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Analysis of judgment 67-23-in/24: active euthanasia in Ecuador in relation to comparative law

Análisis de sentencia 67-23-in/24: eutanasia activa en Ecuador en relación al derecho comparado

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Abstract

This article seeks to analyze the sentence 67-23-IN/24 issued on February 5, 2024 by the Constitutional Court of Ecuador, which resolves the conditional constitutionality of Article 144 of the Organic Integral Penal Code, which typifies the crime of simple homicide, process driven by Paola Roldán Espinosa, due to her advanced amyotrophic lateral sclerosis (ALS), a degenerative disease without cure, Therefore, she requested to the highest body of justice and constitutional interpretation the right to a dignified death through an Action of Unconstitutionality, thus, the public action of unconstitutionality will be defined, what euthanasia consists of will be analyzed, as well as the dimensions that integrate the right to life and the free development of the personality will be studied; The requirements for access to a euthanasia procedure in Colombian and Ecuadorian legislation will be analyzed, in order to determine that the decriminalization of euthanasia in people suffering intense suffering guarantees a dignified life.

Keywords: Euthanasia; right to life; right to free development of personality; palliative care; comparative law.

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Resumen

El presente artículo busca analizar la sentencia 67-23-IN/24 expedida el 05 de febrero de 2024 por la Corte Constitucional del Ecuador, la cual resuelve la constitucionalidad condicionada del artículo 144 del Código Orgánico Integral Penal, que tipifica el delito de homicidio simple, proceso impulsado por Paola Roldán Espinosa, debido a su avanzada esclerosis lateral amiotrofia (ELA), enfermedad degenerativa sin cura, por ello solicitó al máximo organismo de justicia e interpretación constitucional el derecho a una muerte digna a través de una Acción de Inconstitucionalidad, siendo así, se definirá la acción pública de inconstitucionalidad, se analizará en qué consiste la eutanasia, así como se estudiarán las dimensiones que integran al derecho a la vida y al libre desarrollo de la personalidad; se analizarán los requisitos para acceder a un procedimiento eutanásico de la legislación colombiana y ecuatoriana, para así determinar que la despenalización de la eutanasia en personas con padecimiento de un sufrimiento intenso garantiza una vida digna.

Palabras claves: Eutanasia; derecho a la vida; derecho al libre desarrollo de la personalidad; cuidados paliativos; derecho comparado

Introduction

Ecuador is a constitutional State of rights and social justice, which seeks to prevail and guarantee the rights that are enshrined in our supreme law, the Constitution, thus through a public action of unconstitutionality as a jurisdictional guarantee whose purpose is aimed at ensuring the unity and coherence that should have the legal system, so that the Constitutional Court makes an evaluative analysis of substance or form of the incompatibilities between a lower standard with the constitutional text, in the case of Paola Roldan by means of action raised, the conditional constitutionality was declared and the criminal conduct that was typified in article 144 of the COIP referring to the criminal type of simple homicide was modified, having decriminalized the access to active euthanasia under the circumstances provided by the Constitutional Court, this is an advance in constitutional justice, in reason that, thanks to the courage of a 43 year old patient diagnosed with amyotrophic lateral sclerosis (ALS) named Paola Roldán Espinosa, she fought to guarantee the right to a dignified death, a right that the Constitutional Court in the evaluative analysis of its sentence interprets according to the constitutional principles of human dignity and freedom, but why? Because human dignity seeks to ensure that people enjoy the conditions that allow them a dignified and full existence.

Materials and methods

In the elaboration of this work it was necessary to obtain information through the use of different tools, such as: the compilation of texts, books, documents and the search for more bibliographic sources that have allowed me to analyze positions regarding the

application of active euthanasia in patients who suffer intense suffering resulting from a necessarily serious and irreversible bodily injury or a serious and incurable disease, I have relied on the analytical method to understand the scope that has been given to the right to life with dignity and the free development of the personality, as well as to study when exceptions to the inviolability of life are admitted; the deductive method has served me in the sense that I have analyzed the problem from the access and decriminalization of euthanasia; the inductive method has been used through examining the legal problems that are solved in the sentence of the Constitutional Court, finally a study of comparative law between Ecuadorian and Colombian legislation has been carried out.

