Analysis of the Legal Situation Regarding Euthanasia in Ecuador, Colombia, and Peru: Towards a Latin American Model of Medical Assistance in Dying?

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Abstract

Colombia was one of the first countries to decriminalise euthanasia. However, what is known in the international academic literature about the country's regulations is scarce and outdated. Such lack of information on the situation in Latin America is even more evident in the case of Peru, where the Lima Superior Court of Justice set a precedent by allowing a person to have access to euthanasia in 2021. Ecuador, which has just decriminalised euthanasia for all its citizens in February 2024, risks being similarly absent

from the international dialogue. This health policy article summarises for the first time all the regulations in force regarding euthanasia in Latin America, through a study of primary sources in Spanish, and analyses some of the convergences between these three neighbouring countries.

Keywords: Medical Assistance in Dying; euthanasia; assisted suicide; Ecuador; Colombia; Peru.

Introduction

On 5 February 2024, the Constitutional Court of Ecuador decriminalised euthanasia throughout the country. With this judicial decision, Ecuador became the second country in Latin America to decriminalise this practice. Likewise, on 22 February 2021, the Lima Superior Court of Justice in Peru granted a citizen the right to euthanasia. By doing so, and in addition to their geographical proximity, these two countries coincide with Colombia in their growing legal acceptance of euthanasia.

This paper aims to provide an overview of the introduction of this practice in Latin America by studying the judicial decisions that have made it possible. In particular, we focus on the arguments used in the judicial processes and on the profile of the people eligible for euthanasia in Ecuador, Colombia, and Peru. We also aim to highlight the situation in Latin America within the international debate on medical assistance in dying.

Indeed, even though Colombia decriminalised euthanasia in 1997, few articles in the non-Spanish-speaking literature have analysed the case of this country. Among these works, we can highlight Michlowski's in 2009,[1] in which he studies the ruling that decriminalised

[1] Michalowski, S. (2009). Legalising active voluntary euthanasia through the courts: some lessons from Colombia. Medical Law Review. 17(2), 183-218. https://academic.oup.com/medlaw/article/17/3/502/1113751

euthanasia in 1997, and Palomino's in 2017, which analyses, in addition to this first ruling, another one issued in 2014.[2] We also have some interesting empirical work. In 2021, De Vries et al. identified medical end-of-life decision-making practices among cancer patients who died between May 2019 and May 2020 in three Colombian hospitals.[3] In 2023, Erazo-Muñoz et al. studied euthanasia requests received in two Colombian hospitals between 2016 and 2020.[4]

However, since the publication of the two articles reviewing the legal status of euthanasia in Colombia, there have been significant changes as a result of other paradigmatic rulings in the country. The situation is worse in Peru, where there is a notable lack of papers in non-Spanish languages. For this reason, this article constitutes a relevant resource for the international bioethical debate, as it analyses primary sources in their original language. In addition, to the best of our knowledge, this is the only study that summarises all the final court decisions recognising the right to euthanasia in Latin America.

The Ecuadorian situation

Case context

In 2020, Paola, a 42-year-old Ecuadorian citizen, was diagnosed with amyotrophic lateral sclerosis (ALS), a fatal neurodegenerative disease. During a medical consultation, she was told that medical staff could “help her to die” if she wished to in order to avoid the

[2] Palomino, E. (2017). How to Die in Colombia: A Constitutional Dilemma. Asia Pacific Journal of Health Law & Ethics. 10(2), 51-68.

[3] de Vries, E., Leal Arenas F.A., van der Heide, A., et al. (2021). Medical decisions concerning the end of life for cancer patients in three Colombian hospitals - a survey study. BMC Palliative Care. 20(1), 161. https://doi.org/10.1186/s12904-021-00853-9

[4] Erazo-Munoz, M., Borda-Restrepo, D., Benavides-Cruz, J. (2023). Euthanasia in Colombia: Experience in a palliative care program and bioethical reflections. Developing World Bioethics. 1-8. https://doi.org/10.1111/dewb.12430

suffering caused by her disease.[5] However, she was warned that this assistance would have to be done in total secrecy because, although it was a common practice in the country, it remained illegal. According to an interview, Paola felt very uncomfortable that helping someone to die had to be done in secret and with the risk of prosecution.[6] So, in 2023, she decided to take legal action to request that the right to receive euthanasia be transparent: “I decided that I wanted that right for myself and for everyone to do everything openly”.[6]

