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Euthanasia: the Colombian legal framework

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Abstract

This text analyzes the legal provisions regarding euthanasia established in the Colombian legal system from 1997 to 2021 and examines euthanasia from an individual perspective as an exercise of human freedom. It presents a legal framework based on a review of key decisions by the Colombian Constitutional Court and, finally, proposes a discussion on each individual's free and autonomous choice to undergo the euthanasia procedure. The findings highlight the conditions established by the Colombian Constitutional Court, under which patients may expect the euthanasia procedure to be carried out effectively and, therefore, have their right to die with dignity protected.

Keywords: Right to die. Human dignity. Euthanasia. Dignified death. Critical illness.

Resumo

Eutanásia: marco jurídico colombiano

Este texto analisa as medidas jurídicas em relação à eutanásia estabelecidas no sistema jurídico colombiano no período entre 1997 e 2021, bem como aborda a eutanásia a partir do âmbito individual como um exercício da liberdade humana. Apresenta-se um marco jurídico a partir da revisão das principais normas jurídicas do Tribunal Constitucional e, por último, propõe-se uma discussão sobre a escolha livre e autônoma de cada sujeito para optar pela prática do procedimento de eutanásia. Os resultados mostram os pressupostos estabelecidos pelo Tribunal Constitucional sob os quais as pessoas podem esperar que o procedimento da eutanásia seja efetivo e, portanto, seu direito de morrer com dignidade seja resguardado.

Palavras-chave: Direito de morrer. Dignidade humana. Eutanásia. Morte digna. Doença terminal.

Resumen

La eutanasia: marco jurídico colombiano

Este escrito analiza las garantías jurídicas otorgadas respecto a la eutanasia en el ordenamiento jurídico colombiano en el período entre 1997 y 2021 y, a su vez, aborda de manera reflexiva la eutanasia desde el ámbito individual como un ejercicio de la libertad humana. Se presenta un marco jurídico desde la revisión de las principales garantías jurídicas desarrolladas por la Corte Constitucional y, finalmente, se propone la discusión sobre la elección libre y autónoma de cada sujeto de optar por el ejercicio del procedimiento de la eutanasia. Los resultados evidencian los presupuestos que esboza la Corte Constitucional bajo los cuales las personas pueden esperar que se haga efectivo el procedimiento a la eutanasia y, por tanto, se ampare su derecho a morir dignamente.

Palabras clave: Derecho a morir. Dignidad humana. Eutanasia. Muerte digna. Enfermedad crítica.

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The question of death arises from the experience of life; There will never be a more vital question than that of death. The assertion for existence, then, is framed from the most ancient thought; Thousands of people, if not all, have wondered about the certainty of an end, of the expectation of the outcome, of the gloom of the unknown.

Death causes uneasiness when it arrives. Human beings in an abstract gaze demands a certain stability at the moment of the end, they do not intend to do it in any way and, although they know that the certainty of dying can distress them, they anticipate their end, as in a kind of epiphany, and calculate it, wait for it, feel it, and know its arrival. Human beings are the only ones of their kind who know they will die and that knowledge enables them to prepare for that moment.

Regarding the discussion on the right to die with dignity, some authors mention the reasons that the legislature can support for not legislating on this point, which *overflows the sphere of discussion, from the social or purely legal terrain to the orbit of ethics* [1]. Likewise, José Antonio García Pereáñez states that the debate on euthanasia should be sustained from the perspective of the right to of each human being to choose, because he considers that *it must be promoted more so citizens can have and maintain a free and responsible position throughout their existence. Central to all of this is the self-determination of being able to choose* [2].

Nevertheless, Jaime Iván Sánchez Gordillo, in his study on the "legal, ecclesial and cultural aspects" of euthanasia in Colombia, concludes that *the level of information and training of patients and the spiritual and material support personnel who accompany them can be at very precarious levels. Those directly involved in the decisions do not handle the debate and the implications that each position has with adequate critical and rational sentence. In the absence of enough information and training, their vital decisions in the face of pain, suffering, and luck can be made in a limited way and, why not say it, wrongly* [3].

