



The gifts handed out in a pharmacy do not escape from attention of the health authorities

Judgment of the Superior Court of Justice of Galicia of 29 January 2015

Background

In this judgment the Superior Court of Justice of Galicia ruled on the administrative appeal lodged by two pharmacists against the fine of 91.000 Euros that was imposed on them by the Galician Department of Health. The Galician health authorities imposed the abovementioned fine because the pharmacists had handed out gifts to clients who purchased medicinal products. Such conduct constitutes a serious offence under Spanish Law 29/2006, of 26 of July, on Guarantees and Rational Use of Medicinal Products and Medical Devices.

In their appeal the pharmacists argued, inter alia, that the decision of the Galician Department of Health violated the presumption of innocence, because, in their view, there was no evidence that gifts had been offered in relation to the promotion or sale to the public of medicinal products. They also claimed that the decision was against their right to entrepreneurial freedom established by the Spanish Constitution.

Analysis by the Court

Contrary to what was alleged by the pharmacists, the Court considered that there was enough evidence of the infringement, as the administrative file contained the results of private investigations, the affirmative statements of six witnesses as well as statements of the pharmacists themselves, who admitted having occasionally offered gifts when supplying medicinal products to their clients.

Regarding the classification of the infringement, the Court confirms that the Law is clear on qualifying it as a very serious offence, as this case falls under the prohibition of: "offering of inducements, gifts, prizes, competitions, bonuses or similar expedients as methods associated with the promotion or sale to the public of products of the products governed by this Law". It would have been interesting to know what were the gifts offered, in order to obtain a more in-depth knowledge of the criteria used by the health administrations when exercising their power to impose sanctions, but unfortunately the judgement does not offer any further details on this issue.

Concerning the argument of the pharmacists, who claimed that the imposition of this sanction constituted an infringement to their entrepreneurial freedom right, the Court declared that pharmacies are private health facilities of public interest. The Court established that even if the entrepreneurial freedom could be interpreted as affected, this is not contrary to the constitution, because in this case, the aim of this legal measure is not to impede competition, but to guarantee a rational use of medicinal products. The Court ends up fully dismissing the appeal.

The subject matter of this judgement is not new at all, but the reasoning of the Court is clear and concise and it serves as a reminder that even the promotional activities carried out in a pharmacy do not go unnoticed to the Public Administration.