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RIGHT TO A DIGNIFIED LIFE IN THE PROCESS OF DEATH DURING THE EXERCISE OF THE RIGHT TO FREEDOM AND EUTHANASIA

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Abstract

Human life implies more than just physical-biological existence; it implies the recognition and guarantee of the fulfillment of the fundamental right to life, which must coexist with other rights for its full expression to become effective. All States are under the obligation to ensure that the rights of individuals are made effective. Therefore, a dignified life requires a dignified death (dying process), since it is a fundamental right of all people. With the research carried out, it has been found that the non-regulation of euthanasia as a medical practice that puts an end to the suffering of the terminally ill causes the constant violation of other rights since the recognition of a dignified life is conceived to be fulfilled during the entire stage of life of people. In the present study, two research methods were used, such as the comparative and the legal dogmatic. With the application of these methods, valuable information has been obtained regarding euthanasia, which has made it possible to demonstrate the need and importance of regulating it within the Ecuadorian legal system. The Ecuadorian State must establish the necessary guarantees and mechanisms that make effective the enjoyment of people's rights, so this research aims to establish the need to create a legal norm that regulates the practice of euthanasia within the Ecuadorian legal system as a rule that guarantees the right to a dignified life in the process of death of patients or terminally ill patients.

Keywords: Life, death, freedom of conscience, human dignity, human rights.

INTRODUCTION

This research work is of vital importance, since the Ecuadorian legislation, as determined by the Constitution of the Republic of Ecuador in its article 66 numeral 2, recognizes and guarantees people the right to a dignified life, it is, therefore, the obligation of the same to grant the necessary mechanisms in order to make this right effective. From this stems, the need to guarantee it in its greatest expression through the legalization of euthanasia, understood as a medical procedure that puts an end to the suffering of the terminally ill, giving them the possibility of deciding about themselves and avoiding the impairment of their other rights in favor of the defense of another that is not absolute in itself.

Since the right to the inviolability of life is recognized in the legal system (Article 66.1 of the Constitution), the legislation would constitute a violation of this constitutional precept, without considering on the other hand that by guaranteeing it in such a way, other rights that are normativized in the Constitution are being violated.

In a constitutional State of rights, the State must guarantee the full exercise of these rights, which is why it is necessary to take action on the matter so that people who are in degrading conditions to their human rights can have access to this practice. In this particular case, it is necessary to guarantee the right to a dignified life in the death process, which in itself results in a dignified death.

In this regard, this paper is based on the following question: Should euthanasia be legalized in the Ecuadorian legal system in order to guarantee people the right to a dignified life in the process of death? The general objective is to analyze the importance of legalizing euthanasia in the Ecuadorian legal system, through comparative law and theoretical foundations, to guarantee people the right to a dignified life in the process of death.

In the development of this research article, the first section will provide a theoretical-legal background of euthanasia as the means through which people are guaranteed the right to a dignified life in the process of death. In a second section, the importance of the legalization of euthanasia within the Ecuadorian legal system will be examined through scientific databases and comparative law; and finally, the positive effects produced by the regularization of euthanasia in the Ecuadorian legal system will be identified to guarantee people the right to a dignified life in the process of death.

FRAME OF REFERENCE

Background on euthanasia

The first conceptions about euthanasia can be found in ancient Greece, taking as a reference that in their pantheons were placed some figures

such as the Fates or Moiras, goddesses used to remember life and its final destiny. On the other hand, already in Classical Greece, Hippocrates considered the father of medicine, who is credited with the authorship of the so-called “Hippocratic Oath”, stated that the physician will never be empowered to give any deadly medicine even when requested to do so, since the physician's mission is to protect the patient's life, even if the patient is in the most degrading conditions. However, history points out that it was in Greece itself, the place where assisted suicide was allowed as long as certain conditions were demonstrated.

When reviewing thoughts such as those of Socrates or Plato, it could be observed that they affirmed that an illness that was painful and had no cure was a good reason to die. For his part, Cicero, in his letter to Atticus, used the word euthanasia as a synonym for a dignified, honest, and glorious death.

Already during Christianity, with the Roman Catholic Church, euthanasia took a completely abrupt turn since it was affirmed that the human being did not have the right to take his own life since it had been granted by a superior being, therefore, if someone practiced it, he could not receive a Christian burial.

In this same sense, Saint Augustine affirmed that the act of suicide was something considered detestable and at the same time abominable, since it was God who granted life, as well as suffering, and man, therefore, must bear them since they were granted by a divine being. Therefore, anyone who committed suicide would be immediately excommunicated, since these acts against life had become a mortal sin for all Christians.

The term euthanasia was conceived as a duality; on the one hand, it was that act in which people could die peacefully, and on the other, as the medical art to achieve it. Later, in the Renaissance, euthanasia acquired its current meaning, being considered a good death. Since death is the last act of life, helping the dying person to die a dignified death, without suffering, was a human act of compassion.

During the Nazi Holocaust, in 1933, this term was used to suit the interests and ideologies of these social groups, as it is known, the Germans considered themselves as a superior race, so for them, Jews, Gypsies, handicapped, and some Polish or Russian groups were considered as inferior race. Therefore, they did not deserve to live, so at the order of Adolf Hitler, who was their leader, he formed an extremist group called “The Euthanasia Program”, which systematically killed those who supposedly were unworthy of living.