Euthanasia is understood as:

> The action or omission performed by a physician with the intention of directly causing death in a non-aggressive manner to a patient in order to alleviate his suffering, provided that his consent or, if applicable, that of his legal representative, is obtained. (Centro de Bioética de la Pontifica Universidad Católica de Chile, 2019, p. 2).

In this sense, euthanasia is understood as the conduct exercised by a health professional in which, by action or omission, the patient's death can be provoked with the purpose of reducing or alleviating his/her suffering, being necessary that the patient's consent be expressed in order to agree to this type of procedure and, if he/she is unable to express it himself/herself, consent must be expressed through his/her legal representative.

On the other hand, from the Library of the National Congress of Chile (2021) defines euthanasia as: "the deliberate act of putting an end to the life of a person at the request of the person or a family member (p 2). Thus, in accordance with the above, euthanasia is an act that arises from the premeditation of the person who performs it with the purpose of ending a life whether this is decided by the person entitled to the right or a third party on his behalf as a relative or representative, with this scenario it can be seen that in the application of euthanasia is necessary the consent and willingness of the person seeking to undergo this treatment, it should be emphasized that for this procedure to be applied several analyses must be made, such as: The patient's illness, psychological evaluation of the patient, psychological evaluation of the family members in case they authorize euthanasia, psychological evaluation of the physician who will perform the procedure.

Paola Roldan Case

It is necessary to allude, in Ecuador in August 2023, Mrs. Paola Roldán Espinosa, a person suffering from amyotrophic lateral sclerosis (ALS), which according to Revista Elsevier (2014) consists of a neuromotor disease that gradually degenerates the muscles of the body, preventing the control of the movement of the limbs.

Thus, Paola Roldán, in view of her condition, and in addition to not obtaining a favorable and positive result from her therapies and treatment, filed a lawsuit for Public Action of Unconstitutionality of article 144 of the Organic Integral Penal Code.

In this constitutional guarantee signed with case number 67-23-IN/24, , Dr. Enrique Herrería Bonnet was the reporting judge, where the grounds of Ms. Roldán's technical defense were based on the following:

> The challenged norm violates the rights to (i) dignity; (ii) free development of personality; (iii) promotion of autonomy and reduction of dependency; (iv) physical integrity and the prohibition of cruel, inhuman and degrading treatment; and, (v) the right to die with dignity.

Under the arguments given by the technical defense, regarding the violation of the right to dignity occurs when imposing ideas of the State related to ethics, religion or other values, ideas that will not always be shared, in this case when dealing with a person suffering from an illness that causes intense suffering, preventing or denying him/her access to euthanasia, and as a result of this, needing a third person to take care of him/her, makes him/her feel devalued and even humiliated in a certain way. As for the violation of the right to autonomy and reduction of dependency, this is transgressed in the sense that the person suffering from a serious incurable illness or injury implies that at some point a decision regarding his condition must be taken into consideration, respecting the will of the patient.

Analysis of the right to life with dignity

The Ecuadorian supreme law recognizes and protects the right to life, but at the same time establishes that its exercise will not be limited through conditions that allow and provide a dignified life. When speaking of dignity, which is the foundation of the rights and freedoms we have as human beings, how can we speak of a dignified life if we are not allowed to decide on it by exercising it freely?

Following this line of argument, the Constitutional Court in its ruling 67-23-IN/24 mentions that: "dignity implies the fulfillment of minimum conditions that allow subsistence and personal development" (p. 21). In this sense, the highest body of justice and constitutional interpretation develops the scope of the right to a dignified life from two dimensions:

> (i) *Subsistence,* beyond just existing, must be able to comply with the necessary elements that allow having conditions for a decent existence.
> (ii) *Concurrence of minimum factors for a decent existence:* factors that make it possible to achieve the ideals for the development of life, through the development of their capabilities in a comprehensive manner within an environment that provides dignity, in addition to granting and allowing the full exercise of rights, must concur. (Constitutional Court, 2024, pp. 19-21).