This study focuses on the jurisprudential foundations outlined by the high constitutional court of Colombia, which is ever since Sentence C-239/97 decriminalized euthanasia. This action *can be considered a result of the socio-political, legal, and cultural transformation that began in the 1990s after the adoption of a new Political Constitution in 1991* [4]. In this period, euthanasia was in a "gray area" [5], due to the absence of normative regulation, until 2014 when the Constitutional Court in Sentence 970/14 [6]. This orders for this procedure to be regulated and parameters to be granted, and health institutions and professionals must follow it to guarantee the population's access to the right to die with dignity, so that it is not denied under administrative or legal barriers.

In 2021, the high constitutional court extended this right to people by eliminating the requirement to grant this protection not only to people who suffer from a terminal illness, but also to those who have diseases that cause them acute suffering [7].

In this context, this article analyzes the legal guarantees regarding euthanasia in the Colombian legal system between 1997 and 2021, and, in turn, reflexively addresses euthanasia as an exercise of human freedom.

Literature review

Euthanasia: a brief review of its concept

A series of concepts on which medical, scientific, metaphysical, legal, and social discussions in our country about euthanasia are shown. Delgado states that *euthanasia has shown numerous debates throughout history, deploying different conceptions in political, religious, academic, and cultural spheres* [8].

Etymologically, the word "euthanasia" comes from two Greek words, *eu*, which means "good"; and *thanatos*, which means "death", however, some Greek language experts have wanted to interpret the word Θάνατος (*thanatos*) based on the salvific fact of the good departure, thus establishing the phenomenon of death as the journey, in a resting state, made by those who have ended their lives towards eternity [9].

In such a way that the modern current not only enables the possibility of the decision about the

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end of life, but also understands it as a kind act, a type of philanthropy about the one who suffers. That is why the difference has been made, which must be marked by the dichotomy between suicide and euthanasia. The first term refers to the will to not continue living, while the second refers to the will to die, because one wants to end a strong suffering or because it is prevented [10].

Euthanasia is commonly confused with orthotanasia, which refers to a "correct death", avoiding artificial elements that accelerate death [11].

In general, euthanasia refers to the voluntary act of patients who decide to end their life based on their expressed will, seeking to immediately suppress the suffering caused by a disease. However, that will be able expressed by a third party or be imposed by someone else's decision. This is in the case of terminally unconscious patients who cannot express their will to die, which is called "dysthanasia" [12].

In this regard, The World Medical Association (WMA) *qualifies euthanasia as an immoral practice that violates medical ethics* and defines it in *Declaration on euthanasia* as the *act of deliberately ending a patient's life, even at patient's request* [2]. This is conceived that a*n act of ending life, even if conducted voluntarily, goes against the ethical principles of the function that doctors fulfill* [13].

Chronic, degenerative and irreversible disease

Impact on quality of life

Law 1,733 of 2014 [14] has defined and legally delimited this concept in Article 3, in such a way that for the Colombian legislature a chronic disease is one of long duration, which causes serious loss of quality of life, and demonstrates a progressive and irreversible nature that prevents waiting for its definitive resolution or cure, and which has been adequately diagnosed by an expert doctor.

End-stage disease

Article 2 of the above-mentioned legal provision also deals with the concept of terminally ill person: *a terminally ill person is defined as anyone who carries a serious disease or pathological condition, which has been accurately diagnosed by an expert doctor, demonstrates a progressive and irreversible nature, with a fatal prognosis in the near future or in a relatively short period of time, is not susceptible to curative treatment and of proven efficacy, which enables the prognosis of imminent death to be modified; or when therapeutic resources used for curative purposes have ceased to be effective* [14].

Legal framework in Colombia regarding euthanasia

When analyzing the right to die with dignity, it is necessary to resort, in the first place, to the definition of life. Although it is not easy to agree on a precise definition of life, due to the different theoretical and doctrinal positions that have generated great debates and controversy among humanity, in a general way that it is considered a guarantee, an asset, and a right protected by the Colombian State and by various international provisions.

The Preamble to the 1991 Constitution [15] expresses the will of the Colombian people to establish a legal framework based on sovereignty and fundamental values such as life, justice, freedom, and peace. In the same vein, it highlights the purpose of consolidating the Colombian State as a democratic and participatory country, so this can guarantee a fair political, economic, and social order.

Likewise, an invocation to God is made, reflecting the cultural and religious tradition of our country. However, note that Colombia has consolidated itself as a secular state.

