

## **BOTH LIVES MATTER**

### **IN EL SALVADOR**

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#### **INTRODUCTION**

In 2013 was presented before the Inter-American Court of Human Rights the case of Beatriz, a Salvadoran woman with a high-risk pregnancy.

In the present case<sup>2</sup> the Supreme Court of El Salvador managed to defend not only life, but also the country's sovereignty. The Court decision prevailed over the pressure exercised by international organizations that tried, again, to politicize the conflict to impose the abortion agenda in the poorest countries of Latin America.

What is interesting about this case is that mother and child lives were preserved until the child's natural death.

#### **FACTUAL CONTEXT**

Beatriz, 22 years old woman, suffered from discoid lupus erythematosus aggravated by nephritis. During pregnancy of her second child he was diagnosed with anencephaly.

On March 2013, in view of the serious condition of mother and fetus, the Perinatology Department Chief of the National Maternity Hospital requested an opinion of the Medical Committee, who concluded that *"the only way to decrease the risk of maternal morbidity is the termination of pregnancy due to the null probability of extra uterine life of the anencephalic fetus"*<sup>3</sup>. Despite this recommendation, the doctors refused to perform an abortion to avoid incurring in a criminal offense. They would now have to wait for the Attorney's General Office permission to terminate Beatriz pregnancy and avoid the penalty.

On April 11, 2013 a Beatriz lawyers, sought a protective order to the Supreme Court to allow Beatriz to get an abortion (requesting the protection of her rights to health and life), claiming that *"In cases such as Mrs. Beatriz case, health authorities can not shield their inactivity in the Attorney's General Office lack of authorization. It is their duty to provide assistance and urgent action when the need arises by applying the*

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<sup>2</sup> Ruling N° 310-2013 of the Constitutional Chamber of the Supreme Court of Justice of El Salvador.

<sup>3</sup> Idem. Page 2. Translation made by the author.

*relevant medical procedures*"<sup>4</sup>. If the court granted this request it would mean that if the doctor think is advisable to perform an abortion here in this case, he should not have to be obliged by law to request any permission from higher hierarchical authorities.

Two days later the Medical Committee authorized the termination of pregnancy considering both the child's fatal prognosis once born and the aggravation of mother's pathology as the pregnancy progressed. The risks involved were severe obstetric hemorrhage, the aggravation of lupus and renal failure, severe preeclampsia, postpartum infections and ultimately maternal death.

On April 17 the Constitutional Chamber of the Supreme Court ordered that, while the court considered the final decision in the case, "*the defendants authorities guarantee Beatriz's right to life and health, both physical and mental, providing the necessary and appropriate medical treatment for the preservation of such rights*"<sup>5</sup>.

Disappointed with this ruling, on April 18 Beatriz's representatives requested an emergency respond of the Inter-American Commission on Human Rights. On April 29, the Commission requested to the Government of El Salvador to adopt precautionary measures to protect Beatriz's life, personal integrity and health, following the recommendations made by the Medical Committee of the National Maternity Hospital.

On May 24, the Commission filed a request for an order to authorize the abortion to the Inter American Court on Human Rights (IACrHR) as it had been five weeks since the Medical Committee recommended termination of pregnancy.

On May 28, the Constitutional Chamber of the Supreme Court of El Salvador denied the petition, and also mandated that the authorities must continue to monitor the health of Beatriz.

The decision stated that "*from a constitutional point of view it can not be an interpretation of human life as an absolute and unlimited right, so to recognize the unborn child a superior and more important right against the mother's. An opposite interpretation would support a depersonalization and disregard for pregnant women's right*"<sup>6</sup>; but it was noted that the recognition of human life from the moment of conception requires the State, as principal, to ensure its protection and to implement the appropriate and necessary mechanisms and procedures to provide mother and child equal opportunities to enjoy the right to life.

The reasoning of the Salvadoran Court was based on the need to protect both mother-child lives, especially by the medical monitoring that allowed Beatriz and

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<sup>4</sup> Idem. Page 1. Translation made by the author.

<sup>5</sup> Idem. Page 3. Translation made by the author.

<sup>6</sup> Idem. Page 11. Translation made by the author..

her baby to be medically stable. The Chamber concluded that the authorities gave Beatriz an adequate medical care *"because they succeeded in stabilizing her health condition"*<sup>7</sup> and therefore ***"there is no alleged violation of fundamental rights"***<sup>8</sup>. The Chamber noted that *"the rights of the mother can not be given priority over the unborn child right and vice versa"* and that *"there is an absolute impediment to authorize the practice of abortion as it goes against the constitutional protection of the human person granted from the moment of conception"*<sup>9</sup>.

On May 29, the IACrHR issued a decision authorizing the abortion<sup>10</sup>, stressing that there is an obligation of the State to protect by law the medical team so they can exercise their functions based on the Medical Committee's opinion and thus to perform an abortion. However, the nation of El Salvador refused to comply with this decision for the reasons given by the Supreme Court in the case, as noted above<sup>11</sup>.

After a few days, on June 3, 2013 Beatriz gave birth to an anencephalic child, who survived for 5 hours.

## LEGAL CONTEXT

El Salvador has since 1997 one of the most pro life legal system in the world because it forbids abortion in all cases. Before 1997 the country legislation allowed abortion on three cases: when there is a risk to the health or life of the mother, in case of rape or statutory rape, and in case of incompatibility of life of the unborn child outside the womb.

This position was reaffirmed by the protection granted by the Salvadoran Constitution to the right to life, after the constitutional reform made in February 1999. Article 1 of the reformed Constitution establishes *"El Salvador recognizes the human person as the origin and the end of the activity of the State, which is organized to attain justice, judicial security, and the common good. **In that same manner, it recognizes as a human person every human being since the moment of conception**"*<sup>12</sup>. *In consequence, it is the obligation of the State to secure for the inhabitants of the Republic, the enjoyment of liberty, health, culture, economic well-being and social justice"*.

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<sup>7</sup> Idem. Page 21. Translation made by the author.

<sup>8</sup> Idem. Page 21. Translation and highlighted made by the author.

<sup>9</sup> Idem. Pages 22 and 23. Translation made by the author.

<sup>10</sup>See: Resolution of the Inter-American Court of Human Rights of May 29, 2013 Provisional Measures regarding El Salvador.

[http://www.corteidh.or.cr/docs/medidas/B\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/B_se_01.pdf)

<sup>11</sup> Ruling N° 310-2013 of the Constitutional Chamber of the Supreme Court of Justice of El Salvador

<sup>12</sup>National Constitution of El Salvador. Year 2014.

<http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/constitucion-de-la-republica>

The highlight belongs to us.

English version: <http://www.constitutionnet.org/files/El%20Salvador%20Constitution.pdf>

## CONCLUSION

Beatriz vs. El Salvador highlights the importance of the legal preservation of life to both mother and child, since they have the same value for the law. The current progress of science and technology make it highly feasible the conservation of both lives even when one of the two suffers from some kind of pathology.

While it is true that Beatriz had a disease that made risky her pregnancy, and the fact of having an anencephalic son, since she could give birth and permit her son to die of natural causes, it was possible to preserve her psychological health, avoiding the negative consequences that abortion has on the mental health of women<sup>13</sup>.

The right to life was protected adequately by El Salvador that refused the pressure of international organization (Inter American Commission and Inter American Court of HR) to perform an abortion. It is commendable how the State defended its sovereignty and the Supreme Court granted the Constitutional rights for all its inhabitants as equal human beings with the same dignity.

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<sup>13</sup> View psychological consequences of abortion, post abortion syndrome: <http://www.deveber.org/text/chapters/Chap2.pdf>