Judicial process

Paola's team of lawyers devised the strategy of filing a constitutional challenge against the crime of homicide. This crime is described as follows: “Homicide: A person who kills another person shall be punished with imprisonment of ten to thirteen years.”[7] In Ecuador, the constitutional challenge is a legal tool that can be requested by any citizen and is presented to the Constitutional Court when a norm is accused of violating the Constitution.[8]

The lawyers pointed out that the formulation of the crime of homicide does not respect the rights: (i) to dignity; (ii) to the free development of personality; (iii) to the promotion of autonomy and the reduction of dependency; (iv) to physical integrity and the prohibition of cruel, inhuman, and degrading treatment; and (v) to the right to die with

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[5] Echavarría, S. (2024, February 19) Exclusivo: habla abogado que lideró legalización de la eutanasia en Ecuador. El Tiempo. Retrieved March 27, 2024, from https://www.eltiempo.com/mundo/latinoamerica/eutanasia-en-ecuador-como-es-el-proceso-y-en-que-casos-aplica-856537

[6] Sabaté, J. (2024, February 18). Entrevisto a Paola Roldán, enferma de ELA #159. Entrevistando con mis ojos. Retrieved March 27, 2024, from https://www.youtube.com/watch?v=XQMp5w2TvQw

[7] Ministerio de Justicia. (2014). Código Orgánico Integral Penal. p. 70. Retrieved March 27, 2024, from https://www.oas.org/juridico/PDFs/mesicic5_ecu_ane_con_judi_c%C3%B3d_org_int_pen.pdf

[8] Asamblea Nacional. (2009). Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional. Art. 77. Retrieved March 27, 2024, from https://docs.ecuador.justia.com/nacionales/leyes/ley-organica-de-garantias-jurisdiccionales-y-control-constitucional.pdf

dignity.[9] The first four rights are protected by the Ecuadorian Constitution and, according to the appellants, the last right had been recognised by the Constitutional Court. In summary, the lawyers argued that the crime of homicide prevented healthcare professionals from assisting their patients with their wish to die when they were suffering from severe physical or mental pain, thereby forcing them to live against their will and violating the rights previously invoked.

Having rejected the allegation that the offence of homicide violated the rights referred to in arguments iv and v of the complaint, the Court decided to resolve the following legal issue:

> Is the application of the sanction provided for in the criminal offence of homicide incompatible with the right to a dignified life and the right to free development of the personality in the case where (i) a doctor carries out the conduct referred to in Article 144 of the Code of Criminal Procedure, when (ii) a person, by expressing their clear, free, and informed consent (or through their representative if they are unable to express it), requests access to an active euthanasia procedure (iii) on the grounds of severe suffering resulting from a serious and irreversible physical injury or a serious and incurable illness?[10]

After analysing the counter-arguments presented in some amicus briefs, the Constitutional Court stated that the crime of homicide is intended to protect the right to life by preventing its deprivation in an "arbitrary or unlawful" manner. It also considered that the case of a doctor responding to the request of a person who wishes to die because

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[9] Corte Constitucional del Ecuador. (2024) Sentencia 67-23-IN/24. Retrieved March 27, 2024, from http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOidlNzVjZThhMS1iMGM0LTQ0OWMtYmEyMy01MTdlYzVkYTY3NGQucGRmJ30=

[10] Ibid: 16.

of severe suffering would not constitute an arbitrary or unlawful deprivation of life. Therefore, it argued that making such conduct punishable would impede the right to a dignified life and the free development of the patient's personality.

Thus, the Court held that Article 144 of the Criminal Code is constitutional, provided that the sanction is not applied in cases where 1) a doctor terminates the life of a person who 2) requests euthanasia by expressing their clear, free, and informed consent (or through their representative, if they are unable to express it themselves) 3) because of severe suffering caused by a serious and irreversible physical injury or a serious and incurable illness.[11]

Therefore, on 5 February 2024, the Constitutional Court declared the "conditional constitutionality of the crime of homicide" and asked the Ecuadorian Ombudsman to draft a law on euthanasia in accordance with the three parameters described above, to be discussed and finally approved by the Parliament.[12] It also stated that the ruling would have immediate effect so that any case meeting the three requirements would not be prosecuted. Finally, the Court decided to extend the declaration of conditional constitutionality to the provisions of the Code of Medical Ethics, which states that the doctor's responsibility is to protect, and not to shorten, the life of the patient. The reasons for this decision were based on the same arguments used to declare the crime of homicide inapplicable in the case in question: the doctor does not violate this code if the patient voluntarily requests euthanasia under the circumstances specified in the sentence (severe suffering caused by a serious and irreversible physical injury or a serious and incurable illness).