In Sentence 232/96 [16] MP Alejandro Martínez Caballero stated that, in the constitutional sphere, life is the fundamental right par excellence. In addition to being one of the supreme values of the constitution, its protection and guarantee have been established as an essential principle of the Colombian legal and political system. Safeguarding this fundamental right not only implies the protection of the

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individual's right to exist, but also the obligation of others to respect this and prevent death from occurring in an early manner.

In 1997 there was an important change around euthanasia in Colombia, marking it a historic moment in this issue. Article 326 of the penal code of that time enshrined as "mercy killing", the public action of unconstitutionality; and unlike the aforementioned article, it based its request on the fact that the main role of a social and democratic State of law is to guarantee the lives of people, protecting them in situations of danger, preventing attacks against them, and punishing those who violate their rights, which was not fulfilled by the challenged norm, since it was of discretion of the physician or the individual the decision to end the lives of those who are considered an obstacle, a nuisance, or whose health represents a high cost. Therefore, in Sentence C-239/97 [17] mercy killing is decriminalized under the fulfillment of certain assumptions established by the High Court that are outlined below.

Terminal illness

The first assumption refers to the suffering from a terminal illness that generates a high degree of suffering for the person, which threatens their living conditions regarding human dignity. Therefore, it is not a question of considering life only from the point of view of its physical preservation is not a question, but also of the conditions in which it is lived. The *terminal illness that causes them unbearable pain is incompatible with their idea of dignity. Consequently, if terminally ill people who are in the objective conditions set forth in article 326 of the Criminal Code consider that their life must end, because they judge it incompatible with their dignity, they may proceed accordingly, in the exercise of their freedom, without the State being empowered to oppose their plan, or to prevent, via prohibition or sanction, that a third party helps them to make use of their option* [17].

The high court based this consideration on the founding values of the 1991 Constitution, which recognizes fundamental rights and establishes human dignity as the "founding principle of the State" [15].

On this occasion, the Court only referred to terminal illnesses but did not expressly rule on diseases ranked as catastrophic by the World Health Organization. However, Sentence C-233/21 [7] would extend the right to a dignified death to people suffering from a serious incurable disease or injury, eliminating the requirement for it to be ranked as a terminal illness.

The patient expresses consent

The second assumption implies the manifestation of the will of the person suffering from terminal illness and who expresses their personal decision, in a free, autonomous, and informed way; To have the medical procedure that will end their life. Therefore, it is required that the person understands the disease and the situation in which they find themselves, for which it is necessary that they have been informed by the competent medical staff about their disease and *in addition to providing them with the conditions to die with dignity* [17].

The expression of consent for the procedure is a personal decision of those who live in this condition of acute suffering due to a terminal illness and ask to be "helped to die with dignity" [17], protected by the right to live their own lives in circumstances that provide them with the development of being under the assumption of human dignity.

Although the State has the highest duty, indicated in the 1991 Constitution, to protect life, this obligation must yield to the possibility of respecting the right of every person to choose to die in circumstances that end a suffering that has no possibility of improvement and/or cure under medical criteria.

The duty of the State to protect life must therefore be compatible with respect for human dignity and the free development of personality. For this reason, the Court considers that in the

face of terminally ill patients who experience intense suffering, this duty of the State yields to the informed consent of the patient who wishes to die in a dignified manner [17].

Therefore, the consent of the patient must be free, which is an unequivocal manifestation of people that can understand the situation in which they find themselves and to make the decision, it implies that they have serious and reliable information about their disease, the therapeutic options, and its prognosis [17].

The high court mentions the need for strict legal regulations to be established on how consent and assistance in dying should be given, to prevent the elimination in the name of pietistic homicide of people who wanted to continue living, or who did not suffer from intense pain as a result of terminal illness. The points considered essential for this regulation were the following:

1. strict verification, by competent people, of the patient's real situation, illness, maturity of sentencing, and unequivocal willingness to die;
2. clear indication of the people who must intervene in the process;
3. circumstances under which the person must express consent to their death;
4. measures that must be used by the qualified individual to obtain the philanthropic result;
5. incorporation into the educational process of topics such as the value of life and its relationship with social responsibility, freedom, and autonomy of the person [17].

Formation of Interdisciplinary Committees

Patient consent verification

In Sentence T-970/14 [6] the Constitutional Court reaffirms the precedent set in 1997, stating that, in the absence of regulation by the Colombian legislator, it cannot become a justification for denying the practice of euthanasia and, therefore, the obligation to live in conditions that violate human dignity cannot be imposed. Likewise, it reaffirms the category of fundamental right to die with dignity.