Later, social struggles put a stop to this indiscriminate killing led by the Nazis, establishing euthanasia as a medical term that helps terminally ill patients to put an end to their suffering due to incurable diseases. Thus, it is currently considered an option that guarantees death with dignity.

From this definition, it should be understood that in order for euthanasia to be applied, three fundamental requirements must be met: 1) that the patient is suffering great suffering which is degrading to his human condition, 2) that, due to the same suffering, the patient is predestined to die with or without the submission to euthanasia, and 3) that the patient expresses his will to submit to the euthanasia procedure. In this context, euthanasia has been classified into various types, among the most important and concrete of which are the following:

Passive euthanasia: refers to the actions or omissions carried out by health professionals to stop the supply of medicines or other necessary mechanisms that were provided to the terminal patient, whose will to undergo euthanasia has been pronounced, thus accelerating his death process, an example of which is the withdrawal of artificial respirators. On the other hand, in active euthanasia or assisted suicide, the opposite happens, in this case, health professionals, at the request of their patients -terminally ill- are in charge of providing them with what is indispensable to accelerate their death process.

The question of the consent of the terminal patient is indisputably necessary for euthanasia since this prevents its misuse. This idea arises from the need to prevent third parties from deciding on the life of others, causing a use different from the purpose for which it was created.

However, this raises other questions, such as what would happen if the terminal patient is not in the use of his mental capacities and therefore cannot decide about himself. Several countries have already solved this problem, having to regulate that, for the application of euthanasia in these cases, it is necessary to have previous consent, being the only way that grants the permissibility of its application.

Life includes, among other things, the submission to circumstances that are painful for people and are also part of it; however, the same human being has created several options to avoid such suffering (medicines, mechanical aids, among others) and this is acceptable to everyone. The problem lies when the only solution is to let people die or help them to make their death process as painless as possible. Human dignity is one of the rights that is closely linked to the right to life itself and this makes it possible to achieve a dignified death becomes a social necessity that should not be subordinated or prevented by anyone.

Theoretical-legal foundation of the background of euthanasia as how people are guaranteed the right to a dignified life in the process of death

Euthanasia is the medical procedure through which the life of a terminally ill person is ended, with no expectation of improvement in their health, in order to spare them intolerable suffering and guarantee them a dignified death. In some countries, it is considered suicide or

assisted death; however, its execution is controversial since it deals with one of the fundamental rights and is mostly protected by the States.

According to Liliana Vilches (2001) euthanasia

(…) is understood as an action or omission that by its nature hastens death to avoid great pain and discomfort to the patient, at the request of the patient himself, his relatives, or at the initiative of a third party who witnesses, knows, and intervenes in the specific case of the dying person (p. 179)

However, the term most widely accepted by most people is the idea of the good death, i.e., to cause the death of a person in order to avoid uncontrollable and unbearable suffering with the help of health professionals who guarantee a dignified death to those who require it. "As can be observed, it is very important not to mix or confuse concepts, since (...) It is convenient, I insist, to call only euthanasia the direct and intentional action aimed at favoring the death of a person suffering from an advanced and terminal disease" (Sierra, 2007, p. 111).

The decision of the application of euthanasia has been one of the most persistent problems in humanity, its ideologies, and beliefs, have led to the existence of various positions on this issue. However, whatever position is taken, it is certain that all people have the right to die with dignity.

In Ancient Greece, this issue was not as discussed as it is today since euthanasia was not considered a moral problem, but rather, life was conceived as a privilege in which, if it was not adequate, it would not fulfill its purpose and it was necessary to apply certain procedures that would make life and death of people as dignified as possible.

In the Middle Ages, with the conception of more accentuated beliefs, specifically religious ones, the practice of euthanasia is seen more from the point of view of sin -to kill- since, according to these creeds, the human being cannot decide and dispose of his life which has been endowed by a supernatural being. Monotheistic religions such as Catholicism, understand that, although life is a privilege, death also comes with it and it is something that must be accepted at the moment it occurs.

To be born is to begin to die; the last moment of our existence is a consequence of the first. Both events are transcendent and, therefore, must be surrounded by all the conditions that dignify them, because both are expressions of life. The one, being the beginning, is a cause of social satisfaction, and the other, being the end, is a cause of suffering and regret. It is difficult, if not impossible, to think what life would be without death (Barreto, 2004, p. 90)

In itself, euthanasia has been a subject handled by two currents, the scientific and the religious. For science, according to the issue raised,

human dignity consists of the right of the sick person to die with dignity. Establishing the possibility of ending life when it is intolerable is also a guarantee of human dignity. For religion, on the other hand, life is a privilege endowed by a supreme being and it is impossible to deliberately end it since only the supreme being will decide how and when to end it.

With the development of technology, medical advances have not been long in coming, a matter that has favored the welfare of people during their lives, even on the way to their death. Although medicine was created to improve the patient's life, there are cases in which death will be presented without any option and it is here where medicine, to protect human welfare, sees no other option but to end the suffering of the mourners and that is how euthanasia appears.

Today, euthanasia means the medical action by which the death of a sick person is caused. Euthanasia is distinguished from suicide by the fact that it involves a person suffering from a serious and incurable disease, i.e., for which medical science can offer no alternative (Chávez, 2018, pp. 279-280)

In Colombia, although its legalization was very complicated, in the sentence C-239/97 issued by the Constitutional Court, the possibility of applying euthanasia is granted, conceived as “mercy killing” which is doctrinally known as pietistic or euthanasic homicide, which defines it as “the action of one who acts for the specific motivation of putting an end to the intense suffering of another.”