With what has been said, it follows that the right to a decent life is integrated from two perspectives, it is not enough just to exist, but rather that subsistence is allowed. In the same line, (Soriano, as cited in Ferrajoli, 2012) establishes that the right to subsistence is guaranteed for example by the granting of an income or a minimum wage by the State to citizens (p. 7). Therefore, it is interpreted that the right to life is understood from subsistence as a right to be guaranteed an adequate standard of living for the person by granting conditions that allow a decent life, through the development of capabilities to enable the person to fully exercise and enjoy his rights.

Along the same lines, the Constitutional Court of Ecuador, in its ruling 67-23-IN/24, analyzed whether the right to life is protected in the Organic Integral Penal Code, for which it held:

> The COIP typified the criminal offense of simple homicide in order to protect the life of the owner of the legal right from an arbitrary and illegitimate deprivation. However, if the deprivation of life occurs as a result of the consent and at the express request of the owner of the protected legal right, the sanction of the criminal offense would be inappropriate, since the person undergoes a euthanasia procedure due to extreme suffering.

It is understood that the Organic Integral Penal Code has criminalized the crime of simple homicide in order to be able to protect and guarantee the right to life of the holder, however the highest body of constitutional interpretation, adds that such protection is because of an arbitrary and illegitimate deprivation, in order to better understand this point, the General Comment number 36 on Article 6 of the International Covenant on Civil and Political Rights (2017) :

> The deprivation of life implies a deliberate, foreseeable and avoidable damage or injury either by act or omission; while arbitrariness is not equated with "contrary to law", but its interpretation must take into consideration elements that determine that the deprivation of the right to life was unjust and unforeseeable, in addition to considering criteria of reasonableness, necessity and proportionality (pp. 1-4).

Therefore, in the case that a person is allowed access to a euthanasia procedure, the right to free development of the personality and the right to a dignified life are weighed, since the protection that the State seeks to guarantee in relation to the right to life occurs when this right is endangered or damage has already been caused, by action or omission of the active subject.

Analysis of the right to free development of personality.

The constitutional magistracy of Ecuador, in its ruling 67-23-IN/24, also analyzes the right to free development of personality:

> This right protects in general the capacity of persons to determine themselves and, in the exercise of their volitional capacity and sufficient autonomy, to make

> decisions that allow them to establish and develop their life project. It also includes the capacity to freely express and maintain the physical and psychological aspects inherent to their person, which individualizes them and allows them to be who they want to be. (p. 22).

Thus, it follows that the right to free development of personality is related to the self-determination of the person, in the sense that autonomy and self-determination refers to the ability to make decisions without external pressure and based on defining what we really want (Amnesty International, 2015). Therefore, through our ability to decide and manifesting it externally our own will allows us to freely lead a life according to what we believe and want to plan, establish, decide and exercise a life project of our own.

Article 2.1 of the Basic Law of the Federal Republic of Germany (1949) mentions: "Everyone has the right to the free development of his personality as long as he does not violate the rights of others or violate the constitutional order or the moral law". (p. 16) The German country is alluded to due to the fact that in February 2020 the legality of article 217 of the Penal Code was reviewed, establishing that people have the right to a self-determined death. (Olazábal, 2020). E n this sense, the right to free development of personality is limited to not violating the rights of other people, moral law or constitutional order, what is interpreted in the first point is that it does not infringe on the right of another person since a person decides whether to continue with his life or not as it is a personal decision, It would not be an attempt against the constitutional order because the Constitutional Court is in charge of interpreting the compatibility of a norm with the Constitution, in this case to analyze if euthanasia is allowed.

Protection for people with disabilities, the elderly and those suffering from illnesses.

The Constitutional Court in its ruling 67-23-IN/24, states that:

> Human beings can experience painful situations such as suffering from diseases or injuries, among these are terminal diseases, which are incurable because they are in an advanced and progressive stage. People suffering from these diseases have a reduced life expectancy, since there is irreversible organic damage and multiple symptoms that do not respond to treatment. However, they are not the only diseases that cause intense pain in patients; there are also others that cause extreme conditions of pain. (p. 27).

