11, first special series 1986; given the acts constituting Eric Gruen and Francis Gran, and the Prime Minister's act of intervention; judge referee Ettore Gallo having been heard in Cabinet on 16 December 1987; agreed that in his ruling of 10 July 1985 the Prefect of Catania raised the question of the constitutional legitimacy of Penal Code article 348 with reference to articles 10 and 25 of the Constitution; that – in the opinion of the Prefect – as it concerns defining a penal judgement in which he himself found that three United States citizens had exercised the profession of "Chiropractic" without being in possession of training required by the State, the article referred to (which is a general penal regulation) lacks the necessary supplemental references, inasmuch as on the one hand the enabling acts issued in the United States of America are not recognized in this country, and on the other hand, there are no degree courses in Chiropractic in this country, and therefore no specific training, and hence the penal code cannot be applied without breaching article 25 of the Constitution; that nothing is stated in the grounds of the ruling concerning article 10 of the Constitution, although it was used as a reference; that the Prime Minister participated in the judgement, represented by the Government lawyers, by requesting that the question be declared inadmissible or in any case unfounded; considering that the matter reported only punishes those who illegally exercise a profession for which specific State training is required, where it is evident that the illegality actually consists in the exercise of a profession for which the State requires specific training by those who have not undergone such training; that, on the contrary, it is the Prefect himself who recognizes in his ruling that the Italian State does not require any training for the profession of Chiropractic, which is not covered by Italian law, while Civil Code article 2229 entrusts to the law the identification of those professions for which enrolment on an appropriate register or list is a requirement; that, consequently, given the disinterest of common law, it is irrelevant that Chiropractic could be included in the register of professions, as, until the State decides to regulate it and makes specific training for its exercise a requirement, it is apparently professional work governed ex art. 35 paragraph 1 of the Constitution in all its forms and applications and as a free private enterprise ex art 41 of the Constitution, it is decided that Penal Code article 348 is absolutely inapplicable because the fact in question is not considered a crime under the law and the question proposed is wholly irrelevant; that the question is therefore demonstrably inadmissible; given article 26, para 1 of Law 87, 11 March 1953 and article 9 paragraph 2 of the Supplemental Regulations for judgements before the Constitutional Court; FOR THESE REASONS THE CONSTITUTIONAL COURT declares the demonstrated inadmissibility of the question of the constitutional legitimacy of Penal Code article 348 raised by the Prefect of Catania in his ruling of 10 July 1985 in reference to articles 10 and 25 of the Constitution. Decided in Rome, in Cabinet, in the offices of the Constitutional Court, Palazzo della Consulta, on 27 January 1988. President: SAJA

Referee: GALLO

Clerk of the Court: MINELLI Filed in the Clerk's Office, 2 February 1988 Director of the Clerk's Office: MINELLI Source: Official Gazette of the Italian Republic, 1st special series, no. 7, 17 February 1988, pp 68–69. Constitution, article 10 Constitution, article 25