[11] Ibid.
[12] Ibid.

Type of assistance in dying and profile of the person who can request it

Finally, by examining the court decision, we learn that the Constitutional Court decriminalised euthanasia, but not physician-assisted suicide.[13] Since the Court did not address the latter practice and did not rule on its constitutionality, we can affirm that physician-assisted suicide remains illegal on a purely technical level: the appellant and her lawyers only asked the Court to rule on the crime of homicide.

On the other hand, it is also clear from the court decision that euthanasia can be requested not only by people with terminal illnesses but also by people with chronic, non-terminal illnesses. Although the Court did not explicitly mention whether people could request euthanasia on the grounds of suffering caused by a mental disorder, we believe that the decision would include this assumption. Indeed, the Court pointed out that for euthanasia to be granted, "it is essential that the severe pain be caused by a serious and irreversible physical injury or by a serious and incurable illness.[14]" However, when the Court noted that the appellant alluded to the fact that the pain motivating an application may be purely physical, purely mental, or a combination of the two, it pointed out that the effects of the judgment will be limited to "severe" conditions. Therefore, the decision would not exclude mental disorders as long as they are severe and incurable. Finally, it is important to know that the Court did not explicitly exclude minors as a group eligible for euthanasia. What it does require is that the person gives "clear, free, and informed"[15] consent. In this sense, it is important to highlight that the Court accepts the possibility that the request for euthanasia may be made by a representative of the patient if the person is unable to

[13] There is a consensus to distinguish between euthanasia and physician-assisted suicide. Euthanasia refers to the direct (intravenous) administration of lethal substances to a patient by a physician. Physician-assisted suicide occurs when a physician provides a patient with lethal substances that they take (orally) themselves.
[14] Ibid: 16.
[15] Ibid: 39.

express their will. However, it leaves it to the legislator to design the appropriate safeguards for this surrogate decision-making procedure.

The Colombian situation

Context of the cases

In Colombia, there have been numerous rulings by the Constitutional Court that have shaped the right to euthanasia. In 1997, the Court received a constitutional challenge against the crime of "mercy killing". Taking into account the right to life, autonomy, and dignity, the Court upheld the constitutionality of the offence but created an exemption from liability for doctors who cause the death of terminally ill patients with their consent.[16] In 2014, the Court received an appeal for constitutional protection of fundamental rights from an oncology patient who claimed that her doctor did not agree to perform euthanasia because there was still no protocol in place. Thanks to this lawsuit, and in the absence of legislative action, the Court ordered the Ministry of Health to develop the necessary guidelines for the practice of euthanasia and the formation of interdisciplinary committees to evaluate requests.[17] In 2017, the Court received another appeal from a couple requesting euthanasia for their 13-year-old son who had suffered from severe cerebral palsy since birth. Based on the concept of the best interests of the child in harmony with the rights to life, health, social security, and human dignity, the Court recognised the right to euthanasia for terminally ill minors.[18] In 2021, two individuals filed a constitutional challenge to the crime of mercy killing because it prevented people suffering from serious and chronic but non-terminal illnesses from

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[16] Corte Constitucional de Colombia. (1997). Sentencia C-239/97. Retrieved March 27, 2024, from https://www.corteconstitucional.gov.co/relatoria/1997/c-239-97.htm

[17] Corte Constitucional de Colombia. (2014). Sentencia T-970/14. Retrieved March 27, 2024, from https://www.corteconstitucional.gov.co/relatoria/2014/t-970-14.htm

[18] Corte Constitucional de Colombia. (2017). Sentencia T-544/17. Retrieved March 27, 2024, from https://www.corteconstitucional.gov.co/relatoria/2017/t-544-17.htm

accessing euthanasia. The Court, citing the right to free development of personality, the prohibition of torture and inhuman or degrading treatment, as well as the principle of dignity and the right to health with emphasis on the prohibition of discrimination in access to health services, extended the right to euthanasia to the chronically ill.[19] It should be noted that this decision also applies to minors. In 2022, the Court received a constitutional challenge against the crime of aiding suicide to end intense suffering resulting from physical injury or serious and incurable illness.[20] The arguments that the Court considered valid were that the formulation of this offence did not respect human dignity and the fundamental rights to a dignified life, a dignified death, and the free development of personality, nor did it respect the principle of solidarity. The Court, therefore, upheld the constitutionality of the offence, but excluded the liability of physicians assisting in the suicide of patients who give their free and informed consent and who are experiencing "intense physical or mental suffering as a result of a bodily injury or a serious and incurable illness".[21]

