

Legalization of euthanasia in Ecuador

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Abstract

Starting from a reality, terminal illness is recognized as a limitation to a dignified life for people. The law establishes as one of its principles the protection and guarantee of the fundamental rights of the holder of the right, in this case the human being. Throughout this document, we will establish the legal principles that have played a key role in the legalization of euthanasia in Ecuador, such as criminal law and the principles of arbitrariness and proportionality. Likewise, it will demonstrate the role that the judicial body has taken, in this case the power of one of the jurisdictional bodies of the Republic, in the judicial resolution around the clear legal concern that encompasses the legalization of an induced death in a State recognized as a guarantor of constitutional rights.

Keywords: Euthanasia; dignified death; dignified life; constitution; constitutional court; COIP; medical code of ethics; proportionality; arbitrariness

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Legalización de la eutanasia en el Ecuador

Resumen

Partiendo de una realidad, la enfermedad terminal es reconocida como una limitante hacia la vida digna de las personas. La ley establece dentro de sus principios la protección y la garantía de los derechos fundamentales hacia el titular del derecho, en este caso del humano. A lo largo de este documento se establecerán los principios jurídicos que han jugado un punto clave dentro de la legalización de la eutanasia en el Ecuador, como lo es el derecho penal y los principios de arbitrariedad y proporcionalidad. Así mismo, se demostrará el rol que ha tomado el órgano judicial, en este caso el poder de uno de los órganos jurisdiccionales de la República, en la resolución judicial en torno a la clara inquietud legal que abarca la legalización de una muerte inducida en un Estado reconocido como garante de derechos constitucionales.

Palabras clave: Eutanasia; muerte digna; vida digna; constitución; corte constitucional; COIP; código ético médico; proporcionalidad; arbitrariedad

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INTRODUCTION

In its linguistic origin, the term law comes from the Latin word *directum*, which refers to that which conforms to the norm established by the law, which does not deviate from the straight path and which follows the course established by the law. In general, law is understood to be the set of legal norms created by

the State to regulate the external conduct of men, and in the event of non-compliance, this is subject to judicial sanction. "The Law is the set of rules that impose duties and norms that confer powers, that establish the basis for social coexistence and whose purpose is to provide all members of society with the minimums of security, certainty, equality, freedom and justice." (Pereznieto and Castro Leonel, Ledesma Mondragón Abel, *Introducción al estudio de Derecho*, second edition, Harla publishing house, p.9). Now, the law has two meanings, one strict and one broad. In the strict sense, the law is a rule of law directly emanating from the Legislative Power, with the approval and sanction of the Executive Power, through the respective promulgation; but in its broad sense, the law is an abstract and obligatory rule of conduct, of a general and permanent nature, which refers to an indefinite number of people, acts or events, with application for an indefinite period of time and endowed with the coercive character of law. Following this line of argument, the rule of law is also a model of legal organization in which all members of a society are considered equally subject to publicly disclosed legal codes and processes. In this sense, it is a condition that refers to respect in general for an entire normative system; reflecting the democratic ideal in the exercise of rights which is limited by law: in other words, a regime in which the natural person acts only within the margins established by law and its legitimacy depends, precisely, on its adherence to those limits (Bobbio, 2015: 458). The rule of law, within its functions, seeks to guarantee the principles inherent to the judicial nature: the supremacy of the law, equality before the law, the separation of powers, the protection of fundamental rights, and the legality of public acts. In view of the above, in the course of this document we will focus on two key points that will underpin the legalization of euthanasia from a legal perspective: the protection of fundamental rights, and

the role that the judicial body of the State, as in this case the Constitutional Court being one of the jurisdictional bodies of the country, has within the legal analysis of the case. Because the law, despite being imposed as a coercive body, requires entities to demonstrate its application and exercise in practice.

METODOLOGÍA

This article adopts an interdisciplinary methodological approach that combines legal analysis, doctrinal review and normative comparison. This methodology allows us to explore the issue of the legalization of euthanasia from constitutional, criminal and ethical perspectives, evaluating its viability within the framework of the Ecuadorian legal system.