The physical pain and concomitant suffering may become subjectively intolerable to the sufferer. Although the patient requests that such pain or suffering disappear, attenuate or become bearable, sometimes death could be visualized as a definitive solution to the problem (Echeverría, 2011, p. 644)

Euthanasia is only applied when the subject who is going to undergo such a procedure is suffering from serious health problems that have no solution or cure, what it seeks is to ensure a dignified death, ending the suffering of the person who has expressed his will to stop living, for becoming inhumane.

In Colombia, its Constitution establishes that the State is founded on respect for the dignity of the human person; this means that as a supreme value, dignity radiates from the set of recognized fundamental rights, which find their maximum expression in the free development of the personality. This principle of human dignity necessarily attends to the improvement of the person, respecting at all times his autonomy and identity (Sentencia C-239/97, 1997)

Thus, Colombia recognizes that, although its Constitution protects the right to life, this is not over the autonomy and decision-making capacity of persons who have decided about themselves, in conclusion, only the

holder of the right to life can decide how long and under what conditions it is compatible with human dignity.

Spain, for its part, with Organic Law 3/2021 (2021) approves and regularizes the medical procedures for the provision of aid in dying, in which two modalities can be found: euthanasia and medically assisted suicide. These are understood as follows: euthanasia is “the direct administration to the patient of a substance by the competent health professional” that will cause the death of the terminally ill patient without any suffering, and assisted suicide is “the prescription or supply to the patient by the health professional of a substance so that the patient can administer it to himself, to cause his death” (Jefatura del Estado, 2021)

This law regulates the right to request the provision of aid in dying, provided that the requirements established in Article 5 of the aforementioned law are met. On the other hand, medical professionals are guaranteed their right to conscientious objection in the event of refusal and refusal to provide the necessary assistance so that the patient may die.

As mentioned in its preamble, the purpose of Organic Law 3/2021, of March 24, on the regulation of euthanasia (2021) is to “provide a legal, systematic, balanced and guaranteeing response to a sustained demand of today's society, such as euthanasia.” That is to say, through the aforementioned law what is sought is to put an end to the suffering of the suffering person, through a procedure that will put an end to his life, that is to say, to provide him with a good death.

The debate on euthanasia has made its way in several countries, despite not having been accepted by many, its application claim is present in all of them because it is a problem to which the State must respond since the legislator must respond to the demands of the citizens who claim for their rights. An application must be granted to respect them.

The State must protect the life of people, but this does not imply that it should go against the free development of the personality of people and respect for human dignity, which is why those terminally ill who are experiencing intense suffering should be allowed to decide about their life and end it when they deem it convenient.

The legalization and regularization of euthanasia in Ecuador is a latent and current demand of people who long for their petitions to be heard and consequently for their rights to be guaranteed, the same rights that are already guaranteed in the Constitution, however, being a State that is too protective of rights and protecting the life of the human being has caused other constitutionally protected goods, such as human dignity and the freedom to decide about themselves, to be violated notably.

The compatibility of these rights is indispensable, which requires legislation that protects all human rights, guaranteeing the autonomy of

the will of persons, in this particular case, to ensure that they can put an end to intolerable, degrading, and inhuman suffering, which cannot be alleviated or obtain any solution.

While it is true that life is a fundamental right of people and must be protected by the State; however, it is the State itself that must ensure that this right is not undermining others, for the effect, regularizing euthanasia in the country implies that the State provides the requirements to which each person who wishes to undergo this procedure must submit, the form of execution and all legal parameters that are necessary to avoid its misuse.

Similarly, one of the rights that revolve around euthanasia is human dignity, which is based on two philosophical aspects: the first is dignity concerning fundamental human rights and the equality that lies in all human beings, and the second is understood from the quality of life that each person has, and it is believed that as soon as this quality is diminished, it also loses its meaning and, consequently, it is not worth living it (Delgado, 2016, pp. 232-233)

In short, what is intended with the regularization of euthanasia is to guarantee the right to live with dignity in the process of death, established as an individual right that puts an end to the life of the person who requests it under the protection of other rights such as the right to ideological freedom and human dignity, established in Article 11 paragraphs 2 and 7 of the Constitution (2008), the right to a dignified life and personal integrity and free development of the personality normativized in Article 66, paragraphs 2, 3 literal A and 5 of the same body of law.

The State must provide a legal regime that guarantees the rights of individuals, especially when in order to guarantee some rights, others are being violated. “Life is an intrinsic value derived from its dignity that is not granted by society, judges, politicians, (...)” (Zurriaráin, 2021, p. 254). There is nothing crueler than forcing a person to live amid sufferings that threaten his human dignity, the right to live implies exercising it in dignified conditions, so it must be guaranteed that it is so.

Importance of the legalization of euthanasia within the Ecuadorian legal system, through scientific databases and comparative law

According to the Spanish Society of Palliative Care, euthanasia is conceived as the action or omission that, intentionally for compassionate reasons, within a medical context is aimed at ending the life of a person with a serious or terminal illness. Thus, for palliative medicine, the manifestation of the terminally ill patient should be respected and never be confused as suicidal behavior, since such a decision has been made in the face of the impossibility of a cure.