Type of assistance in dying and profile of the person who can request it

In summary, according to regulations issued by the Ministry of Health and ordered by the Constitutional Court, both euthanasia and physician-assisted suicide are currently available in Colombia. Both procedures can be requested by Colombian citizens or foreigners who have resided in the country continuously for at least one year.[22] The minimum age for euthanasia is 12. However, minors between the ages of 6 and 12 with

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[19] Corte Constitucional de Colombia. (2021). Sentencia C-233/21. Retrieved March 27, 2024, from https://www.corteconstitucional.gov.co/Relatoria/2021/C-233-21.htm

[20] Corte Constitucional de Colombia. (2022). Sentencia C-164/22. Retrieved March 27, 2024, from https://www.corteconstitucional.gov.co/relatoria/2022/C-164-22.htm

[21] Ibid.

[22] Ministerio de Salud y Protección Social. (2018). Resolución 825 de 2018. Retrieved March 27, 2024, from https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/resolucion-0825-de-2018.pdf

"exceptional neurocognitive and psychological development"[23] can apply if they are terminally ill and suffering unbearably. What is more, if the patient is between 14 and 17 years old, it is not mandatory to have the consent of the person who has parental authority over the adolescent, although they will always be informed of the patient's decision.

Regarding the type of pathology that can justify a request for euthanasia, many specialists in the country agree that the 2021 ruling would allow the inclusion of mental disorders.[24] In this particular case, the sentence reads:

> It is not up to the Constitutional Court to determine the specific cases in which mental suffering may justify access to a dignified death service. This possibility will correspond to an analysis of the specific case, carried out in principle by the health system, and only eventually by the resolution of an appeal for constitutional protection of fundamental rights.[25]

However, the most recent decisions of the Ministry of Health, which precede the aforementioned ruling, stipulate that euthanasia can only be requested in the case of a terminal illness or an "incurable and advanced illness"[26]. This second type of pathology is defined by the Ministry as an illness with a "medium-term"[27] prognosis of death, implicitly excluding mental illness.

About the procedure for requesting euthanasia, the doctor who receives the request must initiate a process by verifying that the patient meets the conditions for eligibility and

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[23] Ibid: 5.
[24] Correa, L. (2022). Tengo una enfermedad mental ¿Puedo solicitar la eutanasia o asistencia médica al suicidio? 5 ideas. *DescLAB*. Retrieved March 27, 2024, from https://www.desclab.com/post/enfermedadmental
[25] Corte Constitucional de Colombia, op. cit. note 19.
[26] Ministerio de Salud y Protección Social. (2021). Resolución 971 de 2021, p. 5. Retrieved March 27, 2024, from https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/resolucion-971-de-2021.pdf
[27] Ibid.

informing them about the appropriateness of therapeutic efforts, the right to palliative care, and the right to withdraw the request at any time.[28] In addition, within 24 hours of receiving the request, the doctor must inform the "Interdisciplinary Scientific Committee", which is responsible for verifying a second time that the conditions for eligibility are met.[29] These committees are made up of a doctor specialising in the patient's pathology, a lawyer, and a psychiatrist or clinical psychologist.[30] In contrast to countries such as Spain, where regional governments establish committees to decide on requests for euthanasia, in Colombia health institutions that meet certain criteria are required to form their own committees.