An exhaustive study of Ecuadorian constitutional and legal norms was carried out, with emphasis on the 2008 Constitution of the Republic of Ecuador and the Comprehensive Organic Criminal Code (COIP). This analysis included an identification of relevant constitutional provisions, such as the rights to a dignified life and to liberty, an evaluation of the principle of proportionality and its applicability in Ecuadorian criminal law, considering Article 144 of the COIP on simple homicide, and a review of Constitutional Court rulings addressing issues related to human dignity and dignified death.

A systematic search was carried out in recognized academic databases, such as Scopus, JSTOR, Google Scholar and Redalyc. The selection of sources was based on the following criteria of relevance, academic quality and critical perspectives. Legislation and case law from countries where euthanasia is legal, such as the Netherlands, Belgium and Colombia, were studied to identify elements that could be adapted to the Ecuadorian context. This analysis included a comparison of legal principles, medical

procedures and the social impact of legalization. Studies and theories on human dignity and the right to a dignified death were considered, emphasizing the impact of terminal illnesses on quality of life. Ethical arguments for and against euthanasia were also analyzed, incorporating perspectives from both medical professionals and jurists.

RESULTADOS

The word "euthanasia", etymologically formed by the terms "eu", which means good or well, and "thanatos", which means death, means nothing more than a good death, dying well, without further ado. Euthanasia is understood to be that passive or active action aimed at killing incurable patients in a painless and compassionate manner. It is important to understand that euthanasia has two types of definition: active and passive. Active voluntary euthanasia is synonymous with killing. The doctor complies with the explicit request of a competent patient to carry out an act that causes the patient's death, which occurs immediately after it is completed. The doctor's action is both necessary and sufficient. On the other hand, passive voluntary euthanasia is letting die; it is when the doctor responds to the request of a competent patient not to accept a treatment knowing that by doing so, the patient will die faster than if the doctor had not accepted the request and had initiated or continued said treatment.

Constitutional State: Constitution of the Republic of Ecuador Art. 1.- "Ecuador is a constitutional state of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular. It is organized as a republic and is governed in a decentralized manner." (Constitution of Ecuador 2008, Art. 1).

The constitution is a set of fundamental legal and political norms that are binding on everyone in the state, including ordinary legislative institutions; they relate to the structure and functioning of government institutions, political principles and citizens' rights to broad public legitimacy. Its norms are more difficult to change than ordinary laws (for example, a two-thirds majority or a referendum is needed); and, at a minimum, they meet internationally recognized criteria for a democratic system in terms of representation and human rights. (Elliot Bulmer, International IDEA, N/A). It should be noted that, as previously anticipated, the Constitution of the Republic of Ecuador provides for a division of public powers into: executive, legislative, judicial, electoral, and transparency and social control. Thus, the exercise of their rights, in this case constitutional rights, relies on the rigorous application of the principles and the legal judgment of its norms with respect to the circumstances or objectives of a person that require the knowledge and ability of an entity in charge of the exercise of said rights. In this respect, emphasizing the work of the judicial body, Art. 178 of the Constitution points to the existence of jurisdictional bodies in charge of administering justice, which include the National Court of Justice, the provincial courts of justice, the tribunals established by law, and the magistrates' courts; as well as being part of the Constitutional Court of the Republic of Ecuador. However, within this classification, the Organic Code of the Judiciary stipulates in Articles 5 and 6 that these bodies have an obligation to comply with the principle of direct and immediate applicability of constitutional law and the integral interpretation of constitutional law (OAS, N/A); the same principles that will help us to understand the legal analysis that embarks on the unconstitutionality and constitutionality of a law imposed in it, in this case , those that attempt to classify euthanasia as an illegal act in relation to constitutional rights. The provisions of our constitution demonstrate the importance of

