

Constitutional Claim Decision C- 355 de 2006

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On May 10th, 2006, the Colombian Constitutional Court determined that abortion could not be considered a crime if at least one of the following three circumstances took place: 1) whenever a physician certified that pregnancy could threaten the woman's health or life; 2) whenever the physician came to the conclusion that the fetus would suffer from serious malformations that would eventually result endangering or terminating his life and; 3) whenever pregnancy resulted from rape, incest or artificial insemination without consent, as long as the criminal act was lawfully reported before the competent authorities.

The plaintiffs of the Constitutional Claim¹ argued that the articles of the Penal Code that penalized abortion, abortion without consent and the mitigating circumstances all together, in all cases², violated the right to life, to dignity, to physical integrity, to equality, to liberty, to free development, to reproductive autonomy, to health, and in general to all obligations provided encompassed under human rights law.

However, before analyzing the aforementioned matter, the Court determined that in this case, there was no substantive or procedural *res judicata* in relation to prior decisions of the Court, regarding the provision that prohibited abortion. Indeed, if such substantive or procedural *res judicata* would have taken place, then it is clear that the set of doctrinal guidelines from the Constitutional Court would have been applied, as in other occasions, in order to preserve judicial stability and to protect the right to equality. After all, the constitutional jurisprudence in Colombia has always maintained a close relation between legal precedent and *res*

¹ Paragraph 4 of Article 241 of the Constitution of Colombia states that the Constitutional Court has the duty to decide on the constitutional claims brought by citizens against a law of the State, arguing unconstitutionality for its substantive content or for a procedural flaws in the expedition.

² The norms that the plaintiffs challenge from the Penal Code are the following:

“ART. 122.- Abortion. The woman who aborts, or allows another person to abort will incur in a prison punishment of one (1) to three (3) years. The same penalty shall be applied to the person that, with the consent of the woman, practices the conduct described in the preceding paragraph. ART. 123. - Abortion without consent. Whoever causes an abortion without consent of the woman, **or female under fourteen**, will be chastised with a punishment of imprisonment of four (4) to ten (10) years ART. 124. - Punitive attenuation circumstances. The penalty prescribed for the crime of abortion shall be reduced by three quarters when the pregnancy is the result of sexual intercourse or sexual contact without consent, abusive intercourse, artificial insemination without consent or fertilized ovum transfer without consent.

judicata, thus commanding constitutional judges to acknowledge previous legal decisions in any sort of related legal subjects.

Nevertheless, this must not suggest that jurisprudence has remained immobile, given that the purpose of the aforesaid principle has constantly been that of counteracting unacceptable injustices. In fact, whenever there is a significant reason validating and supporting a modification of the lines traced by past jurisprudential decisions, the Court may distance itself from its own precedent and set out a different decision. As an example, these shift-situations have presented themselves whenever the legal context of a certain case enables the Court to take into account other possible solutions, which in fact is what happened in the case under study, given that the Court determined that the legal context regarding abortion had changed, and decided that the case was admissible for review.