It should also be noted that in Colombia it is possible to request euthanasia using an advance directive document if the person is at least 14 years old. This document can be formalised before a notary, two witnesses (unless they have a conflict of interest with the declarant), or the attending physician.[31]

Finally, it is important to mention that there is some opacity in the data on the number of euthanasia carried out in Colombia. In fact, the Ministry of Health does not publish an annual report on this issue, as is the case in Canada and in European countries. However, thanks to the fact that some civil organisations have requested these data in court, we know that, according to the latest official figures, from 2015 to 31 October 2022, 322

[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ministerio de Salud y Protección Social. (2018). Resolución 2665 de 2018. Retrieved March 27, 2024, from https://www.minsalud.gov.co/Normatividad_Nuevo/Resoluci%C3%B3n%20No.%202665%20de%202018.pdf

people were euthanised in Colombia; the vast majority of these people (80.4%) were diagnosed with an oncological disease.[32]

The Peruvian situation

Case context

At the age of 12, Ana, a Peruvian citizen, was diagnosed with polymyositis, an incurable, progressive, and degenerative disease. She was confined to a wheelchair from the age of 20. By the time she turned 44 in 2021, she was completely dependent on others for all activities of daily living. In her own words, after three years of research into how to be assisted in dying without third parties being prosecuted, and after saving up in vain to go to Switzerland, where it is known that the rules on assisted suicide are not very restrictive, she decided to fight for euthanasia in her country.[33] However, this new goal was not to seek death at any cost but rather to be able to make decisions regarding the end of one's life as a result of exercising a right in a social and democratic state.[34]

Judicial process

In 2021, Ana's lawyers filed an appeal for constitutional protection in the Lima Superior Court of Justice against several institutions, including the Ministry of Health, to obtain access to euthanasia and to issue a protocol for dealing with similar cases. The legal strategy was to request the non-application of Article 112 of the Criminal Code, which describes the crime of mercy killing as follows: "Anyone who, out of compassion, kills a

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[32] Correa Montoya, L., & Jaramillo Salazar, C. (2022). De muerte lenta #2. Cifras, barreras y logros sobre el derecho a morir dignamente en Colombia. Bogotá: *DescLAB*. Retrieved March 27, 2024, from https://www.desclab.com/_files/ugd/e0e620_6a4d002443244417a5552c762e40c785.pdf

[33] Corte Superior de Justicia de Lima. (2021). Sentencia. Resolución número seis. 2021. Retrieved March 27, 2024, from https://www.pj.gob.pe/wps/wcm/connect/84cdc5804a33e267894dfd9026c349a4/EXPEDIENTE+N%C2%B0+573-2020-SENTENCIA+PRIMERA+INSTANCIA-AMPARO-CASO+ANA+ESTRADA-EUTANASIA-22-2-2022.pdf?MOD=AJPERES&CACHEID=84cdc5804a33e267894dfd9026c349a4

[34] Ibid.

terminally ill person who expressly and knowingly asks for an end to their unbearable suffering, shall be punished by imprisonment for a term not exceeding three years.[35]" Her lawyers pointed out that this offence prevented medical staff from helping Ana to die, thus violating the fundamental rights to dignity, to a decent life, to the free development of the personality, and freedom from cruel treatment. The main counter-arguments of the defendants were based on the state's duty to protect life and that the creation of a new right was a matter for the legislature, not the judiciary. In the end, after considering the various arguments, the Court decided that euthanasia could not be a fundamental right, but that it could be non-punishable only in certain circumstances.[36] Therefore, it decided that Ana's claim was partially justified, allowing her to finally receive euthanasia without the medical staff being prosecuted.[37] However, the Court rejected the request for the Ministry of Health to draw up guidelines to regulate euthanasia in cases similar to Ana's, considering this to be beyond its remit and the exceptional nature of the case.

Type of assistance in dying and profile of the person who can request it

Since Ana's claim was an appeal for constitutional protection and not a constitutional challenge, the effects of the ruling were limited to her case. However, this does not prevent other people from following the same path to try to obtain euthanasia on an individual basis, or even from filing a constitutional challenge in the future.

According to the ruling, the type of assisted dying recognised in Peru for Ana was euthanasia, not physician-assisted suicide. Similarly to Paola's case in Ecuador, this was due to a technicality, as she had asked for the inapplicability of the crime of euthanasia,

[35] Ministerio de Justicia. (2024). Código Penal peruano [actualizado 2024]. Retrieved March 27, 2024, from https://lpderecho.pe/codigo-penal-peruano-actualizado/
[36] Corte Superior de Justicia de Lima, op. cit. note 33.
[37] Ibid.

not that of aiding suicide. The reason for this decision is that her pathology would prevent her from adequately carrying out this action.

On the other hand, it should be noted that although the judgement did not focus on analysing the case of euthanasia due to mental illness, a secondary paragraph seems to exclude it.