The acceptance or rejection of the medical practice of euthanasia should always depend on the patient's decision; however, the legal permission

or prohibition of euthanasia is tied to the public policies and characterization of each State, which has resulted in the fact that, at present, very few States have granted this possibility.

Baum, (2017) for euthanasia, states:

(…) the acceptance or rejection of euthanasia falls on the individual whose health situation is serious and irreversible. On the other hand, the legal permission or prohibition of euthanasia would have to do with the public health policy that each state designs in virtue of the incorporation or not of a moral criterion of compassion in the face of human suffering (p. 12).

The lack of regularization of euthanasia in Ecuadorian legislation constitutes a serious problem of public health policy. Those who require access to euthanasia are suffering excessive and unbearable suffering, which is degrading to the rights of persons, yet they are prevented from deciding about themselves under the pretext of a legal restriction that is supposed to guarantee their rights.

The incorporation or not of euthanasia in the legislation of each country will depend considerably according to their moral criteria, which are related to the social conceptions rooted in each one. In this sense, for some, euthanasia is a moral act of compassion in the face of human suffering, while for others it is nothing more than an inconceivable act of compassion.

Human beings by nature are free, enjoy personal autonomy, and are therefore capable of deciding about themselves. According to this idea, legally preventing the possibility of putting an end to suffering that in itself is considered inhumane constitutes a restriction to this human freedom.

In order not to confuse the terms used, it should be noted that “autonomy” is the patient's right to self-determination after being properly informed to be able to make a decision. This principle, if taken literally, should not deny the patient his or her wish to die (Francisconi, 2007, p. 113)

Human dignity is that intrinsic value in each person that does not admit negotiation because it is the source of individual freedom. Every human being has the right to be recognized as having the possibility to dispose of his own life, even more so when he finds himself in degrading situations. To recognize this is to respect the humanity of the other, it is respect for his dignity and innate freedom, and the State must make it effective.

Since life is a fundamental, innate right of every person, what States do in their legislation is to seek the necessary mechanisms to make it effective. Thus, the Constitution of the Republic of Ecuador (2008) guarantees “the right to a decent life, which ensures health, food, and

nutrition, drinking water, housing, environmental sanitation, education, work, employment, rest and leisure, physical culture, clothing, social security, and other necessary social services" (art. 66.2).

Therefore, respect for human dignity implies that supreme value which, together with the other rights, is aimed at its full exercise and is linked to the free development of the personality of each individual, therefore, it should not be limited or restricted, since the disregard of any of them would generate a limitation of this right.

Life is not an absolute right, that is, it is not valid by itself, but it is linked to other rights that are inherent to people, so making them effective as a whole guarantees that the main one is being fulfilled. In addition to that, the human being enjoys the right to self-determination, which is simply the power that each person has to decide freely about himself, so this power should not and cannot be restricted.

It is necessary to point out that the right to life engenders death and there is no discussion about that, everyone is predestined to die in any circumstance. Likewise, it must be understood that the holder of the right to life is each person; however, the States, as is the case of Ecuador, have subordinated life as an inviolable good within any context, thus consecrating that life is no longer considered a right, but rather an obligation, confusing the duty of the State to protect rights as a general good, without taking into account that due to the ownership of rights that each individual has, they are empowered to decide about themselves.

Therefore, if death (the good death) is an integral part of our person, discrimination concerning this "right" constitutes a serious attack against human dignity. To discriminate against someone is to deny another the most elementary rights and the enjoyment of the goods to which he or she is entitled. Therefore, in the case of euthanasia, by denying someone a dignified death, we are discriminating against them and violating their fundamental rights; such denial is often produced by the mere whim (based on beliefs, false ideologies, myths, etc.) of those who possess the power to separate and prevent others from having access to a dignified existence (Aguilera, 2021, pp. 112-113).

In this context, the "right to life is not and cannot be thought of as a duty for its subject, nor is it formulated in such legal-constitutional terms, nor would it be coherent for it to be so" (Tomás, 2021, p. 36). (Tomás, 2021, p. 36) The State cannot, on the grounds of guaranteeing one right, undermine others that are intimately linked such as freedom, the capacity for self-determination, and the integrity of persons, among others.

The state's duty to protect human life cannot be entirely blind to the exercise of other fundamental rights because, "life imposed against the will of its owner cannot in any case merit the qualification of a protected

legal right (...) life is a right, not a duty" (Tomás, 2021, p. 37). In this context, it is evident that fundamental rights cannot be conceived as absolute, unlimited, and boundless.

If one wishes to be helped to die with dignity, if our law is intended to be that of a democratic state founded on dignity and freedom, euthanasia cannot be criminalized following the will of the citizen. Regularization must be aimed at guaranteeing that this will is carried out with the utmost freedom. There is not even, in these cases, as is sometimes claimed, a conflict between values: life and liberty are not antagonistic but are implicit, life cannot be imposed against the will of the citizen, and the will of the citizen must be respected (Carbonell, 2014, p. 6).

Along the same lines, "the right to life may also have certain limits, despite its essential character, as when in certain circumstances and conditions it may collide with other legal rights" (Tomás, 2021, p. 37). As an example of this, the right to self-defense, a state of necessity, or in the case in question, in circumstances that are determined to be inhumane for the individual, such as the suffering of incurable diseases and that there is no medicine to alleviate the suffering of the patient.

