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LADB Staff

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Colombia Decriminalizes Abortion in Cases of Incest, Rape, Danger to Mother's Life

by LADB Staff

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Colombia's Corte Constitucional (CC) partially decriminalized abortion on May 10, allowing women to seek the procedure in special cases like incest, rape, and when completing a pregnancy would endanger the mother's life or if the fetus was too malformed to survive outside the womb. The decision eased Colombia's absolute criminalization of the procedure, one of the most restrictive in Latin America, and incensed conservative social sectors including the hierarchy of the Roman Catholic Church.

Decision calls total ban "irrational"

The long-awaited decision by the CC, which voted 5-3 in favor of the changes, cannot be overturned by the Corte Suprema de Justicia (CSJ). Under the decision, abortions will be permitted in the cases of rape, incest and if the life of the mother or fetus is in danger. Abortion under all other circumstances will remain illegal, punishable by sentences ranging from 16 to 54 months in jail for the woman and the doctor performing the procedure.

"The court fulfilled its duty in recognizing the right of Colombian women," lawyer Monica Roa, who spearheaded the lengthy legal battle to overturn the abortion ban, told Caracol radio. "I'm very happy," Roa, who presented the petition to the court last year, told The Miami Herald in a telephone interview. "Hopefully, mortality rates of women seeking abortion will drop immediately because of this decision." Roa brought the suit on the grounds that, by banning abortion, Colombia was violating its own commitments to international human rights treaties ensuring a woman's right to life and health. Roa's suit was backed financially by Women's Link Worldwide, a Madrid-based group for which she works.

Prior to the ruling, Colombia, El Salvador, and Chile were the only countries in Latin America where performing an abortion was illegal under any circumstance. The issue has become a hot topic of debate in the campaign ahead of the May 28 presidential elections, and some conservative politicians made their opposition to gay rights and reproductive rights a centerpiece in recent congressional elections (see NotiSur, 2006-03-31).

Conservative President Alvaro Uribe has voiced concern that women could take advantage of easing the ban to end unwanted pregnancies of any type. His main challengers in the race supported partial legalization. In anticipation of the court's decision, anti-abortion groups took out ads in newspapers on May 10 calling abortion "a moral problem and not an issue of public health." Federal officials estimate that as many 450,000 illegal abortions are performed each year in Colombia, the majority in unsanitary, clandestine clinics. Police figures show that 125 women were prosecuted in Colombia for getting abortions between 2003 and 2005.

The court, explaining its decision on May 11, said the life of a fetus could not be put ahead of the life of a mother and called the complete abortion ban "disproportionate" and "irrational." But opponents in this heavily Roman Catholic region saw the decision as akin to legalizing murder. Cardinal Alfonso Lopez Trujillo, Colombia's highest Catholic Church official, told RCN radio that the decision was "an attack on human life." He said, "The depenalization of abortion is a judicial stupidity. The Corte Constitucional does not have the right to say there is or there is not a crime. This is a bad decision, the fruit of international pressures that disrespect many Colombians."

Advocates for the continued criminalization of abortion like Ilva Hoyos of the Red Futuro Colombia called the decision a victory for "foreign feminist movements and international nongovernmental organizations (NGOs)." She added, "We are not going to just cross our arms. Despite fatigue and sadness, we will keep fighting, not only to avoid a future decision [further decriminalizing abortion], but also to reverse the current decision." Bogota newspaper El Tiempo praised the court decision in an editorial, saying, "An elevated number of unwanted pregnancies, many of them among teenagers and near-girls, scandalous levels of sexual abuse, also often against minors and within the family, the lack of sex education, and the absolute impossibility of going to a doctor of state social services were all circumstances that nourished the sinister business of clandestine abortion."

Regional implications

Abortion-rights advocates say arguments from the case are applicable to other Latin American countries as well. Women's-rights groups and human rights organizations have been mounting challenges in courts and on the streets to laws that in most cases permit abortion only when a woman has been raped or her life is in danger, according to the Center for Reproductive Rights in New York. In the region, abortion is readily available only in Cuba, where women can have abortion on demand in the first 12 weeks of pregnancy, and in a few English-speaking Caribbean nations. The parliaments of some countries, like Argentina and Uruguay, have begun to debate proposals to loosen abortion laws.

In two recent cases, international human rights commissions told Peru and Mexico that they had violated their own laws by not permitting two women in Mexico, a rape victim, and in Peru, a teenager whose fetus was severely malformed to receive abortions. With Colombia's decision, several Latin American groups that have been pressing for looser abortion laws see new opportunities to use the courts, many of which are changing and are seen as becoming more independent.

Roa is hopeful Chile will follow Colombia's lead, given the recent election of its first woman president, Michelle Bachelet. So far it seems unlikely. Bachelet has said that "the possibility of legalizing abortion is not part of my program." In Uruguay, President Tabare Vazquez has opposed any changes to the status quo, which prohibits most abortions except in extreme cases. "This decision influences and makes one think that other countries will advance on this issue," said Susana Chavez, director of the Center for the Promotion of Sexual and Reproductive Rights in Peru.

In Buenos Aires, Mabel Bianco, president of the Foundation for Studies and Research on Women, said the Colombia decision could propel plaintiffs to demand that governments adhere to the international treaties they signed requiring that they ensure a woman's right to health care. "I think this decision will prompt countries in Latin America that have stringent legislation to reflect that abortion is not ideological, but a health-care issue," Bianco said. Groups advocating changing the laws argue that the abortion laws in Latin America are counterproductive.

Latin America has a higher rate of abortion than even in Western European countries where abortion is legal and widely available. Four million abortions, most of them illegal, take place in Latin America annually, the UN reports, and up to 5,000 women are believed to die each year from complications from the procedure. The court's ruling will not be easy to put into effect, as health authorities ponder such thorny issues as how to confirm that a woman seeking an abortion was raped.

Church threatens to excommunicate justices

Some groups opposed to abortion vowed to fight on. "We are calling for civil disobedience, so Colombians do not follow these practices," said Jose Galat, rector of the Universidad Gran Colombia. He has paid for full-page newspaper advertisements criticizing abortion-rights advocates. "We're going to call for a referendum to let the people decide if abortion should be legal because the court cannot impose this." Catholic Church leaders reacted vehemently against the decision, telling the Associated Press that they would challenge the ruling and adding that Catholic women who seek abortions in Colombia could be excommunicated from the church.

Cardinal Pedro Rubiano said the procedure was reason for immediate excommunication. "All those who cause an abortion, including those protected by the law, are automatically excommunicated," said Rubiano, former president of the Conferencia Episcopal Colombiana (CEC). "The penalty also covers those who help commit it." He refused to say to reporters whether he would excommunicate magistrates who voted for depenalization but did say that "they opened the door."

Indigenous woman first to seek legal abortion

The test case revolved around Martha Gonzalez, who was told by doctors that she had uterine cancer. Doctors counseled that she abort her fetus or die. Colombian law at the time made the decision for her. Abortion was outlawed, no exceptions. She gave birth, and the 34-year-old's cancer is now inoperable. Gonzalez, a street vendor, is spending her final months asking for donations for her four children so she can die knowing they will be housed and educated. "This change in the law could have saved my life. I just wish this law existed before," Gonzalez said. Yolanda Mulcue, a 32-year-old woman of the Paez indigenous people, was the first to follow the path Gonzalez was prohibited from following. Doctors said she and her baby would die together if she did not get an abortion because her bone marrow was drying up and ceasing to produce blood. The mother of two children says she never would have sought the operation previously, but she and her husband agree that he and the children need her alive. She will later seek marrow transplants if one of her five siblings has compatible marrow.

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