> If the mental illness is not effectively treated, this suicidal desire is not a right, insofar as the will, the freedom, is affected by a distortion caused by the illness, which affects precisely their reason and their will, which, as we have said, is the measure of their freedom and dignity.[38]

This Court's position seems to deny outright the possibility that a person with a mental disorder has sufficient capacity to make free and informed decisions about their health. However, such a categorical statement is not unanimously supported in the scientific context. Indeed, systematic reviews confirm that "most patients with a severe mental disorder are able to make adequate decisions about the care of their health".[39] Likewise, some specialists distinguish "three types of death wishes among patients suffering from psychiatric disorders: 'impulsive suicidality,' 'chronic suicidality,' and 'rational death wishes'".[40] Finally, it should be noted that the Constitutional Court, as the highest body, could modify this and other criteria.

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[38] Ibid.

[39] Calcedo-Barba, A., Fructuoso, A., Martinez-Raga, J., et al. (2020). A meta-review of literature reviews assessing the capacity of patients with severe mental disorders to make decisions about their healthcare. BMC Psychiatry. 20(1), 13. https://doi.org/10.1186/s12888-020-02756-0

[40] Pronk, R., Willems, D.L. & van de Vathorst, S. (2021). Do Doctors Differentiate Between Suicide and Physician-Assisted Death? A Qualitative Study into the Views of Psychiatrists and General Practitioners. Culture, Medicine, and Psychiatry. 45, 268. https://doi.org/10.1007/s11013-020-09686-2

Towards a Latin American model?

In all cases, access to euthanasia has been recognised by the courts rather than through a legislative process. Eventually, in Ecuador and Colombia,[41] parliaments will have to pass a law that falls within the parameters set by their highest judicial bodies; in Peru, this recognition has only been granted to one individual because of the scope of the appeal for constitutional protection. By contrast, in Europe, of the five countries that allow euthanasia, four have legalised the practice through a legislative process and without the decisive precedent of a judicial decision in which a person was granted euthanasia.[42] In North America, Canada is the only country where euthanasia is legal and, like its southern neighbours, has also regulated the access to this practice through several lawsuits.[43]

In all Latin American cases, euthanasia was decriminalised first, not physician-assisted suicide. In Colombia, there is a 25-year gap between the decriminalisation of euthanasia and that of physician-assisted suicide. The inapplicability of some version of the crime of homicide was also challenged in all cases. In Ecuador, it was homicide, whereas in Colombia and Peru, it was mercy killing. This difference may derive from the absence of the crime of mercy killing in Ecuador's penal code.

Interestingly, depending on the offence challenged, the outcome related to one or the other type of medical assistance in dying. For example, when the constitutionality of the crime of aiding suicide was challenged in Colombia on grounds similar to those used against the crime of mercy killing, the Court ended up decriminalising physician-assisted suicide. It is therefore inevitable to think that if the crime of aiding suicide were to be challenged in Ecuador as it was in Colombia in 2022, the Constitutional Court might also recognise

[41] In Colombia, there have been several bills that have failed to gain the necessary parliamentary support.
[42] The Netherlands is the exception.
[43] Supreme Court of Canada. Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331. Retrieved March 27, 2024, from https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14637/index.do

the right to physician-assisted suicide. Likewise, if a case similar to the one reported in Colombia in 2017 were to occur in Ecuador, it would be possible for the Constitutional Court to explicitly recognise the right of terminally ill minors to medical assistance in dying. The latter scenario could arise if a terminally ill minor and their parents file an appeal for constitutional protection, invoking principles such as the best interests of the minor and equality and non-discrimination.

If this were to happen, some would argue that we are facing a logical-legal version of the slippery slope. This means that if we are consistent with respecting the autonomy of a person with decision-making capacity and a somatic condition that causes them unbearable suffering, and we are in a democratic and secular state that constitutionally recognises the right to autonomy and dignity, we would most likely have to judicially accept their right to some form of assisted dying. Once this is done, a person who also has decision-making capacity and suffers from a chronic, non-terminal illness that causes unbearable suffering could invoke the right to equality and non-discrimination to acquire this new right as well. The same could happen in the case of the chronically mentally ill or minors who are considered “mature”. This “euthanasia syllogism” need not be unethical, but a natural consequence of the rule of law.