With the above, it is clear that the constitutional magistrate does not exclude other circumstances that may cause extreme pain or intense suffering to a person, especially when it is an irreversible organic damage, which usually occurs in a terminal illness. Following this line, a terminal illness, in addition to causing a physical condition that leads the patient to intense suffering derived from his pathology to which he has no response, causes in him an emotional impact that will probably make him question his life.

On the other hand, the Constitution of the Republic of Ecuador in its article 35, establishes the rights of persons and groups of priority attention:

> Art. 35.- The elderly, children and adolescents, pregnant women, persons with disabilities, persons deprived of their liberty and those suffering from catastrophic or highly complex diseases shall receive priority and specialized care in the public and private spheres. (Constitution, 2008).

In relation to this, it refers to those groups that suffer violations of their rights and find themselves in a situation in which discrimination takes shape and originates (Arandia, et al., 2020). This being so, these groups have been historically excluded due to the condition in which they find themselves that has caused them to be vulnerable, for social, economic, political reasons, among others; this causes them to find themselves in a situation that is often discriminatory, therefore it is the duty of the State to provide protection to these groups and as can be observed people suffering from catastrophic or highly complex diseases are part of the priority care groups.

In that order of ideas, the sentence of analysis within the present work issued by the Constitutional Court, 67-23-IN/24 adds that:

> It is essential to emphasize that the responsibility of the State goes beyond the provision of medical services, since it must take into account factors such as accessibility, quality and effectiveness of the care provided in health services, as well as the promotion of new technologies, alternatives and medical techniques, without forgetting the training and continuous education of the personnel that make up the health system. (p. 29)

Thus, the Constitutional Court is aware that it is the duty of the State to offer an accessible, quality and effective health service, i.e. that all individuals and communities without any discrimination have difficulties in accessing the service, in the same way this must be satisfactory for the patient, however, beyond this, the State must move forward with the implementation of new technologies that allow the patient to have more alternatives in their treatment.

Palliative Care

At this point it is transcendental to talk about palliative care, by means of a dissenting vote in sentence 67-23-IN/24, constitutional judge Carmen Corral, expresses the following:

> Palliative care involves medical treatment for people with terminal illnesses or an incurable disease with the purpose of keeping them alive, so that in some cases it may not be feasible to prolong their agony (...) what is undesirable is the *therapeutic overuse* that occurs when the doctor prolongs life with a treatment that is neither proportional nor necessary, in which case the patient has the right to refuse to receive certain treatment, repudiating the therapeutic overuse. (p. 72).

Under the proposed perspective, palliative care is interpreted as a medical treatment aimed at maintaining the life of a patient suffering from a terminal illness; however, it is

emphasized that the decision to accept or refuse to undergo this type of care must be considered.

Now, if it is desired to provide comprehensive care to alleviate or reduce the suffering of a patient with a terminal or incurable disease, does the Ecuadorian State really offer comprehensive health care? Does the population have access to a quality and efficient health service? The constitutional judge states that it would not make sense to prolong a life when the patient is in agony, however, she then refers to the *therapeutic overzealousness* also called therapeutic obstinacy understood as the use of inadequate diagnostic or therapeutic measures, not indicated in advanced or terminal stages of the disease in order to delay death (Nabal et al... 2005 p.78), 2005 p.78). So if we are talking about inadequate measures that the treating physician considers, I think that the last decision will always be the patient's, including the possibility of hearing a second opinion regarding his specific case, but if it is the negligence of his doctor, it would be another matter in my opinion, apart from not allowing him access to a euthanasia procedure.

Martinez (2000) points out that:

> Palliative care is not about bringing forward or delaying death; it provides relief from the patient's pain, as well as other symptoms that may be distressing to the patient, resulting in the patient not only being distressed by his or her physical illness, but becoming emotionally distressed, thus integrating psychological and even spiritual factors of care; and it provides a support system to help the family cope with the patient's illness and grief. (p. 142).

With this definition, it is analyzed that when we talk about palliative care this is not intended to advance or delay the death of a patient with a terminal illness, but rather it is care focused on reducing pain and other symptoms that cause discomfort to the patient, beyond an individual sphere involves relieving physical and emotional pain that is a product of their condition, which also involves the family as they also come to be a support and support to their family.