The State must respect, guarantee and protect the rights of individuals, but this does not imply that it does so in a blinded way, aimed at fully protecting some when this causes a violation of others, not legalizing euthanasia results in patients who require access to it are not attended and therefore their rights are violated.

Human life is a good contemplated in a double context; on the one hand, it is conceived as an individual good; and, on the other hand, as a social good, which in both cases must be protected by the State through constitutional, penal and other norms, but life itself is not exclusive of either one or the other. Being a social good, this means that it corresponds to the state's power to enforce this right, but it cannot be assumed that the prohibition of aid in dying is found in it, being evident in the degradation of its other rights.

On the other hand, it must be taken into account that the right to life is an individual good, that is to say, that the capacity to decide about it is on the will of its holder and this empowers the possibility of putting an end to it. However, it is necessary to consider the situation of each case, the degree of affectation and the consequences of remaining alive. Therefore, it is necessary to understand these two dimensions, the social and the personal, that is to say, to establish up to what limit it is understood as an asset for each one, up to what extent it reaches such dimension and what each one entails.

The absolute prohibition, even backed by a criminal sanction, to provide assistance in dying to a person suffering serious, chronic and incapacitating suffering or serious and incurable disease is hardly compatible with an understanding of the right to life and to physical and

moral integrity that takes into account the dimension of free development of the personality that is enshrined in the Constitution (…) (Prenso, 2021, p. 39)

When a person decides to end his or her life, either because of unbearable suffering, or because of personal suffering that degrades his or her integrity, the State is not in a position to prohibit decisions about the life of its owner, especially when such prohibitions involve the infringement of personal rights.

If the right to life is imposed as it is currently conceived in the legal system, this means that life itself is affected. Imposing it as an absolute good, which as has been said, it is not, causes other rights to be violated; for this reason, forcing people to continue living even when other rights are being violated, makes it a strange understanding of a right duty. States must guarantee that people's rights become effective; however, they should not become an obligation. Placing life in a biological condition of existence is a flagrant violation of people's rights.

All these painful consequences, such as the obligation to continue living even in the most degrading conditions for the sake of guaranteeing the right to life in a mystified and hierarchical manner means that people find themselves in a total lack of protection of their rights. Although the State indeed tries to guarantee the right to life, nevertheless, such intention is a mere pretension, because as it has been said, the only thing it is guaranteeing for the moment is the right to life only in the limit of the mere physical-biological existence.

Ideological, religious, political, or other beliefs and convictions cannot be considered an obligation for the whole society, no matter how respectable they may be. To impose them in a democratic society is neither conceivable nor acceptable. That is why several legislations such as the Colombian and Spanish, have granted the possibility of access to euthanasia, regulating certain premises that allow its control, access and application, thus avoiding abusive behaviors by both professionals and applicants

In Colombia, the application of euthanasia arises with the Constitutional Court Ruling C-239 of May 20, 1997, in which medical professionals were exempted from any penalty in case of performing mercy killing, as long as it is determined that the patient or the clinical case in which euthanasia is intended to be applied meets certain requirements among them, the subject of the procedure is terminally ill, that he/she is under intense suffering or pain, that he/she has requested assistance to die, that the procedure is performed only by a physician and that the patient is subjected to a rigorous verification by professional experts on his/her will and desire to end his/her life through the euthanasia procedure. In addition, the National Congress was urged to regulate assisted death; however, it never elaborated or enacted any regulation in this regard.

Later, on December 15, 2014, the Colombian Constitutional Court Ruling T-970, reaffirmed what was said in the aforementioned ruling, and established more specifically the right to die with dignity, placing it as a fundamental right. Since Congress did not elaborate any norm regulating euthanasia, within the same sentence the Ministry of Health was requested to elaborate a Guide in which doctors and patients would know how to proceed with this practice.

On April 20, 2015, the Ministry of Health and Social Protection issued Resolution 1216, which established guidelines for the formation and operation of Scientific-Interdisciplinary Committees to give effect to the right to die with dignity, which was to submit their actions to the provisions of Rulings C-230 of 1997 and T-970 of 2014.

In addition, it elaborated a Protocol for the application of euthanasia, with recommendations for carrying out the procedure, thus establishing several requirements, among them: that the physician must determine the terminal diagnosis, define whether the patient is in a condition to understand his clinical situation and adequately make a decision, and that physicians must carefully consider the patient's suffering, provide the necessary care and treatment, and verify whether the request made is persistent.

Later, on September 2, 2006, with the issuance of Resolution 4006, an Internal Committee of the Ministry of Health and Social Protection was created to be in charge of overseeing that euthanasia procedures are carried out in compliance with the right to die with dignity, as stipulated by the Constitutional Court.

Spain, for its part, with the approval of Organic Law 3/2021 of March 24, 2021, approves the regulation of euthanasia, becoming the fourth European country to have a legal norm that expresses the possibility of practicing it, thus, it is contemplated as a right that citizens have as the ultimate expression of their freedom, which in turn gives it the recognition of a fundamental right of each individual to decide on their death and obtain help from third parties to produce it.

The LORE, as the Organic Law for the Regulation of Euthanasia in Spain is known, has been discussed from various aspects. On the one hand, as the promulgation of a right, while on the other hand, its violation; however, by the same content of its legal text is understandable the various disagreements of opinions that may exist, including within its themes, the role of medical professionals in the context of this law.

