

**COURT OF ADMINISTRATIVE LITIGATION RULING 297/2014:
RECONGNITION OF THE CONSCIENTIOUS OBJECTION – SUSPENSION
OF ARTICLES OF DECREE 375/012 WHICH REGULATES THE LAW
RULING ABORTION**

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Context. Uruguay has ceased to be a "traditional and conservative" country, and has innovated in fields that until recently were unthinkable, at least for many people. Innovations that have led to our own leaders to talk about how we're doing "experiments"¹, that if they work, can then be replicated or adopted by other countries.

In this context, recently the law known as "IVE", which refers to the volunteer interruption of pregnancy², was enacted.

The IVE law recognizes in Article 11 the right to conscientious objection for those who are bound by the Law to participate in abortion procedures and sets some parameters for the exercise thereof. Notwithstanding the foregoing, subsequently Decree 375/012 regulated the IVE law, limiting the right of health professionals to exercise said right, as well as the assumptions under which the latter may invoke the exercise of the same.

Action for annulment and suspension request. Due to restrictions on the fundamental right of conscientious objection, little more than a year ago, 100 health professionals who were harmed in their rights under Decree 375/012, proceeded to request the annulment of 11 of its 42 articles.

The doctors based their request for a suspension on the fact that continuing to enforce the Decree was likely to cause more serious damage to health professionals than the suspension of enforcement would cause to the health organizations in which they worked.³

Last October 14th the Court of Administrative Litigation ("TCA for its acronym in Spanish") notified its Ruling 297/2014 through which it decided to suspend temporarily ten of the eleven articles challenged. The rationale used by the TCA was based on the fact that a) the recognition of the right to conscientious objection as a fundamental right; b) the application of the provisions of the Decree was presented as limiting the right to

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¹ <http://www.elpais.com.uy/informacion/mujica-pide-mundo-ayude-experimento.html>

² Act 18.987

³ Karina Goday & Victoria Vergara Jurisprudencia comentada: "OBJECCIÓN DE CONCIENCIA: Reconocimiento de derechos versus cuestionamientos institucionales", at "Revista de Derecho Público", Number 46, December 2014.

conscientious objection in violation of the rights of appellants professionals; c) the application of the questioned articles could cause irreparable damage.

The TCA stated in its Ruling that the recognition of the right to conscientious objection derives from the fundamental rights of the individual whether it is related to the right to freedom of conscience or to the right to human dignity, and that there is no doubt that it enjoys protection. In this context, the TCA resolved the suspension since it considers that *"the damage invoked by the plaintiffs in the exercise of their right to conscientious objection, has the status of serious in said terms (...) and merits, (...) to suspend as an injunction the application of the provisions of the Decree mentioned, until thoroughly analyzing the merits of the case."*⁴

Thus, the suspension appears in this process as an injunction or precautionary measure, since those rights susceptible to be wounded cannot wait the terms of duration of the litigation procedures for the annulment. If the act (the Decree in this case) is enforced and produces its effects (as indeed has been happening), the interested parties would have suffered its consequences, regardless if in the end the annulment of the contested act is resolved⁵.

Effects of the suspension. The suspension of certain articles of the Decree has, as an immediate consequence, the removal of certain barriers that health professionals were finding at the time of exercising their right to be objectors.

We point out some of the most relevant consequences: A) doctors shall be allowed to refrain from participating in the preparatory or after activities to the performing of an abortion; B) professionals shall not be required to sign the IVE form (which starts the process of abortion), C) professionals shall be released from submitting a written conscientious objection before the provider for which they work; D) sonograms and report on alternatives to abortion will be allowed to be shown.

Final considerations. In our opinion the Ruling analyzed features Uruguay as a cutting edge country in the protection of fundamental rights. We join Santiago Altieri, Professor of the Human Rights Chair at the University of Montevideo, in its considerations which highlight the value of the Ruling since it recognizes conscientious objection as a fundamental human right and evaluates it in the context of protection of human life: *"It is a landmark Ruling that demonstrates the enormous importance of conscientious objection as a fundamental human right; and even more, if possible, for those who struggle every day to save lives and are faced with the enormous violence to intervening in actions that threaten the lives of innocent human beings."*⁶

It remains now to await the TCA to make the final decision on the annulment of the challenged articles, and we expect that it continues to rule within the same parameters,

⁴ Ruling 297/014, August 14th, 2014, issued by the Court of Administrative Litigation (Paragraph I, Considering III on "Damage Balance").

⁵ Karina Goday & Victoria Vergara Jurisprudencia comentada: *"OBJECCIÓN DE CONCIENCIA: Reconocimiento de derechos versus cuestionamientos institucionales"*, at *"Revista de Derecho Público"*, Number 46, December 2014.

⁶ Professor Dr. Santiago Altieri's input on the paper "Conscientious Objection: There are still judges in Berlin ... and also in Uruguay" (*"Objeción de Conciencia: Todavía hay jueces en Berlín... y también en Uruguay"*), by Victoria Vergara and Gianni Gutiérrez, for the *Revista Derecho y Tribunales*, Ed. Ferrere (being edited).

since the control of the legality of acts of the Administration (as is this Decree) made by the Court of Administrative Litigation is vital to the Rule of Law.