guaranteeing rights and the importance of living with them, and even more, knowing how to exercise and enjoy them; to establish that euthanasia violates the right to life is to take away the right of the subject to enjoy their rights to freedom, especially when the Republic of Ecuador presents itself as a Constitutional State of Rights and Justice in Article 1 of its constitution, in which case it would not fulfilling its aim of being an equitable and egalitarian country, which is what the country always aspires to be. As established in the Constitution of the Republic of Ecuador in Chapter Six Freedom of Rights, "Every person under the law must be recognized and guaranteed the right to the inviolability of life, as well as the right to a dignified life, which ensures health, food, nutrition, drinking water, housing, environmental sanitation, education, work, employment, rest and recreation, physical culture, clothing, social security and other necessary social services." (Constitution of Ecuador 2008, Art. 66.-1-2) However, it must be understood that in order to guarantee the enjoyment of the right to a dignified life, the state must guarantee the right to a dignified death. In effect, what is meant here by 'right to a dignified death' is the right to experience one's own death in a humane manner. This statement implicitly carries the idea that, faced with the inevitability of death, there is room for a certain exercise of our freedom. Understood in this way, a dignified death cannot be considered a merely passive phenomenon that happens to us and in the face of which we remain powerless, but rather a "human act", that is to say, an act in which our freedom could intervene to some extent.

With this in mind, it is essential to emphasize that a dignified life is not granted when a person's life is merely governed by catastrophic medical circumstances and terminal illnesses that unintentionally end up limiting the person's capacity to live and their fundamental right to dignity. This invaluable right that is human dignity has its

roots in the internal value that corresponds to man by reason of his being, the dignity of people is the basis of all society, because the value of the person is recognized by the simple fact of being a person, it is the right that all human beings have to be valued as individual and social subjects, with our particular characteristics, by the simple fact of being people. Dignity also implies the right to be ourselves and to feel fulfilled. Consequently, the right to a dignified death is legitimate before a law that allows it without imposing it on anyone, but is a manifestation of the will of the person (Valls, 2015). Thus emphasizing that no form of practice that guarantees the invaluable right to human dignity and the right to a dignified life should be classified as a crime.

Thus, the right to a dignified death is a social dispute of great importance worldwide, which is why some European and Latin American countries have recognized this right intrinsically by recognizing the right to a dignified life in each of their legislations. However, upon realizing that the Republic of Ecuador has not formally recognized the right to a dignified death in its legislation, we have been led to cite the state's obligation to adapt the necessary norms to guarantee human dignity, where the National Assembly and any body with regulatory power will have the obligation to adapt, formally and materially, the laws and other legal norms to the rights provided for in the Constitution and international treaties, and to those necessary to guarantee the dignity of the human person or of communities, peoples and nationalities, as framed by Art. 84 of the constitution: Art. 84.- "The National Assembly and any other body with regulatory power shall have the obligation to adapt, formally and materially, the laws and other legal norms to the rights provided for in the Constitution and international treaties, and those that are necessary to guarantee the dignity of human beings or of communities, peoples and nationalities. In no case shall the reform

of the Constitution, the laws, other legal norms or the acts of public power attempt against the rights recognized by the Constitution.” (Constitution of Ecuador 2008, Art. 84).

This makes it clear that the state has a full obligation to provide the due legal analysis that addresses the issues of the constitutionality of laws that violate the fundamental rights of the subject of the law, who in this case suffers from catastrophic and terminal illnesses, and that the state, by denying his right to die with dignity, ends up undermining his full right to live with dignity. Constitutional Court of the Republic of Ecuador

However, understanding the jurisdiction of the Constitutional Court is fundamental to understanding the interpretation of the law and the legal analysis of the legislation on euthanasia. The Constitutional Court is the country's highest court in matters of interpretation, protection and enforcement of the Constitution; it is an autonomous and independent body for the administration of constitutional justice, part of the judiciary of the state, and has vast national and international prestige. It deals exclusively with constitutional matters, that is, with cases that raise questions about the application or interpretation of the Constitution.

Regarding the right to a dignified death, the Constitutional Court refers to it as a “right of those who suffer and have suffered serious illnesses” and points out that the Court recognized it in judgments 679-18-JP/20 and 679-18-JP/20 and other accumulated judgments, affirming that the right to the full enjoyment of health implies the improvement of capacities and potentialities so that the life of the person with illness is as full as possible, and that for these capacities to also be potentialities for life, the consideration of a natural and dignified death, without pain or suffering, should be implied. In this sense, it points out that the patient has the right to decide and

define his or her understanding of the highest possible level of health during the course of his or her illness until his or her death. Therefore, the person should be able to choose to stop and change the treatment with medication.