It is necessary to point out that in Spain, the path towards the decriminalization of euthanasia began in its 1995 Penal Code, in which it was known as euthanasia homicide, constituting a privilege that medical professionals had, since despite having committed a death, they would not be condemned and therefore did not serve any penalty, as reflected in numeral 1 of Article 143. However, it also established certain ways in

which the medical professional could be subject to punishment, thus in paragraphs 2, 3, and 4, it established certain penalties but reduced them according to their commission, sanctioning them from six to ten years.

Unlike other countries, the legalization of euthanasia as such in Spain arises from the claim of a 25-year-old person named Ramon Sampedro, who had suffered a serious accident when jumping into the sea, which, after a strong blow, made him a quadriplegic, which led him to claim his right to die with dignity, hence, after being contacted by the Association of the Right to Die with Dignity, he became obsessed with requesting its recognition.

This case attracted a lot of attention because he was not terminally ill, which is a characteristic of euthanasia, but his claim was centered on the fact that he considered that his life was not of sufficient quality. Since his first claim in April 1993, Sampedro understood that his situation and obligation to live was caused by an unjust imposition by the State and the Catholic Church that prevented him from having access to his right. In this context, Sampedro understood that the Christian attitude of respect for life was his greatest obstacle.

Ramon had tried everything, and despite repeatedly requesting his right to die with dignity, the courts denied him this right under the argument that Spanish law does not allow it. After thirty years of being bedridden, at the age of 55, tired of insisting on his request to the State, on January 12, 1998, he decided to take his own life, leaving behind a letter he wrote with his mouth, which read as follows:

The right to be born starts from one truth: the desire for pleasure. The right to die starts from another truth: the desire to suffer. The ethical reason places good or evil in every act. A child conceived against the will of the woman is a crime. A death against the will of the person is also a crime. But a child desired and conceived out of love is good. A death desired to free oneself from irremediable pain is also good.

To achieve his longed-for wish, Sampedro sought out several friends who were given different tasks so that his actions would have no legal repercussions, and finally, after drinking a glass of potassium cyanide, he ended his life, without first recording a video explaining the reason for his decision:

Today, tired of institutional neglect, I am forced to die in secret, like a criminal. The process that will lead to my death was scrupulously divided into small actions that do not constitute any crime in themselves and that have been carried out by different friendly hands. If the state still insists on punishing my cooperators, I advise them to have their hands cut off, for that is the only thing they will bring to the table.

Also, Sampedro said:

I consider living a right, not an obligation. I have been forced to endure this painful situation for 28 years, four months and a few days. At the end of this time, I take stock of the road I have traveled and I am not happy (...) Only time and the evolution of consciences will one day decide whether my request was reasonable or not.

Later, in 2017, Jose Antonio Arrabal, who suffered from amyotrophic lateral sclerosis also decided to take his own life for the same reasons as Sampedro, leaving a recorded video in which he said: "I find it outrageous that in this country assisted suicide and euthanasia are not legalized. I find it outrageous that your family has to leave home to avoid being compromised in the issue and end up in prison."

These cases led the Spanish State to decide to regulate euthanasia, as well as assisted suicide as a means of guaranteeing people access to a dignified death, as a guarantee of the recognition of a right that life itself brings with it. In this context, the contemporary legal perspective must be considered as an exception in the protection of human life.

However, Spanish legislation has been clear regarding the decriminalization of euthanasia and has insisted that the right to life implies not suffering inhuman or degrading treatment and that is what is guaranteed, for this reason, it could not be understood that such recognition implies that the State intends to recognize the right to one's death.

These are the cases in which legislation, in the face of evident violations of the rights of persons, has decided to regulate in their legal system the right to live with dignity in the process of death. The States must ensure that the rights become effective even if they do not have the approval of the entire population, since only those who agree will submit to this practice and those who do not, will not observe it since it does not constitute an obligation as the right to life has been an obligation.

Positive effects produced by the regularization of euthanasia in the Ecuadorian legal system to guarantee people the right to a dignified life in the process of death

Dying is a truth that awaits us all, so that a dignified life in the process of death corresponds to an innate and legally recognized right of people, however, the problem is found in those situations in which ensuring the right to life causes degrading situations to their human condition.

Nowadays, society, as well as medicine, has been evolving in a positive way, all of this, in order to provide and guarantee better living conditions for people. Although medicine has always sought to heal the patient, there are cases in which it is impossible to achieve it, and for that reason, certain procedures have been implemented that allow the patient to end his suffering.

One of them is euthanasia, a procedure that causes the death of the terminally ill person to prevent suffering due to the discomfort caused by the disease he/she suffers and that is not susceptible to any treatment, which is why euthanasia has been called by many as the good death, however, it is a procedure that is not accepted in many countries.

In Ecuador, for example, recognizing euthanasia as a procedure that allows ending the life of a person is undoubtedly complex, given that, in its constitutional legal regulations, the following can be found: "Art. 66.- The right to the inviolability of life shall be recognized and guaranteed to all persons: 1. The right to the inviolability of life (…)" (Constitución de la República del Ecuador, 2008).

It is for this reason that, in its power as a State guarantor of rights, in order to ensure the right to life, it has been remarkably closed to this possibility, forgetting its duty to guarantee people the right to a dignified life, which has caused that even today euthanasia is not recognized as a procedure that is regularized within the Ecuadorian legal system.