Comparative law on access to euthanasia: Colombia:

Hurtado (2015) mentions that:

> In 1997, Colombia's Constitutional Court decriminalized euthanasia, allowing those suffering from incurable and terminal illnesses to end their lives. However, the Congress of the Republic did not approve the corresponding regulations for 18 years. Therefore, the Constitutional Court ordered the Ministry of Health to regulate access to euthanasia and to establish a committee to deal with requests. (p. 49)

Although Colombia was the first country in Latin America to decriminalize euthanasia, it was not until 2015 that the Congress of the Republic was unable to regulate access to

this procedure, so the Ministry in charge of health was ordered to regulate it, and a committee was formed to monitor compliance with the protocol created by the Ministry.

Following this line of argument, in compliance with Ruling T-970 of 2014, the Ministry of Health and Integral Protection issued the appropriate guidelines for the formation and operation of the Interdisciplinary Scientific Committee for the Right to Die with Dignity, in Resolution No. 00001216 on April 20, 2015, which states:

> Article 5. *Organization of the Interdisciplinary Committees for the Right to Die with Dignity.* The Health Provider Institutions (IPS) that have enabled the service of hospitalization of medium or high complexity for oncological hospitalization or care service for a chronic patient or home care service for chronic patient that has the respective management protocols for palliative care, in this case an Interdisciplinary Scientific Committee for the right to die with dignity will be formed. (p. 3).

From the aforementioned article, it is interpreted that in Colombia the denomination of health facilities are Health Care Providing Institutions, which, if they provide hospitalization services, have a medium or high level of complexity. With the aforementioned order of ideas, it is also considered that committees should be formed when providing care to patients who have cancer or have a chronic disease such as diabetes.

In resolution number 00001216 issued on April 20, 2015 in compliance with judgment T-970 of 2014, it adds:

> Article 7. Functions. Each Committee shall have the following functions: review the determination of the treating physician regarding the request made by the patient and establish whether palliative care was offered or received; order that a non-objecting physician be appointed within a maximum of 24 hours term if objection is presented by the treating physician; Establish up to 10 days term from the request for it to be reiterated; To monitor the procedure to be carried out 15 days after the reiteration of the decision; to suspend the procedure in case of detecting irregularities; to provide accompaniment in all phases of the treatment; to verify in the consent form if there is any circumstance that vitiates its validity and effectiveness; to report the facts to the Ministry of Health. (p. 4)

Now, it is understood that the functions of each committee are oriented to review, monitor and follow up from the beginning of the request for the euthanasia procedure, considering the conscientious objection and even the reiteration of the submission to this procedure, which in my opinion is appropriate when it comes to deciding whether to end one's own life, one must be sure and think well about this decision; On the other hand, suspending the procedure when irregularities are detected is in accordance with the actions of the doctors, they must ensure that the procedure is applied correctly with due diligence; another point that I consider important is to analyze that the consent given by the patient is not vitiated, the nature of consent is to express and externalize the will, which must be one's own in the exercise of autonomy and self-determination.

The Protocol for the Application of the Euthanasia Procedure in Colombia (2015) states:

> Recommendations on the assessment processes used to ensure that the patient has the capacity to request euthanasia are: medical status, assessment of suffering, lack of treatment or care alternatives, persistence in explicit request, assessment of decisional capacity, further assessment, and that the assessment be comprehensive. (p. 14-15)

Thus, the Colombian country has established a protocol regarding the procedure to be followed in order to evaluate whether a patient has the capacity to request access to euthanasia, taking into account his medical condition, as well as to evaluate his suffering when he cannot tolerate it, making it difficult for him to continue with his life project, Even the pain that the family feels in this type of cases can be taken into consideration, however, the patient's decision must prevail, a striking requirement is that there is a second evaluation, understanding this point as if it will be sought to prevent or have another perspective before proceeding with the euthanasia procedure.

