



TRIBUNAL CONSTITUCIONAL

COMMUNICATION

Physician-Assisted Death Ruling No. 123/2021

1. The Constitutional Court has just sent to His Excellency the President of the Republic the ruling that decides the request for *prior abstract review* of the constitutionality of several rules of Decree No. 109 / XIV of the Parliament - with emphasis on paragraph 1 of article 2 - regarding the conditions in which the anticipation of physician-assisted death is not punishable and the consequent amendment to the Penal Code, which the Head of State submitted to the Court.
2. The Court issued, by a majority, the decision just pronounced, which, due to its complexity, starts to refer, in the simplest and clearest possible way, to the essential aspects that make it possible to understand its scope.
3. It should be remembered that, under the terms of that article 2, paragraph 1 - which is the norm that enshrines the legislator's option of not punishing the anticipation of physician-assisted death, when performed under certain conditions -, one person can only resort to the anticipation of physician-assisted death that is not punishable if he/she observes all the conditions foreseen in that article, among which stands out that such person is "in a situation of intolerable suffering, with definitive injury of extreme severity according to scientific consensus or incurable and fatal disease".
4. The President of the Republic raised two most specific doubts about constitutionality in relation to the following aspects of the latter condition:
 - 1st - The excessively indeterminate character of the concept of "intolerable suffering";
 - 2nd - The excessively indeterminate character of the concept of "definitive injury of extreme severity according to scientific consensus".
5. The Court considered, in the first place, that it is essential to consider the norm of the referred article 2, paragraph 1, as an indispensable whole.
6. Secondly, the Court considered - having concluded in the negative - the question of whether the inviolability of human life enshrined in Article 24 (1) of the Constitution of the Portuguese Republic (CPR) constitutes an insurmountable obstacle to a rule, such as that of the article 2, paragraph 1, here concerned, which admits the anticipation of physician-assisted death under certain conditions. In this regard, the Court considered that the right to live cannot be transformed into a duty to live in any circumstances. In fact, the conception of a person of a democratic society, secular and plural from the ethical, moral and philosophical points of view, which is the one that the CPR welcomes, legitimizes that the tension between the duty to protect life and the respect for personal autonomy in extreme situations of suffering can be resolved by means of political-legislative options made by democratically elected representatives of the people, such as the anticipation of physician-assisted death at the request of the person himself. Such a solution requires the establishment of a legal protection system that safeguards in material and procedural terms the fundamental rights in question, namely the right to life and the personal autonomy of those who ask for the anticipation of their death and those who collaborate in it. For this reason, the conditions under which, in the framework of this system, the anticipation of physician-assisted death is permissible, must be clear, precise, predictable and controllable.

7. Thirdly, and regarding the first question of constitutionality referred to by the President of the Republic in his request for *prior abstract review*, the Court found that the concept of “intolerable suffering”, although indeterminate, is determinable according to its own rules of the medical profession, so it cannot be considered excessively indeterminate and, to that extent, incompatible with any constitutional norm.

8. Fourthly, and with regard to the second question of constitutionality referred to by the President of the Republic in his request for *prior abstract review*, the Court understood that the concept of "definitive injury of extreme severity in accordance with scientific consensus", due to its imprecision, it does not allow, even considering the normative context in which it is inserted, to delimit, with the indispensable precision, the situations of life in which it can be applied.

9. Because of this insufficient normative solidity, which affects one of the conditions provided for in article 2, paragraph 1, of Decree No. 109 / XIV of the Parliament to access the anticipation of physician-assisted death, which is not punishable, the Court concluded that the rule contained in that article was found to be inconsistent with the principle of determinability of the law corollary to the principles of the democratic rule of law and the reservation of parliamentary law, arising from the combined provisions of articles 2 and 165, no. 1, paragraph b), of the CRP, by reference to the inviolability of human life, enshrined in article 24 of the same Basic Law.

10. In these circumstances, the Court pronounced the unconstitutionality of paragraph 1 of article 2 of Decree No. 109 / XIV of the Parliament and the consequent unconstitutionality of the other norms.