



## Colombia

# Between False Assertions and Flaws in Argumentation: The So-Called “Abortion Case” in the Colombian Constitutional Court

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## I. Introduction

**O**n May 10 2006, after a judicial process lasting for several months and involving six different complaints<sup>3</sup> and two requests to dismiss the case for lack of jurisdiction,<sup>4</sup> the Constitutional Court of Colombia declared the conditional constitutionality of Article 122 of the Criminal Code,<sup>5</sup> covering the crime of consensual abortion, holding that the punishment stated in such Article

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3 In chronological order, the complaints were filed by: Mónica Roa (April 14, 2005), Javier Oswaldo Sabogal and Óscar Fabio Ojeda Gómez (admitted on May 27, 2005), Mónica Roa, Pablo Jaramillo Valencia and Marcela Abadía Cubillos, Juana Dávila Sáenz and Laura Porras Santillana (these complaints were filed in December 2005 and, on December 14, 2005, the Constitutional Court announced that they would be analyzed together).

4 These are ruling C-1299 (2005), by means of which the Constitutional Court abstained from pronouncing a fundamental ruling regarding the complaint filed by Mónica Roa in April 2005, and ruling C-1300 (2005), by which the Court dismissed the complaint filed by Javier Oswaldo Sabogal and Óscar Fabio Ojeda for lack of jurisdiction. The arguments cited were procedural defects in the first case, and complaint substantial ineptitude in the second case.

5 Act 599, Article 122 (2000) of the Criminal Code:

“Any woman who has an abortion practiced, or lets another person practice an abortion on her, shall face one (1) to three (3) years in prison.

Any person who performs an abortion on a woman with her consent shall receive the same punishment”.

was unconstitutional when the “termination of pregnancy” was performed in any of the three factual circumstances as follow: (i) The imminent danger to the pregnant woman’s life or health; or (ii) any “malformation incompatible with the extrauterine life” present in the unborn; or (iii) the pregnancy being the result of an action that constitutes criminal carnal penetration by violence or abuse, or nonconsensual artificial insemination or fertilized ovum transfer. Similarly, the Court pronounced the unconstitutionality of the expression “or in a woman under 14 years of age” in Article 123 of the Criminal Code<sup>6</sup>—which classifies nonconsensual abortion—and of the entirety of Article 124<sup>7</sup>—which governs the circumstances mitigating the punishment, and eventual non-application of the punishment, for the crime of abortion which provides for the same factual suppositions that the Court excluded as punishable in Article 122—.

This case—as almost all other cases of this kind—remained the center of public debate during the months of trial and even after that, since the four-month delay—from the rendering of the ruling until its official publication – led to numerous speculations about the scope of the decision.<sup>8</sup>

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6 Act 599, Article 123 (2000) of the Criminal Code:

“Any person who performs an abortion on a woman without her consent or on a woman under fourteen years of age shall face four (4) to ten (10) years in prison”.

7 Act 599, Article 124 (2000) of the Criminal Code:

“The punishment for the crime of abortion shall be reduced to three quarters when the pregnancy is the result of the criminal action of nonconsensual and abusive carnal penetration, or nonconsensual artificial insemination or fertilized ovum transfer.

Paragraph: In the events mentioned in the previous subsection, when the abortion is performed under special, abnormal motivating conditions, the judicial officer may not apply the punishment if it is not necessary in that specific case”.

8 Between April 14, 2005 and May 10, 2006, the two main opinion newspapers in Colombia—*El Tiempo* and *Revista Semana*—published 460 press articles, editorials and readers’ letters regarding the case. Between May 11 and December 31, 413 other pieces were published. Moreover, during the trial, 1081 legal interventions were filed, some of which were filed by groups of up to 180 people, which has never seen before in the history of Colombian case law. The previous facts do not include the interventions sent by minors and the more than 400 thousand signatures of citizens sent to the Court as a sign of opposition to the plaintiffs’ claims.



## II. The Arguments of the Parties

The arguments posed by the plaintiffs in favor of the decriminalization of abortion can be basically summarized as follows:

1. The *unborn's* life certainly is a legally protected interest but does not have the nature of a right.
2. Banning abortion in all cases violates the basic rights to life, free development of the personality, sexual and reproductive freedom, dignity, health, equality, protection against cruel, inhuman and degrading treatments, and state commitments as regards Human Rights.
3. Banning "therapeutic abortion" imposes an excessive burden on women, who are forced to sacrifice their life and health by continuing with a pregnancy that, as a matter of fact, is risky even for the unborn.
4. Banning abortion in those cases in which a malformation incompatible with the extrauterine life of the unborn produces an excessive burden on women in favor of a gestating life with no future. Otherwise, pregnant women are forced to deal with the traumatic experience of giving birth to a "monstrous creature", thus subjecting them to humiliation and contempt.
5. Banning abortion in cases of sexual violence adds further suffering to the already tragic situation of raped women, making their suffering even greater. More specifically, the rape is perpetuated by obliging women to be the mothers of their rapist's child. Not only does this violate women's dignity but it also ignores the state's duty to fight sexual violence, especially in a situation such as the national conflict in Colombia in which rape and other ways of sexual violence have been used as weapons.
6. Ignoring the actual consent granted by women under fourteen years of age to an abortion and, therefore, considering all abortions practiced on women under fourteen as nonconsensual, seriously violates the right of girls, who, instead of being preferentially protected by the state, are forced to continue a pregnancy to birth for which they are neither physically nor psychologically prepared.
7. Banning abortion under all circumstances overlooks the recommendations and policies by the Committee on the Elimination of Discrimination against Women and, consequently, overlooks some binding sources of international law that, in dealing with human rights, are understood as linked to the Constitution, in accordance to article 93 of the Constitution of Colombia considering they are binding interpretations of an international human rights treaty signed by Colombia.