It is essential to understand that the Constitutional Court of Ecuador states that if a person, in the use of their mental faculties and free of coercive pressures, makes decisions that affect only themselves and do not affect the rights and protection of others, they cannot be forced to act according to what others consider appropriate or best for them, as this decision is of an eminently private nature of the inherent right to freedom. In Ruling 67-23-IN/24, the court considered that it is unreasonable to impose on people in such situations the obligation to be kept alive, without considering their intense anguish and suffering, when there are more compassionate options available to them to end their pain. Therefore, the Comprehensive Organic Criminal Code (hereinafter COIP) should not criminalize what the Constitution recognizes as the exercise of a right derived from dignity and freedom. However, the Constitution guarantees the protection of life from arbitrary behavior, and in this sense, the State provides a regulatory framework to deter any threat. Thus, the COIP has classified simple homicide and included it within the framework of freedom rights, as it aims to guarantee that the holder of the legal right freely decides on the conditions of its exercise. To this end, it has structured a justice system to investigate, punish and provide reparation when the deprivation has been arbitrary. Having analyzed the opinion of the court, it is now known that the main obstacle to the exercise of the right to a dignified death is the criminal offense of simple homicide (Art. 144 COIP), as it generates a legal conflict that requires a constitutional interpretation that must be resolved in accordance with the principle of minimum penalty and proportionality of penalties, the principle of proportionality to

resolve normative conflicts between rights, and the need for a constitutional interpretation in accordance with the Constitution. It is proposed to legalize euthanasia with the argument that the questioned norm violates constitutional provisions such as the rights to dignity, free development of the personality, promotion of autonomy and reduction of dependency, physical integrity, prohibition of cruel, inhuman and degrading treatment and the right to die with dignity.

But something must be understood, Art. 144 of the COIP criminalizes simple homicide, and one would believe that ending a life through euthanasia is practicing this crime, but legal interpretation allows the subject of law to understand that euthanasia cannot be defined in such a simple way. In sentence 67-23-IN/24, the constitutional court indicated that, as long as euthanasia exists, the contested regulation would be decriminalized and classified as unconstitutional under certain requirements; in this sense, the court also pointed out that the public action of unconstitutionality is limited to the analysis and contrast of the norms that are supposedly contrary to the Constitution. In this instance, the disputed regulation violates the rights to: human dignity; the free development of the personality; the promotion of autonomy and the reduction of dependency; physical integrity and the prohibition of cruel, inhuman and degrading treatment; and the right to die with dignity. These rights are based on the right to freedom that people have to live life to the full. There is no dignified life without freedom. Not allowing a dignified death through euthanasia for people with the aforementioned conditions implies the violation of constitutional rights, and due to the interrelation and interdependence of these rights, it is alleged that the right to die with dignity is being violated. Furthermore, it must be understood that even when a person in intense suffering decides, in the exercise of their radical freedom,

to end their life through a process of euthanasia, their life, in principle, continues to be valuable because it is their final decision to take it. (Judges Teresa Nuques Martínez and Richard Ortiz Ortiz, Ruling CCE 67-23-IN/24).

Principle of arbitrariness

Consequently, the term arbitrariness in law refers to decisions, actions or norms that lack reasonable, objective or well-founded justification, violating basic principles of justice, legality and proportionality. This occurs when the person acts based on his or her personal will, without adhering to clear legal criteria or respecting fundamental rights. For example, an arbitrary act may consist of issuing a sanction without basing it on evidence or on applicable law. In the constitutional sphere, arbitrariness is considered a violation of the rule of law, as it disregards the guarantees of impartiality and fairness regarding fundamental rights.

Under this proposition, the Inter-American Court of Human Rights in the aforementioned case has reiterated that the right to life will be violated when the deprivation has occurred arbitrarily as a result of the use of force in an illegitimate, excessive or disproportionate manner. Thus, even though the protection of the right to life is a fundamental value within the Constitution, it cannot be interpreted in an absolute manner. Consequently, conventional, constitutional and legal regulations have established cases in which the deprivation of life is not punishable when this deprivation is not arbitrary or illegitimate.

In this context, General Comment No. 36 of the International Covenant on Civil and Political Rights, in relation to Article 6, has stated that the concept of 'arbitrariness' should not be equated with 'against the law', but should be interpreted more broadly to include

elements of inadequacy, injustice, unpredictability and considerations of reasonableness, necessity and proportionality. Having made this clear, it is well understood that the conventional and constitutional recognition of the right to life and its regulation in Criminal Law share a common objective: the protection of life against its arbitrary and illegitimate deprivation; and that, therefore, the use of medically induced death in reasonable, necessary and proportionate conditions would not constitute an arbitrary deprivation of life, and therefore the practice of euthanasia would be legal .