In 2014, the Court reiterated the conditions under which it must take place, which were developed in 1997. However, regarding the manifestation of the *consent of the patient*, *which must be free, informed, and unequivocal* [6], it outlines two criteria that must be met to comply with this budget. The first orders the creation of a committee of interdisciplinary professionals who can provide this accompaniment to the patient and their family group. The second refers to the need to implement *a procedure in which the patient's decision is shielded* [18].

Regarding the duties of physicians, *the Chamber also highlighted the obligation of physicians to apply the necessary procedures for access to a dignified death. But he explained that, in the event of conscientious objection, that is, a written statement by the medical professional opposing the procedure because he considers it incompatible with their personal convictions, the HPE would have the obligation to reassign another professional to perform it within the following 24 hours* [5].

In accordance with the foregoing and in the absence of legislation to regulate euthanasia, the Constitutional Court ordered the Ministry of Health to issue the pertinent guidelines that would be a reference for procedures aimed at guaranteeing the right to die with dignity. In the case studied, the following are pointed out: *criteria of prevalence of patient autonomy, speed, timeliness, and impartiality that should guide the performance of procedures for a dignified death* [5].

Regulation of procedures

Right to die with dignity

As a result of the mandate of Sentence T-970/14 [6], the Ministry of Health and Social Protection (2015) issued Resolution 1216, which regulates the parameters for health service providers to create interdisciplinary committees and the framework for the procedures in which the right to die with dignity is guaranteed.

A terminally ill, according to Law 1733, is *anyone who carries a serious disease or pathological condition, which has been accurately diagnosed by an expert doctor, which*

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demonstrates a progressive and irreversible nature, with a fatal prognosis near or in a relatively short time, who is not susceptible to a curative treatment and of proven efficacy, which enables modifying the prognosis of imminent death; or when therapeutic resources used for curative purposes have ceased to be effective [14].

This regulation issues the guidelines according to the judicial framework developed by the high court in 1997 and 2014, and defines the composition and operation of the interdisciplinary committees, the functions of the Health Service Provider Institutions (HSPI) and the Health Promoting Entities (HPE) with respect to them and, in general, the protocol for the application of euthanasia.

Children and adolescents

Holders of the right to die with dignity

In the protection given to the right to die with dignity, no distinction has been established by age, so this protection applies both to people of legal age and to children and adolescents (NNA). *By virtue of the principles of equality and non-discrimination, defense of the best interests of children, the effectiveness and absolute priority of the rights of children and adolescents* [19], it is recognized that their right to live in dignified conditions must also be protected and not prolong life exposed to intense suffering due to terminal illnesses. Therefore, the best interests of children and adolescents cannot be ignored and the absence of this regulation can lead to situations in which the right to die with dignity is violated.

Human dignity as a founding principle of the Colombian legal system and, therefore, of the State, recognized as a general constitutional principle and an autonomous fundamental right, requires the recognition of the right to a dignified death of children and adolescents [19].

Widening the margin of substitute consent

In Sentence T-721/17 [20] note the relationship made by the high court with respect to substitute consent, which had already been pointed out in Sentence T-970/14, *in cases in which the person is factually unable to express their consent, in these cases and not to prolong their suffering, the family may substitute their consent* [20]. Resolution 1216 of 2015 [21] establishes as a requirement in this type of consent that the person suffering from the disease has previously expressed their desire to have the right to die with dignity practiced.

Expansion of the legal budget

Beyond terminal illnesses

The Constitutional Court states that in several cases there is an analysis of the protection of the right to die with dignity in the face of the damage consummated [7], that is, when the person has died attempting to seek the legal guarantees that allow them to make use of the euthanasia procedure seeking to avoid prolonging their suffering and to live in conditions of respect for their dignity given the high degree of suffering generated by the terminal illness.

It is necessary to delve into the relationship between the fundamental right to die with dignity and the fundamental right to health, because the dimensions of the latter are also predictable to the former. Once this link is emphasized, it is possible to understand why most of the decisions handed down by the Court have ended in the declaration of the consummated damage caused by the suffering in which people who had the right to access a dignified death have been maintained [7].