8. Banning abortion under all circumstances perpetuates a patriarchal and misogynist ideology that degrades women to the point of considering them mainly as living wombs, and imposes on them the social role of being mothers.
9. The Court is not obliged by any previous jurisprudential criterion insofar as there is no formal or material *res judicata* on these points, and the legal, social and cultural circumstances have changed significantly over the last decades.

On the other hand, defenders of the law argued that:

1. Article 11 of the Political Constitution of Colombia sets forth the absolute protection of the right to life regardless of age, degree of physical development, health, feasibility for life after born, or circumstances of conception. The mandates in the Universal Declaration of Human Rights, the American Convention on Human Rights (Pact of San Jose) and the U.N. Convention on the Rights of the Child are of the same tenor.
2. Truly acknowledging the principle of respect for human dignity as a basic mainstay in the legal system is only logical within a framework of an absolute understanding of dignity, that is, by acknowledging the intrinsic value and inviolability of every human being and by acknowledging existence as a human being as the foundation of rights. Article 94 of the Political Constitution of Colombia means that fundamental rights are not only the ones specifically mentioned in its provisions, but also all other rights inherent to a human being (i.e. an ontological criterion is resorted to as a foundation for those rights). Therefore, rights apply not to human beings with certain characteristics, but to every person for the mere fact of being human.
3. From the very moment of conception, the unborn is an individual of the human race, different from its mother, on whom it depends only accidentally (environmental dependence). Moreover, it is widely accepted by the scientific community that a being formed by the union of an ovum and a spermatozoid is an organism genetically different from its parents and clearly belonging to the human race.
4. Accepting that the unborn has rights but of less importance than the mother's means applying a discriminatory criterion to fundamental rights, to which, by definition, everyone is entitled.
5. Accepting "therapeutic abortion" entails discrimination based on age and physical development, in favor of the strongest individual; accepting



“abortion on account of malformations” entails making the quality of life a determinative criterion of human rights, thus discriminating against the weakest individual; and accepting abortion in cases of rape entails transferring the rapist’s punishment and guilt to the unborn child; moreover, it is not a true remedy, since the death of the unborn does not “erase” the past rape.

6. In any case, the Constitutional Court had already pronounced fundamental rulings regarding abortion in four specific cases, and, despite some of those decisions having been decided while another Criminal Code was in effect, material *res judicata* is in force, as long as the provisions are practically identical.

### III. Review of the Opinion of the Majority in the Constitutional Court<sup>9</sup>

In essence, the Constitutional Court accepted the arguments by the plaintiffs, except for the claim that the recommendations by the CEDAW committee were obligatory and part of the Colombian Constitution, though the court noted it was still compulsory for the court to consider them when reaching its decision.

As regards its jurisdiction in rendering judgment on a topic specifically dealt with in four decisions, and incidentally on other eight occasions, the Court considered there was no formal *res judicata* insofar as the provisions, though being almost identical in their wording, were not parts of the same set of regulations —because a new Criminal Code was adopted—nor did they refer to the same subject matter, for the rules presented subtle variations in their texts and slight changes in measuring the punishment. On the other hand, the Court referred to the theory of the “Living Constitution” to justify its detachment from the *ratio decidendi* of previous judgments, thereby employing the questionable thesis that what was constitutional ten years ago had stopped being so at the moment the new ruling was pronounced. In the Court’s opinion, a gradual and clear variation had been taking place in the Court’s criteria. In reality, the reader should understand this statement as the consequence of the change of magistrates in the Supreme Court, most of whom are now in favor of abortion.

Regarding the fundamental issue, the Court resorted to an “equitable” criterion by which, apparently, it was admitted that all stances were right. Thus,

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<sup>9</sup> The decision is in Ruling C-355 (2006), with a joint paper by the magistrates Jaime Araújo and Clara I. Vargas.

it considered that, as a general rule, penalization of abortion is justified insofar as the life of the unborn, though not exactly a right, is an interest legally protected by the state (in the following section we will go over this crucial aspect in the ruling). However, the Court held, the general protection of the *unborn's* life cannot be given such prominence that it results in severely ignoring the fundamental rights of women which, unlike the purported rights of the unborn, are genuine rights and not just expectations. In a sense, the Court's argument was founded on an alleged "scientific doubt" as to when human life starts, which then generated legal uncertainty regarding the moment in which the right to life begins. According to the Court, the balance between fetal and women's rights is disrupted in cases concerning sexual violence, danger to the woman's health or life, and malformation incompatible with the extrauterine life of the unborn, and to pretend otherwise seriously violates the rights of women who, pursuant to the plaintiffs' opinion, are degraded to the point of being considered "living wombs". The Court specially insisted that abortion was a necessary measure to remedy raped women's dignity and a measure of protection against crimes of sexual violence – a clear example of a fallacious and unreasonable conclusion.<sup>10</sup>

The Court also suggested in its *obiter dicta* that abortion was a fundamental right of women and declared, *ultra petita*, the inadmissibility of institutional conscientious objection.