Principle of proportionality

The principle of proportionality fulfils the function of structuring the interpretative procedure for determining the content of fundamental rights that is binding for the constitutionality control of laws. It has 3 principles for it to be legitimate: suitability, necessity and proportionality in the strict sense:

1. The principle of suitability will tell us that the omission or insufficient action of the authority in the protection or guarantee of fundamental rights is correct as long as it contributes to the achievement of some other constitutionally legitimate end;
2. The principle of necessity implies that the omission or insufficient action of the authority is correct if it produces more benign consequences than its active intervention,
3. The principle of proportionality, in the strict sense, must imply that the omission or insufficient action of the authority that affects fundamental rights—in order for it to be correct—is compensated by the importance that these have for the satisfaction of other fundamental rights or principles that are satisfied.

As for proportionality itself, the rights at stake are the right to a dignified life of the person seeking a dignified death and the freedom of the person assisting them. However, the branch of law

that would best safeguard the right to a dignified death, in conditions of intense suffering, requires the application of the principle of proportionality and balancing of rights to determine whether, in cases of assistance for a dignified death, the crime of homicide is proportional. In line with this, it is stated that the proportionality test verifies whether the measure subject to constitutional control has a constitutionally valid purpose, and is suitable, necessary and proportional; clarifying the unconstitutionality of Article 144 of the COIP under this legal analysis, provided that the criteria are met.

Criminal Law and euthanasia

Article 144 of the COIP establishes: Homicide: "A person who kills another shall be punished with a prison sentence of between ten and thirteen years." However, throughout this document we have pointed out that for criminally relevant conduct to be unlawful, it must threaten or harm a protected legal interest without just cause, but it distinguishes that there will be no crime when the typical conduct is justified by a state of necessity. This means that, in the aforementioned circumstances within the practice of euthanasia, the legal interest in life can be harmed without the conduct constituting a crime or meriting punishment. In this specific situation, the right to life is not absolute, as its violation would be justified. From the examples given above, it can be inferred that criminal law intervenes minimally because the right to life was not arbitrarily deprived, as the conduct in question is justified under the law and in consideration of the protection of other constitutional rights.

The right enshrined in Article 66, paragraph 1, of the Constitution of the Republic of Ecuador safeguards the right to life in its dimension of subsistence and is protected by Article 144 of the COIP against arbitrary and illegitimate deprivation. Art. 66.- The

following is recognized and guaranteed to all persons: 1. The right to the inviolability of life. There shall be no death penalty (Constitution of Ecuador 2008, Art 66.-1). However, in the scenario of euthanasia, it is now understood that the conduct does not present such characteristics, since the deprivation of life occurs with the consent and express request of the holder of the legal right, who seeks euthanasia due to intense suffering resulting from a serious and irreversible bodily injury or a serious and incurable illness. Consequently, the application of the penalty contemplated in the norm to the active subject becomes controversial, since it does not genuinely protect life against an illegitimate and arbitrary act given the particularities of the scenario; the criminal offense of homicide will pursue as a constitutionally valid end the protection of the right to life whenever the deprivation is unlawful, without this, in principle, the object of Criminal Law to sanction behaviors that, even though may be antisocial, do not pose a risk to the person, nor to the legal rights of third parties.

Therefore, a criminal sanction "lacks legitimacy if it punishes behavior that does not threaten or harm the legal rights of others," and in this case, it is recognized that the practice of euthanasia does not harm or threaten the legal rights of others, since it is the person who, in full enjoyment of their inherent right to freedom, as well as to human dignity, voluntarily chooses to end their life in an induced manner; thus, to have a criminal sanction against its practice would be, in the literal sense of the word, an illegitimate sanction. For the substantial difference between death by compassion and simple homicide is that the person who asks for and pleads for death is the holder of the right to life, and therefore cannot be considered a victim, but rather a holder of rights.