Given the protection of human dignity, autonomy, and the free development of the personality in the right to die with dignity, people who are in conditions of intense suffering due to a terminal illness that generates intense pain are protected. This situation affects not only physical condition, but also the possibility of living in circumstances worthy of their own life project; then, it is questioned whether this applies only in cases of terminal illnesses or if it can also be predicated by other health situations that *can be considered extreme and that they constitute a source of intense suffering* [7].

In accordance with this, the Constitutional Court in this *relationship of the right to die with dignity with the right to life and dignity* [7] it states that the right that is protected should be given a greater scope, taking into account other health situations that are not classified as terminal illnesses but that also affect the possibility of living in an environment of respect for the human dignity of those who suffer from them. *It is necessary to expand the established precedent, so that autonomy and self-determination at the time of death are also exercised in the face of diseases that are not terminal, but that are serious and incurable and produce intense suffering* [7]. The expansion of this precedent finds its justification, given that the high court outlines that the restriction to the criterion of terminal illnesses is *a barrier to access to services for dignified, unreasonable, and disproportionate death, which causes a deficit of protection for people who are subject to special protection due to the extreme health conditions they suffer* [7].

This barrier prevents a person affected by diseases that are already serious and incurable and a source of profound suffering from exercising their self-determination and choosing the way to end their life. This generates a deterrent effect on health professionals for an ethical and altruistic exercise of their profession, which erodes professional, scientific and ethical autonomy, and prevents the doctor from acting in pursuit of the best situation or the best interests of the patient [22].

Application of euthanasia procedures in Colombia

Since its decriminalization in 1997 and subsequent regulation in 2015, clear guidelines have been established for the application of euthanasia, contained in the protocol for applying the euthanasia procedure of the Ministry of Health, sentences of the Constitutional Court and legal instruments. The euthanasia procedure is a fundamental right for patients suffering from terminal illnesses or conditions of intense suffering, provided that the legal and medical requirements are exhausted.

This procedure can be requested by the patient, by a family member via the figure of substitute consent or by the advance directive document, which can be included in the patient's medical record.

Regarding substitute consent, the Constitutional Court [17] warns that the patient's family can validly express the consent of a substitute nature so that the patient can access the right to a dignified death. This will be subject to verification of the set of conditions for accessing the procedure. The application of this mechanism, which is a consequence of respect for people's existential interests and their validity, is conditioned by the patients' inability to express it for themselves.

Applications are evaluated by medical committees to determine compliance with the criteria. The procedure is performed by a licensed health care professional if approved. In this sense, it is important to determine it from the framework of analysis on decision-making, in which, despite being a decision of a technical nature, it goes through categories of review, which must be inserted in a highly legal burden that is imposed on medical criteria and risks in the face of liability.

Despite the existence of a legal framework, the application of euthanasia in Colombia faces significant challenges. Among them are conscientious objections on the part of health professionals, the disparity in the implementation of regulations throughout the national territory, the resistance of some health service providers to the authorization and effective application of the procedure, and the bureaucratic barriers faced by patients and their families.

In this sense, note that there is a critical parameter, not a technical one, because it subjects practice to an interpretative judgment on the dynamics of a reasoned criterion in medical practice. There is the need to outline the need to have the parameters, which will be binding for the generation of the technical conditions for decision-making.

There is a summary below of the considerations of the Constitutional Court regarding the right to die with dignity.

Table 1. Considerations of the Constitutional Court and euthanasia.

Sentence	Brief context of the events	Most relevant considerations
Sentence C-239 of 1997 [17]	Public action of unconstitutionality against Article 326 of the Penal Code, which established the criminal type of mercy killing.	The Court declared the conditional enforceability of the rule, given that the conduct of mercy killing cannot be penalized if it is conducted by the treating physician on the patient who is terminally ill and that the latter expresses the informed consent and understands the procedure to exercise their right to die with dignity. The right to live in dignified conditions includes the "right to die in dignified conditions" and is therefore a fundamental right. The legislator is urged to issue the norm that regulates the right to die with dignity.
Sentence T-970 of 2014 [6]	A patient diagnosed with colon cancer asks the doctor and HPE to perform the euthanasia procedure. The HPE argues that the right to die is not regulated and, therefore, denied the practice of it.	The right to die with dignity is a fundamental right that protects the dignity of the living conditions of those who suffer intense suffering and "is an autonomous fundamental right, related to life and autonomy". The consent expressed by the patient "must be free, informed and unequivocal". Likewise, this sentence contemplates "substitute consent" which can be granted by the patient's relatives when the patient cannot express consent. The creation of "interdisciplinary scientific and medical protocol committees" is ordered, which must ensure that guarantees are given in the expression of this consent, so that information is provided to the patient in a comprehensive way and their family; and that they can make the decision with due knowledge, guaranteeing access to the euthanasia procedure.
Sentence T-132 of 2016 [22]	Person deprived of liberty who files a legal action to be granted the right to die with dignity: Janner was ordered to undergo varicolectomy surgery, but the HPE Caprecom did not expedite the procedure, despite the filing of the tutela action and a sanction of contempt. In this context, Janner requested a procedure to access a dignified death, afflicted by the "precarious conditions of imprisonment, the seriousness of the illnesses and pain he suffered" (Constitutional Court, Sentence T-132/16).	The protection of the right to health is ordered, but the right to die with dignity is not granted, since it is not verified that he is in a state of terminal illness.

