

Constitutional Claim Decision C-239/97

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In the year of 1997, the Colombian Constitutional Court set out to decide the constitutional claim established against the criminal code provision that penalized euthanasia with an imprisonment penalty from 6 months to 3 years, which was inferior to that provided for homicide. In this historic decision the Court, in a 6 to 3 voting, established that the norm that penalizes mercy-killing or euthanasia is constitutional and does not attempt against any constitutional principles. Also, it establishes, that whenever a medical doctor or physician performed such an act, in the presence of informed consent, no criminal sentence, conviction or penalty could result, in observance that it is a lawfully justified conduct. As a final point, the Court urged the legislature to regulate the aforementioned matter.

In the interposed claim the plaintiff argued that this regulation which condemned euthanasia—or mercy-killing—violated a variety of Constitutional provisions, specifically, the rights to life<sup>1</sup> and equality<sup>2</sup>. He claimed that a provision which permitted a lower penalty, compared to that foreseen for homicide cases, meant that the Government was not fulfilling its duty to protect the citizen's life without exceptions, and, on the contrary, its position could be interpreted as an unlawful incentive. Therefore, the plaintiff affirmed that the provision was discriminatory, in consideration of all ill individuals who suffered from severe pains, although conflicting with the idea to terminate their lives.

This taken into consideration, at first, the Court clarified that mercy-killing could not be confused with eugenic murder, as the plaintiff argued. As a matter of fact—the Court stated—mercy-killing seeks to aid the individual afflicted by intense pain, providing him with the opportunity to die with dignity. Meanwhile, the end of eugenic murder is to maintain or improve the human species or race. With this in mind, the Court analyzed if indeed, the practice of euthanasia collided against Colombian Constitutional principles, and with respect to the relevance of the patient's consent to proceed with it or not.

Judgment commenced, the Court initially studied whether the attenuated penalty provided for mercy-killing, violated the Constitution or not, taking into account that it has a lesser penalty than homicide. To solve this query, the Court stated that Colombian legislature had adopted a criminal law act system, guided by the principle of guilt. Unarguably, this implied that a condemnatory sentence would depend on the execution of an unlawful act, and likewise, that the penalty applied would be proportional to the culpability degree. Thus, under the adopted system, an individual would only be punished for what he did, and not for what he represented, thought or felt. As seen, the criminal law system originated from the

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<sup>1</sup> The Colombian Constitutional, on its 11th article says: "The right to life is inviolable. There will be no death penalty."

<sup>2</sup> Article 14 of the Constitution establishes: "All persons are born free and equal before the law, will receive the same protection and treatment by the authorities and enjoy the same rights, freedoms and opportunities without discrimination based on sex, race, national origin or family, language, religion, political or philosophical."

idea that the conduct of the offender would be analyzed in consideration of the acts performed as a free, self determined individual.

Based on the foregoing, the Court continued to mention that the motive of an alleged criminal act, also constituted a key element to be considered if a penalty was to be enforced under the Colombian criminal law system. For this reason—the Court said—applying a penalty reduction in a case where an individual had mercifully acted to end someone's intense suffering did not breach any countrywide legal provisions. Hence, it was clear why euthanasia itself could not be considered plainly as a wrongful act against the right to life, however, punished under the criminal system with a reduced penalty with regards to the actor's motive and the victim's intense-suffering condition. Ignoring the motives—held the Court—would go against the principle of guilt, and in total disregard of the penalty's proportionality, in relation to the culpability degree of the act.

In accordance, the decision of the Colombian Constitutional Court with respect to the practice of euthanasia was that the practice itself did not violate the right to life or any other Constitutional provisions.

Having established this, the Court's analysis continued in order to determine the factual relevance of the patient's consent when practicing euthanasia. Consequently, the right to life was held as the starting point, acknowledged as the State's founding principle and as the premise for all other constitutional rights. Following this fact, the Court set out to analyze the abovementioned right, in the context of existence of other constitutional principles, such as solidarity and human dignity.

In observance of the foregoing, the Constitutional Court's jurisprudence in various decisions had already determined that the right to life could not be seen as the mere existence of the individual, whereas the right to life implied that the individual, in point of fact, had to live under adequate and worthy conditions. The aforesaid lead the Court to conclude that there is not an absolute duty to be alive. From a different perspective, he who lives and sees a conduct as mandatory—according to its religious or moral beliefs—cannot pretend that those values are coercively enforceable to all individuals, given that the only thing that could really be enforceable to all within the State is the idea that an individual may carry its life fully, according to his own way of life, leaving aside any sort of intervention. As a result, if an individual wishes to end his life due to his extreme affliction, and moreover considers that his life is unworthy, he has the absolute right to do so without restraint.

To end with, the Court also examined the function of the informed consent to practice euthanasia, in the case of terminally-ill patients, and determined that, in this case, the State's duty to protect the right to life yields to the patient's informed consent and his desire to die with dignity. This taken, the State has to consider the circumstances surrounding the individual who has freely chosen a way to face an early death, since—as an example—extending a painful condition in that situation could be considered as unworthy. After all, the fundamental right to a worthy life involves the right to die with dignity. Thus, forcing an individual to prolong his

suffering would be considered inhuman treatment—outlawed by the Constitution—that would annul its dignity and autonomy. The latter would imply that the individual would have been seen as an instrument towards the preservation of life, as an abstract value, and not as an end for itself.

Subsequently, in the state of affairs regarding terminal patients wishing to end their lives beforehand in order to die with dignity, the active subject performing euthanasia cannot be held accountable of executing an illegal act; furthermore, considering this would truly be an act of solidarity, unquestionably not motivated by the desire to carry out a homicide. Sure enough, in this scenario, the consent of the individual willing to die with dignity, must be unequivocally directed to that other individual qualified with adequate and sufficient intellectual competence to take the decision to cease life, by playing a part in this set-up as the recipient of acute and reliable information about the first individual's disease, his prognosis and treatment options. Precisely, this is why the Court concluded that the only active subject eligible to perform euthanasia could be a medical doctor, given that he is the sole professional capable to provide and interpret the patient's medical information, but to furnish the proper conditions for a dignified death.