The procedure to access a euthanasia procedure in Colombia according to the Ministry of Justice (2021):

> To fill out the advance directives document, it is not necessary to go to a notary's office and it may be requested to be included in the medical record, once the request is submitted (having a copy with the seal of receipt and another at the Health Care Provider Institution requested), the Interdisciplinary Scientific Committee will analyze the request to subsequently communicate with the interested party, being a free procedure.

In this sense, the request can be made at the Health Care Provider Institution with an advance directives document that can be requested to be found in the medical record, after which the committee will review the request in exercise of the functions conferred by law.

Comparative law on access to euthanasia: Ecuador:

With the ruling of the Constitutional Court, the Ministry of Public Health was ordered to issue the Regulations for the application of Voluntary Active Euthanasia and Avoluntary Euthanasia, being as follows:

> Art. 4.- Requirements to request application of voluntary active euthanasia: a) Ecuadorian nationality or foreigner with permanent residence; b) of legal age and mental and legal capacity; c) informed, unequivocal and persistent request; d) medical report signed by the treating physician(s) of the National Health System containing: 1. diagnosis of the serious and incurable disease or serious and irreversible bodily injury; 2. evolution of the disease; 3. proof of access to comprehensive palliative care; 4. evaluation of the patient's prognosis, functionality and quality of life in the short, medium and long term; 5. details of comprehensive counseling; e) clinical psychological report detailing assessment

> in order to determine the ability to make a free and voluntary decision; f) psychiatric report detailing the mental state and the absence of a mental disorder; g) socioeconomic report issued by a social worker; h) medical reports valid for 30 days; i) request for ratification or revocation. (Regulations for the application of euthanasia, 2024, Art. 4).

In this context, in order to request the euthanasia of the non-anticipated patient it is essential to have Ecuadorian nationality, at this point it is not limited to foreigners who want to come to Ecuador to practice this type of procedure, but it is required to have a permanent residence which would make sense because if the patient suffers a serious and incurable illness or injury it is possible that he/she must have followed a treatment prior to wanting to access euthanasia, also the treating physicians must diagnose that the disease is incurable, On the other hand, it is also stated that there must be proof that the patient has received palliative care, thus encouraging that the patient has been given the possible alternatives for a better life, interpreting that euthanasia could be the last option for the patient, it is necessary to mention that a diagnosis from the physician is also requested regarding how the quality of life of the user will be in the short, medium and long term; Finally, it is stated that it is necessary for the patient to ratify or revoke his or her decision, which is why these forms must also be provided by the National Health System.

In this order of ideas, the law also contemplates the procedure to access voluntary euthanasia, stating:

> Art. 5.- In order to access the application of avoluntary active euthanasia, the following is required: a) notarized advance will or living will; b) Ecuadorian nationality or foreigner with permanent residence in the country; c) legal age of majority; d) copy of judicial decision supporting the legal representation; e) application signed by legal representative; f) medical report signed by treating physicians which must contain: 1. definitive diagnosis of the serious, incurable and irreversible disease or injury; 2.- The evolution of the disease; 3.- proof of effective access to palliative treatment; 4.- evaluation of the patient's functional prognosis and quality of life; 5.- details of comprehensive counseling to the patient, family or relatives; 6.- certificate of the patient's current incapacity to make decisions; g) socioeconomic report issued by social work; medical and socioeconomic report valid for 30 days; i) request for ratification or revocation. (Regulations for the application of euthanasia, 2024, Art. 4).

It is considered in the country the voluntary advance decision of the patient, it is requested by his legal representative because the patient may present difficulty in the process for the request for example if his health is deteriorating for it is needed a judicial decision that supports the legal representative, in this section is colige that refers to the guardians and curators, legal figure that establishes that: constitute burdens imposed on some persons in favor of those who cannot govern themselves or manage their affairs competently, and who are not under the parental authority of a father or mother who can provide them with due protection (Civil Code, 2004, Art. 367). In this sense, due to

the incapacity that the patient may present, he/she must have a legal representative duly appointed by a judge; likewise, an advance will document or a duly notarized living will is required.