continues...

Table 1. Continuation

Sentence	Brief context of the events	Most relevant considerations
Sentence T-423 of 2017 [23]	An 89-year-old person requests, via legal action, the right to die with dignity that had not been granted by the HPE, based on the state of health and that he was in a situation of loneliness and helplessness. The HPE denied support, since he was not suffering from a terminal illness.	The Court reiterates the duty to protect and support the rights of older adults to search for the necessary care and affection that is required given the context of their age and their health conditions. However, the plaintiff was not under the diagnosis of a terminal illness, so the high court calls for the study of these situations to be verified that a disease can really be noticed *medically classified as serious and incurable, which are those that give rise to the request for access to the right to die with dignity* [23].
Sentence T-423 de 2017 [23]	A 24-year-old patient who suffers from cancer that causes intense pain because the disease metastasized, it is requested that the right to die with dignity is granted, but the HPE denies it arguing that the hospital did not have an interdisciplinary scientific committee to evaluate the request.	The Court states that the right to die with dignity must be protected without imposing "barriers to access the fundamental right to health," since the patient died without being able to access the psychological support service and the euthanasia procedure. Likewise, the Superintendence of Health was ordered to take the pertinent actions so that the health promoting entities have the resources to form these committees and guarantee the right to a dignified death without administrative barriers.

Source: authors' elaboration based on the sentences cited.

The right to die with dignity

Ethical basis for the decision

The Court points to the right to die with dignity in the category of fundamental right since it *finds its foundation in human dignity* [17], that is, when there is a possible affection of the dignity of the human being, it is essential to consider this right in the rank of fundamental right. In this way, the right to die with dignity not only means the possibility of guaranteeing the physical life of the subject but also implies that they can fulfill themselves on their life projection and that they can decide to stop living in circumstances of intense suffering and treatments that may violate the condition of living with dignity. This is how *the State cannot oppose the decision of the individual who does not wish to continue living and who requests help to die, when they suffer from an illness that causes them unbearable pain, incompatible with their idea of dignity* [17].

This decision implies a motivation that must be subject to the analysis of the construction of the technical criterion. As they are not normative criteria that enable generating a validation framework, it must be reviewed directly for the materialization of the conditions of technical basis, and this implies a direct review with the patient and with their family.

One of the rights that revolve around euthanasia is human dignity, which is based on two philosophical aspects: the first is dignity in relation to 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 decreases, its meaning is also lost and, consequently, it is not worth continuing living [8].

Regarding its recognition as a fundamental right, Delgado [6] stated, according to Sentence T-970/14, *to demand euthanasia in Colombia, there is the fundamental right to Die with Dignity; Despite not being explicitly within the Constitution of 1991, the jurisprudence does have two fundamental aspects for it to be conducted: human dignity and individual autonomy. These are*

two concepts that are linked, the first aspect is the faculty that the person must reason and determine what is good or bad and in turn is indispensable for fully enjoying life. And the second aspect is related to the autonomous right that does not require other rights to be configured [15].

In this criterion, being considered as a right, it implies a framework of discretionary criteria. The right to die with dignity has been recognized in Colombia as a fundamental and autonomous right [12] which has been the product of various judicial discussions; This recognition has been shown in the judicial evolution of the right to die with dignity. And in that sense, the criterion of non-maleficence will be tied to recognizing this as a functional category, it implies that criteria, of nature and analysis for the specific case, are set aside for decision-making.