However, as has already been analyzed, in countries such as Colombia and Spain, euthanasia has already been legalized since they have recognized that this procedure is the only means through which people who are in a terminal state are guaranteed their right to die with dignity, thus avoiding the suffering of the patient, who has not been able to be helped except by death itself.

Although it is true that the practice of euthanasia dates back many years, however, since it is such a delicate issue as the right to life, many countries do not contemplate it within their legal systems and the problem in many cases is usually social due to the ideologies rooted in society.

In reality, the problem lies in the recognition of the absolute nature of the right to life, which makes the States establish the refusal that people can, under their will and request, die with dignity. Since life is one of the fundamental rights, allowing, in a certain way, to end it prevents the recognition of the practice of euthanasia. It is for this reason that in countries where euthanasia is not yet legalized.

(…) t is considered that the legal understanding of life cannot be other than that of mere physical existence in its biological evolution, which is concretized and exhausted in an understanding of the right to life only as a reactional guarantee against its possible deprivation (which would entail the physical disappearance of its owner) and as a state duty to protect it in all circumstances, regardless of any other factors (Tomás, 2021, p. 51).

It has also been stated that euthanasia, with its procedures and requirements described above, would be a way in which people can

make this fundamental right effective in its maximum expression since it should be recognized in the legal system.

As it has been argued, the decision to undergo a procedure that avoids this painful death process, understood as what it is, that is, the other face of life, is likely to generate the constitutional and legal adequacy for the recognition of euthanasia, especially when it is articulated with the services of the national health system.

The regularization of euthanasia is a necessary procedure in society, whose acceptance or rejection will be derived from the decision of each person since it is not compulsory. Faced with serious, chronic situations that make it impossible to maintain a dignified life, societies ask their legislators to accept their request for the permissibility of the practice of euthanasia.

Life is not an absolute value, to make it effective. it depends on the assurance and fulfillment of other rights; however, it is usually confused as such and this leads to the fact that euthanasia is not approved in legislation. Nor can life be seen as a duty, understood as a categorical conception of existence in this physical world, since that is what causes its non-regulation.

(…) from the Constitution cannot be deduced a mandate of criminalization to protect life in situations of euthanasia. Only the constitutionally prohibited euthanasia model would support this. But it has been seen that this traditional model, associated with conservative ideologies, is not the only possible model with the Constitution in hand (Alonso, 2008, p. 8)

Likewise, we must understand that the right to life, with the regulation of euthanasia, does not generate a right as it would be understood, that is, the right to death, much less a State duty since its practice itself implies the guarantee of assuming the process of death in a dignified manner, but not empowering people their right to die.

(…) it is important to emphasize that the expression does not refer directly to the act of dying, to the extent that the only thing that can be subject to this freedom is the attitude adopted towards it, since death as an unavoidable reality should not be understood exclusively as an option or a right, in the traditional sense of the legal system, but also as an ethical requirement that allows people to determine and control the circumstances of their death, through the adoption of different resolutions aimed at ending their existence, but within the framework of the law (Heras, 2020, p. 297).

Assisted death can be better understood if it is explained from a point of view outside the mere physical-biological existence, but from the human point of view, in which people, to safeguard their integrity and avoid inhuman suffering, can decide to end their lives. The free decision to die should not be understood in its maximum expression, since what is

intended with euthanasia is that in situations that are inhumane for terminal patients, they can ask to be subjected to the practice of euthanasia, to die with dignity.

The right to a dignified life is fully recognized in the legislation so subjecting people to live in degrading conditions constitutes a violation of this right. Hence, the need for a State that guarantees rights, such as ours, to recognize the possibility that patients who are in degrading and even inhumane situations in certain cases, under their own will, request and consent, may have access to the practice of this procedure.

The Ecuadorian State, despite being a guarantor of rights, has shown a great delay concerning this issue, it has been subject to the idea that life is above other rights, omitting circumstances in which the only one harmed is the terminal patient. That is why it is essential to research this topic since it demonstrates the importance and necessity of regulating euthanasia within the Ecuadorian legal system.

METHODOLOGY

Research approach and level

The present research work was carried out with a qualitative approach through legal-theoretical research since it allowed obtaining data that provided the necessary information for the development of the present research work. Regarding the level of research, the present work was exploratory, since it is a new topic, it was necessary to carry out research and review of relevant doctrine regarding the topic raised, as well as comparative law.

Research methods, techniques, and instruments

This work was carried out through the comparative method with legislations such as the Spanish and Colombian ones, which allowed to bring to safekeeping the advances on this subject as alternatives for the evolution of the Ecuadorian regulations. Another method that was applied was the legal dogmatic method, which allowed obtaining the information contained in studies carried out by jurisconsults that gave rise to establishing the importance of regulating euthanasia within the legislation.

RESULTS

After the development of this work, it has been possible to determine that life is a right, not an obligation. Also, it has been found that being considered absolute has caused others to be unobserved to ensure its compliance. The Constitution of Ecuador recognizes the right to freedom, which implies that people are free to make decisions about themselves; however, this right is not absolute, the limitation of this is

subject to the protection of ensuring compliance and enjoyment of other rights.

It is recognized that life is an inviolable right, and therefore any act against it is expressly prohibited, which is why, in our legislation, there is no rule that allows people to access practices such as euthanasia. Since, it is considered an absolute right, the Ecuadorian State has not paid adequate attention to this type of requirement, even more so when the majority of the Ecuadorian population maintains its extremely deep-rooted religious beliefs that prevent the practice of euthanasia.