Life is a legal asset and a personal right whose exercise corresponds to each individual and is legally protected against third parties, not

constituting an obligation or duty towards others. In this context, every human being, by virtue of their autonomy and free development of personality, has the right to make free and informed decisions that affect their personal development. Thus, it was demonstrated that the legal text under debate aims to protect life from arbitrary and illegitimate deprivation. However, in the scenario analyzed, the patient consents to and expressly requests the procedure while experiencing extreme suffering. Intense suffering derived from illnesses, whether terminal or not, or from bodily injuries can significantly affect people's ability to exercise their fundamental rights.

In these situations, not only is pain experienced, but substantial limitations arise for those who suffer it to carry out their life projects, contradicting their values, ideals and goals of personal development. People facing such conditions may even lose their personal sense of what it is to live with dignity. Therefore, the charge that affirms the constitutionality of the article regarding life as an absolute does not consider the second dimension of the right to a dignified life recognized in the Constitution, since it focuses on the biological dimension, on subsistence, but the right is not satisfied only in this way, but with the concurrence of factors that allow it to reach the ideals of each person.

In this context, a weighing up of fundamental rights takes place, where greater importance is given to the fulfillment of the rights to free personal development and to a dignified life. Therefore, the court considered that for the legal practice of euthanasia, the application of the sanction established in article 144 of the COIP is of conditional constitutionality as long as the sanction is applied in the scenario addressed throughout the practice of euthanasia. This unconstitutionality is limited exclusively to the aforementioned case, requiring the conditional interpretation of simple homicide to

safeguard the scenarios in which the norm is not unconstitutional. Unconstitutionality: Medical Code of Ethics and Simple Homicide Due to the fact that in the procedure involved in the practice of euthanasia, an intermediary is required to carry it out, in this case the doctor, the court determined that the application of the sanction imposed on the doctor who carries out the conduct typified in article 144 of the COIP in the context of a euthanasia procedure is unconstitutional. This body realizes that the rules of the Code of Medical Ethics prescribe that the doctor is not authorized "to shorten the life of the patient" and that his greatest responsibility will be the "preservation of the life of the patient," thus maintaining a direct connection with the prohibition and sanction of article 144 of the COIP, which merits simple homicide. So, the court ruled on articles 6 and 90 of the Code of Medical Ethics in light of the following legal problem.

Articles 6 and 90 of the Code of Medical Ethics state that:
Art. 6. – The doctor, from the moment he is called to attend to a patient, becomes responsible for providing him with all the medical care necessary for him to recover his health. His greatest responsibility will be to preserve the patient's life. (emphasis added).

Art. 90. – The doctor is not authorized to shorten the life of the patient. His fundamental mission in the face of an incurable illness will be to alleviate it through the therapeutic resources available. (emphasis added).

Two medical obligations emerge from the regulations under study: to "preserve" life and, in the face of an incurable illness, to "alleviate" it. The normative provisions understand life as a right that deserves protection from an absolute and indisposable conception because even when the person suffers intense suffering from a serious and irreversible bodily injury or a serious and incurable illness that prevents the promotion of their autonomy and

the reduction of dependence, life must be protected. As already determined in the previous section, the protection of life through a criminal law or a provision of a different nature - as in this case - will be constitutional when an arbitrary and illegitimate deprivation is configured. Furthermore, it would come into conflict with the case in question, since the termination of life in a context of intense suffering from a serious and irreversible bodily injury or a serious and incurable illness is presented as a reasonable and merciful alternative available to those who find themselves in such circumstances.

Consequently, the aforementioned provisions are unconstitutional because they unreasonably hinder the exercise of the rights to a dignified life and the free development of the personality by preventing the assumption addressed in this ruling. However, in order to effectively address the connection of these regulations and the alleged charge of homicide surrounding euthanasia, reference is made to Article 116 number 3 of the Organic Law of Jurisdictional Guarantees and Constitutional Control (LOGJCC of Ecuador 2009), which prescribes that in order to determine the connection between the legal provisions, the Constitutional Court must take into account the explanatory memorandum and the variations between the original texts and the definitive texts, among others. Likewise, the jurisprudence reiterates that: The Constitutional Court is competent to analyze the unconstitutionality of related norms, provided that the existence of normative unity is configured through the verification of:

1. That the accused provision or its content is reproduced in other normative texts not demanded;
2. That it is not possible to produce a ruling on an expressly challenged legal provision without also ruling on another with which it has a close and essential connection and/or;

3. That the contested provision is a consequence or direct cause of other uncontested provisions;

In this way, the court has declared the conditional constitutionality of the provision in question. In such a way that it is determined that said article will be constitutional as long as (i) the doctor who commits the act typified in article 144 of the COIP is not punished in the event that (ii) a person, expressing their unequivocal, free and informed consent (or through their representative when they cannot express it), requests access to an active euthanasia procedure; (iii) due to the suffering of intense suffering resulting from a serious and irreversible bodily injury or a serious and incurable illness. Similarly, Article 90 of the Code of Medical Ethics was declared unconstitutional and Article 6 was declared constitutional in accordance with the criteria addressed in the practice of euthanasia, that is, in cases where (i) the doctor carries out the conduct defined in Article 144 of the COIP when (ii) a person, expressing their unequivocal, free and informed consent (or through their representative when they cannot express it), requests access to an active euthanasia procedure (iii) due to the suffering caused by a serious and irreversible bodily injury or a serious and incurable illness. On the other hand, because Article 90 expressly prohibits active euthanasia practices and having determined that this assumption is incompatible with the Constitution, it becomes unconstitutional and must be expelled from the legal system.

CONCLUSIONES

As a final reflection and after analyzing the case presented, it is now clear that the legislation on euthanasia in Ecuador is a legal dispute that, if resolved correctly, reaffirms the interrelated constitutional rights within the country's legal framework, in particular the rights to dignity, to a dignified life and to freedom. In this context, it is

recognized that laws should not be considered absolute, as their arbitrary application would contravene the fundamental principles of a constitutional state that seeks to ensure the full protection of human rights. The Constitutional Court, in the exercise of its authority, has demonstrated that both the law and rights are not absolute, but can be adjusted under specific circumstances. Thus, the legalization of euthanasia in Ecuador reflects the flexibility and adaptability of the legal system, which, while respecting individual rights and human dignity, is aligned with the principles of justice and proportionality.

The practice of euthanasia, as well as being seen as a medical practice, should be recognized as a legal guarantee for the subject of the law. The constitution of the Republic of Ecuador establishes the recognition of life with dignity as a fundamental right, and we have resolved that for a life to be dignified, it must possess that characteristic until the end of its life. The principles of the law that attempts to classify this practice as a crime have allowed us to reach the conclusion that euthanasia is not an infraction as such, as we now understand that it is a practice that guarantees rights.

Through the principle of proportionality, it has been explained how the legal interpretation of extraordinary circumstances allows the legal body to adapt the regulations, and thus guarantee that the established rights are in force and celebrated by the natural person. Because one thing must be made clear, it is understood that the law is applicable to everyone, but it must also be understood that unfortunately we do not all live under the same circumstances. To this, the applicability of the law varies in highly relevant situations, such as a situation that warrants the induced termination of a life.

On the other hand, the principle of arbitrariness has allowed us to understand that the practice of euthanasia is not related to the

unlawful termination of human life. The law is clear, the deprivation of life must be labeled a crime as long as it is the product of the illegitimate, excessive or disproportionate use of force. And euthanasia, when requested within reasonable, necessary and proportional frameworks, cannot be recognized as against the law. The norm in question should not be taken in an absolute way, since the absolutism of a norm would mean the existence of an incongruent literalism in its application. We understand that the interpretation and flexibility of the disputed norm is an analysis that the State itself must take into account in order to promote equality, equity and justice in its application; otherwise, instead of promoting the guarantee of rights, we would find ourselves in a situation of ignorance and omission of fundamental rights inherent to the holder of those rights.

Thus, through the application of these principles, the courts of the Republic of Ecuador have managed to resolve the legal dispute in question. The State's judiciary, through one of its courts, established by means of sentence 67-23-IN/24 that the articles that classify the practice of euthanasia as a direct violation of the criminal law of simple homicide, together with the practice of medical intermediation, would be declared unconstitutional under the attention of a legal request for euthanasia. In this way, the purpose of our republic is reaffirmed once again in accordance with the law and its application, Ecuador being an equitable, egalitarian country that guarantees constitutional rights.

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