Thus, what can be inferred is that Ecuador and Colombia are the only two countries in Latin America whose legislations allow access to euthanasia, being the requirements similar, however, I consider that in Ecuador, in addition to the ratification of the decision or its revocation, a second evaluation of the patient should be carried out as contemplated in the Colombian legislation, so that the patient can have more security in the decision he/she makes, Similarly, in Ecuador the advance directive document is requested in avoluntary euthanasia but this requires legal representation authorized by a judge, from my perspective this is a limitation because not all people have the income or time to be granted a judicial authorization constituting this requirement an impediment.

Results

The present investigation focused on the analysis of sentence 67-23-IN/24 issued by the Constitutional Court of Ecuador, which examined and resolved the conditional constitutionality of article 144 of the Organic Integral Penal Code, which typified the crime of simple homicide, This was a jurisdictional action filed by a patient suffering from multiple sclerosis named Paola Roldan, who promoted that in the Ecuadorian legal system a euthanasic procedure could be accessed when a person is under intense suffering derived from a pathology, In order to infer this, this article has analyzed why it was necessary to decriminalize euthanasia in Ecuador through the analysis of the mentioned sentence, which allowed to examine the nature and scope of the right to life with dignity and the right to the free development of the personality, These rights allow the person to continue to carry out his or her life project in conditions that, in addition to granting subsistence alone, make it possible to have a decent life, in addition to exercising and enjoying his or her rights. The sentence also promoted the issuance of the Regulations for the application of Euthanasia in the country, which establishes the requirements for access to an active and voluntary euthanasia procedure, Finally, thanks to the constitutional magistracy with its sentence, it was possible to evidence an advance in constitutional justice by having protected fundamental rights of people who suffer intense suffering, as well as the fact of listening to them and accepting the decision they make when they have been previously informed regarding access to a euthanasia procedure, however, as a country we face new challenges to better regulate the application of euthanasia.

Conclusions

Therefore, the relevance of the present study is based on the legal analysis of sentence 67-23-IN/24 issued by the Constitutional Court of Ecuador, which examines the constitutionality of article 144 of the Organic Integral Penal Code that typified the crime of simple homicide, because the rule protected the arbitrary and illegitimate deprivation

of the right to life, however, the access to a euthanasia procedure does not imply a deprivation of life with the intention of causing harm to the patient or causing death in a deliberate and unjust manner, the access to a euthanasia procedure does not imply a deprivation of life with the intention of causing harm to the patient or cause death in a deliberate and unjust way, this is given at the express request of the owner of the protected legal right, that is to say that by the will of the patient the decision to access euthanasia is made, such decision must be free and without external pressures or interference, taking into consideration that the patient must be informed by his treating physician about the other alternatives for his treatment.

Now, it was necessary to decriminalize euthanasia in Ecuador under the argument that people who suffer intense suffering due to a bodily injury or whose pathology makes it difficult for them to continue building their life project should be allowed to have access to this procedure; as analyzed in the research, access to euthanasia weighs the right to free development of the personality and the right to a dignified life, euthanasia has been the subject of debate over the years, however, through constitutional control, in this case, citizens are allowed to participate in the analysis of the constitutionality of a norm, the law is changing, in virtue of the new social problems that arise and are the subject of study and debate by academia and other professionals, with respect to the decriminalization of access to a euthanasia procedure in Ecuador has demonstrated an advance in constitutional justice by expanding the scope of the right to a dignified life.

Regarding the analysis of the requirements for access to a euthanasia procedure in the Colombian and Ecuadorian legislation, it is concluded that as stipulated in the Regulation for Access to Euthanasia in Ecuador, I consider that the requirements for voluntary euthanasia limit the access to this procedure, in the sense that the legal representation of the patient is requested and is duly authorized by a judge, it is understood that for this type of procedure there is the legal figure of the guardian or curator in accordance with the Civil Code, However, in the case of a patient who suffers intense suffering as a result of an incurable disease or injury, and considering the time it takes for legal proceedings to be processed, this requirement constitutes a delay in access to euthanasia, in addition to the fact that it would also constitute a limitation not to consider the resources or time that each patient has for his particular situation and condition, what happens in Colombia could be adopted, in that the advance directive document can be included in the medical record without incurring the patient in judicial or notarial expenses.

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