There is the emanation in their decision, as well as the family that seeks to translate into the medical concept how their dignity is materialized, that is, the quality of the patient, the quality of the family and their environment that becomes broad because it is legal.

Analysis and results

The discussion, as has been said, then passes from the religious and moral field to the juridical one. The natural and legal fact of death is also the cause of legal obligations and rights, it is a discussion that society, through its legislators, has not wanted to have because perhaps it is not an issue that can collect the necessary votes from society.

Surely, later we will be able to stop seeing this subject as a social taboo and to start creating policies for life (which includes a good death), because regardless of the feelings of those who proclaim it, the ontological goal of every human being is happiness and the fullness of their existence [2]. Decision-making, and the concept that is not regulated, exerts the need for these criteria to be taken as a technical construction of the person, in which a foundation that recognizes the normative conditions regulated by sentences is evidenced. In this sense, the criterion of non-maleficence implies the way in which it is translated to the extent that the concept of dying is supported by a technical committee.

Nevertheless, the right to euthanasia must also be seen from the exercise of the freedom and autonomy of the human being, which is also indisputably linked to a legal context that frames the guarantees of euthanasia. Therefore, euthanasia includes some guidelines and presuppositions outlined from Colombian constitutional jurisprudence, and goes beyond this because, ultimately, it remains in the freedom sphere of each human being who will be able to dispose of their possibility of exercising the right to die with dignity or may also choose a path that leads them to face the experience of suffering in a way that elevates them to the fullest realization of their own dignity. This is explained by the fact that the loss of the condition of dignity cannot be avoided, because it is in a state of intense suffering, since human beings have demonstrated, even in these states of life, that they can face it with a high level of dignity.

Therefore, reflection on euthanasia, beyond the legal framework, also implies an ethical principle that is based on the free, autonomous and responsible choice that each person makes in the face of their life, coping with their own illness and the personal perception of their own suffering. In other words, the right to die with dignity is an issue that underlies the unique and individual condition of each human being, as García states [2].

The ethical principle of autonomy is based on and supported by the consideration of euthanasia. In a social state of law such as Colombia, it must be accepted that there are different options for living and dying, and that the will of those who are enduring a terrible disease must be respected.

At the same time, it is interesting to reflect on the care and attention in a comprehensive way for patients who are experiencing terminal illnesses or are facing a prognosis of incurable diseases. As Zurriaráin states *Palliative Care must first be legislated at the national level, before legalizing euthanasia* [17]. Likewise, a review is generated on how this process of constitutionalization imposes functional duties, which must be oriented to concepts that imply the recognition of dignity,

of the right to die, and how this imposes a duty on the medical and technical staff of any committee that must endorse a euthanasia procedure.

Final considerations

The euthanasia procedure in Colombia is a fundamental right that has no longer only been recognized for patients with intense suffering in terminal illnesses [7], since the high court recently [2] has expanded the scope to those people who suffer from serious and incurable diseases, thus affecting the quality of life. All this is based on the protection of the human dignity of those who live it, since the high court states that people cannot be forced to prolong their lives by intense suffering.

The decriminalization of euthanasia in Colombia with Sentence C-239/97 [17] and the protection granted to the right to die with dignity by the High Constitutional Court have generated advances in the legal guarantees of this right. These advances include the establishment of criteria so that people who are terminally ill and with intense suffering can express their consent or their relatives when they are in a position to grant it, such as substitute consent; The euthanasia procedure must be practiced by a qualified subject, such as the competent doctor who can declare their right to conscientious objection, but in any case, the health institution must guarantee the citizen the possibility of accessing said right and must form Interdisciplinary Committees to guarantee its suitability.

Such committees must understand that this category becomes qualitative and that, based on the Colombian case, the praxis implies that non-maleficence is articulated to recognize the scope of death as a right based on criteria of human dignity, which recognizes a decision that is analyzed from the will of the subject, his medical conditions and the family environment. a decision that involves the ethical duty to the materialization of a fundamental right.

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Participation of the authors

Andrés Felipe Roncancio Bedoya, provided support in the elaboration of the analysis category, in the construction and presentation of the results, in the abstract and in the editorial adjustment. Lina María Valencia Porto, responsible for the writing of the article and the systematization of the data. Diana Botero Porto, contributed with the review, the proposals for analysis and the elaboration of the theoretical framework. John Edison Mena: assisted in the research and collection of legal data for analysis within the research project.

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