In any case, there is no doubt that Ecuador has been inspired by the Colombian model. This was stated by one of Paola's lawyers. Moreover, in the constitutional challenge itself, it was requested, unsuccessfully, that the Ecuadorian Parliament use the euthanasia protocol in force in Colombia when drafting the law. Likewise, the Ecuadorian Constitutional Court itself has adopted some of the wording used by its Colombian counterpart in several of the euthanasia cases discussed above, particularly in granting

minors access to euthanasia. It refers to the characteristics that the consent of the person requesting this service must be "clear, free, and informed"[44].

On the other hand, something that two of the three cases have in common is the conviction of two women that they should have the right to euthanasia, even though they do not know whether they will end up exercising it. For example, Paola said in an interview: "I don't necessarily want to die that way, but I'm sure I want to have that right.[45]" In addition, the Ecuadorian citizen explained that having won this right has had a positive psychological impact on her: "Just knowing that it is already legalised makes the illness more bearable.[46]" Similarly, Peruvian appellant Ana commented: "If I had the state's 'permission' to die, I am sure that the evolution of the infection would not be so horrible and I would carry it in peace, with hope and freedom".[47]

These stories make us wonder about the need for medical assistance in dying to be discussed in a forum with the characteristics of parliament, rather than in a judicial process.[48] This would perhaps allow for a national debate involving multidisciplinary experts, patients, associations, etc. Although there are rights that do not need to be subject to public consultation, a national debate is important, for example, to ensure adequate communication and reaching the widest possible consensus in society. Perhaps this could help to avoid problems such as those that occurred in Peru when, after the sentence was upheld by the Constitutional Court and returned to the Supreme Court (which has less authority), the new judge in charge refused to ask for the sentence to be carried out, citing

[44] Corte Constitucional del Ecuador, op. cit. note 9, p. 39.
[45] Sabaté, J., op. cit. note 6.
[46] Ibid.
[47] Corte Superior de Justicia de Lima, op. cit. note 33.
[48] Uruguay is one of the Latin American countries where the legislative process to regulate euthanasia is most advanced. The bill has already been approved by the Chamber of Deputies and is awaiting discussion in the Chamber of Senators.

her freedom of conscience and decency.[49] In addition, parliamentary regulation of access to euthanasia would allow for better drafting of laws and protocols clarifying the procedure. It is precisely this lack of transparency that has led some people abroad to believe that "Colombia is confused over legalisation of euthanasia"[50] or that euthanasia is "in legal limbo in Colombia"[51]. In fact, Colombia did not put the first protocol regulating euthanasia in place until 18 years after it was decriminalised, and it has now been 27 years without Parliament passing the law ordered by the Constitutional Court. Ecuador should certainly not follow its neighbour Colombia in this regard.

Conclusions

This article has, for the first time, provided an overview of all the judicial provisions that regulate the application of euthanasia in Latin America. First of all, we have studied the judicial decision that decriminalised euthanasia in Ecuador. We have then offered an update on the situation in Colombia with the most recent rulings and ministerial decisions. Thirdly, we looked at the appeal for constitutional protection that gave a citizen access to euthanasia in Peru. Finally, we have analysed the elements common to the three neighbouring countries concerning the decriminalisation of euthanasia.

In all cases, the right to euthanasia was recognised through a judicial rather than a legislative process. The strategy in all three cases was to request constitutional review of a criminal offence: homicide in Ecuador and mercy killing in Colombia and Peru. The same process was used again in Colombia to decriminalise physician-assisted suicide

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[49] Paucar, L. (2023, February 9). Jueza se negó a ejecutar sentencia de eutanasia para Ana Estrada: el lento camino hacia una muerte digna. Infobae. Retrieved March 27, 2024, from https://www.infobae.com/peru/2023/02/08/ana-estrada-jueza-se-niega-a-ejecutar-sentencia-sobre-eutanasia-de-activista-por-que-el-derecho-a-la-vida-es-irrenunciable/

[50] Ogilvie, A.D. (1997). Colombia is confused over legalisation of euthanasia. BMJ. 314(7098), 1852. https://doi.org/10.1136/bmj.314.7098.1849h

[51] Ceaser, M. (2008). Euthanasia in legal limbo in Colombia. Lancet. 371(9609), 290-291. https://doi.org/10.1016/S0140-6736(08)60150-6

through a constitutional challenge to the crime of aiding suicide. This path could likely be followed in other Latin American countries. Likewise, as has been the case in Colombia, its neighbours could gradually expand the scope of euthanasia using constitutional reviews. Similarly, one of the challenges shared by the region is the general strengthening of its healthcare systems and society's knowledge of the processes and rights related to the end of life.