However, it has been demonstrated that there are cases in which people are living in conditions that are degrading to their human condition, which causes them to be unable to live with dignity. Because of this, it is necessary that Ecuador, to guarantee the effective enjoyment of other rights that are currently subordinated to the right to life, enact a law that regulates the practice of euthanasia to guarantee the right to live with dignity in the process of death.

DISCUSSION

With the research conducted, it is evident that the regularization of euthanasia within the legal system as a medical practice that allows people to live with dignity in their dying process is a social necessity that arises from the constant violation of the right to a dignified life and freedom of people.

It should be made clear that the regulation of euthanasia is intended to guarantee the right to a dignified life for people who, faced with unbearable suffering or who have been evicted by doctors, using their right to freedom, request assistance to die with the help of medical professionals.

Euthanasia does not imply the recognition of the right to die, what it seeks is the guarantee and realization of the right to live with dignity in the process of death, for that, to ensure that euthanasia is applied in the sense and form for which it was created, the States have issued a series of rules that regulate the permissibility of its application, avoiding abuse or bad practices.

Since it is a fundamental right and such a delicate issue as human life, not everyone agrees with its permissibility and application, including several medical professionals, since they are the only ones able to perform euthanasia on patients, their situation must also be analyzed, and the State must pay the necessary attention.

However, in the practice of euthanasia, the rights of medical professionals must also be observed, since no one can be forced to perform acts that are not in accordance with their freedom of conscience. Therefore, in the application of euthanasia, the right of

conscientious objection recognized in Article 66 numeral 12 of the Constitution of the Republic of Ecuador must also be respected.

Due to the lack of regularization of euthanasia, many people have been subjected to endure intense pain and degrading living conditions, constituting a flagrant violation of the right to a dignified life. In Ecuador, no rule regulates or guarantees that the death process of terminally ill patients is adjusted to conditions of a dignified life, which is why it is necessary to regulate it.

PROPOSAL

This research has focused on the search for the regulation of medical practice such as euthanasia in order to guarantee the right to a dignified life for terminally ill patients in the process of death in the exercise of their right to freedom implicit in each person, guaranteed in the Constitution of the Republic of Ecuador, however, since a fundamental right such as life is involved, the same supreme norm establishes in its normative body that in Ecuador any action that violates this right is prohibited.

Despite being a fundamental right, it is not absolute since it requires the fulfillment of other rights to be fulfilled in its maximum expression, it cannot be said that the right to life is guaranteed only with the evidence of a merely biological condition, i.e., the physical existence of human life.

“Relief of suffering is one of the objectives of medicine, but perhaps not all types of suffering can be the explicit object of medical intervention” (Guijarro, 2021, p. 32). There are cases in which patients are evicted because there is no medicine or palliative treatment that can heal the patient or at least prevent them from suffering, causing them to suffer unbearable pain, without any solution. Euthanasia has arisen with this purpose, which is to prevent patients from choosing to end their lives and avoid continuing to suffer constantly, a right that arises from the free development of personality and freedom, that is to say, to decide about themselves.

Therefore, euthanasia must be regularized within the Ecuadorian legal system in which a legal norm must be established to regulate the form of application, to establish who can have access to this practice, in what situation and when to request it.

In this norm, other aspects should also be observed to avoid abusive uses, and bad practices, as well as to establish the possibility for medical professionals that in use their right to conscientious objection are not forced to practice it, providing the power to oppose it in case of disagreement.

CONCLUSIONS

In Ecuador, the demand for euthanasia by people subjected to continue living against their will, forcing them to live in degrading and inhumane conditions, has become a legal problem without a solution, unjustifiably denying them the exercise of their right to freedom.

The Ecuadorian constitution recognizes the right to life as fundamental; however, it is necessary to consider that, to make it effective, it needs to coexist in conjunction with other rights such as freedom, and free development of personality, among others. It must be understood that the ownership of the right to life is rooted in each person, therefore only that person can dispose of himself. In this context, it is understood that despite being considered absolute, it is not, since it has certain limits such as the right to live with dignity.

Life with dignity is one of the elements of euthanasia, which means that States that protect rights such as life must protect it, especially when the aim is to avoid unbearable suffering that is degrading to human dignity.

The legalization of euthanasia within the Ecuadorian legal system is intended to guarantee the terminally ill their right to live with dignity in their dying process, in no case should it be understood that such regularization implies the right to die since this is not the essence of euthanasia.

After the research carried out, it has been determined that euthanasia, as a medical procedure that puts an end to the suffering of terminally ill patients, constitutes a guarantee of compliance with the right to live with dignity in the process of death of terminal patients, for which the need has been established to regulate how, when, who and under what circumstances its practice can be requested.

It has also been determined that the only ones capable of performing euthanasia are medical professionals who, under the patient's clinical condition and in the face of repeated requests to submit to the practice of euthanasia, may perform it. It has also been pointed out that since it is an issue on which not everyone agrees, euthanasia is not compulsory. Likewise, in the application of the right to conscientious objection, it will be the duty of the State to establish the guarantees through which physicians may refrain from performing euthanasia.

The regularization of euthanasia is a subject of much discussion, however, the need to include it in the legal system to safeguard the fundamental constitutional rights of terminally ill patients who are subjected to unbearable suffering, which is degrading to human dignity, cannot be ignored.

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