It is necessary to highlight the inappropriate legal conduct by the Court, which took more than four months from rendering the judgment until its official publication –something completely unusual in other countries' justice systems–. During that period of time, the court, in effect, pronounced its judgment in press releases on several occasions and in a confusing way, contrary to the regulations. This situation was aggravated by the fact that the press releases' content and the interventions by the magistrates in the media were inconsistent, due to the

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10 The fallacy in question refers to the unreasonable conclusion or *ignoratio elenchi* mentioned.

It occurs when the conclusion drawn from a certain reasoning does not necessarily stem from the premises alluded. The Court's reasoning in this case was fallacious inasmuch as it goes as follows: Raped women's dignity must be remedied; therefore, abortion should be decriminalized in cases of rape. The argumentative flaw lies in this "leap" in proving the facts. Indeed, in order to conclude that the decriminalization of abortion in cases of sexual violence arises from the need to remedy raped women's dignity, it is first necessary to prove that abortion is an effective means to achieve said purpose. Proving so was never considered by the Court, which simply assumed that abortion was truly and undoubtedly capable of remedying raped women.



majority judges' trend to "expand" on the decision's content—inaccessible at that time to the public—on every occasion.

In this sense, it is worth noting that—as can be seen in the dissenting opinions of the magistrates Monroy and Escobar, as well as Tafur, and in the session minutes—the judges who wrote the majority opinion introduced elements to its text after pronouncing judgment, which were never discussed in the Plenary Chamber.<sup>11</sup> The most noticeable issue was the inadmissibility of institutional conscientious objection against abortion.

The ruling in favor of the plaintiffs required that the Court use various argumentation "strategies" to justify its failure to follow the four prior constitutionality rulings directly related to the illegality of abortion<sup>12</sup> and to at least eight other judgments<sup>13</sup> which acknowledged that the unborn was entitled to rights and which dealt with the issue of the moment at which an entity has the right to be recognized as a person before the law in the Colombian legal

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11 The Constitutional Court of Colombia is made up by a Plenary Chamber, and several Chambers of Constitutional Tutelage Selection and Constitutional Tutelage Review:

Plenary Chamber (*Sala Plena*): it is made up of nine magistrates in charge of ruling actions relating to unconstitutionality ("C" Rulings), and all matters related to constitutional tutelage (Unifying Rulings or "SU" Rulings).

Constitutional Tutelage Selection Chamber (*Sala de Selección de Tutelas*): it is made up of two magistrates in charge of deciding what case files relating to the protection of a constitutional right will be analyzed by the Constitutional Tutelage Review Chamber.

Constitutional Tutelage Review Chamber (*Sala de Revisión de Tutelas*): it is made up of three magistrates in charge of the tutelage actions selected to be examined ("T" Rulings), pronounced by the different judicial reports.

A **constitutional tutelage action** is a mechanism of protection of fundamental constitutional rights that can be filed before any judge, who shall immediately take all measures he deems necessary to restore the right that has been deprived by means of illegal actions, and to ensure the victim's adequate protection. The Constitutional Court (through its Constitutional Tutelage Selection Chamber and its Constitutional Tutelage Review Chamber) is responsible for reviewing the judgments made by all the judges and courts of the Republic when they have decided any tutelage action. A similar action is called "amparo" in Argentina (see footnote N° 64 in the Argentinean report), and "protection remedy" in Chile (see footnote N°23 in the Chilean report).

12 Specifically, the rulings are C-133 (1994), C-013 (1997), C-591 (1997) and C-647 (2001).

13 Rulings T-223 (1998), T-377 (1998), T-727 (2005), T-639 (2005), T-128 (2005), T-872 (2004), T-501 (2004), T-063 (2004),

system. The Court decided to ignore the main arguments that supported the previous decisions altogether, grounded on the briefly and quickly outlined idea that there exist numerous answers explaining the beginning of human life, “the evaluation of which is not incumbent on the Constitutional Court”<sup>14</sup>. The Court also stated—without any support for this assertion—that, since biological “life” and the legally-protected “right to life” were not the same, the Court was free to analyze the constitutionality of the laws challenged. (If the “life” of the unborn and “right to life” were the same thing legally, the Court would have been unable to do so).<sup>15</sup> Finally, it presented a careful selection of passages from dissenting opinions in previous constitutional decisions, as support for an alleged “new conception of abortion in Colombia”.<sup>16</sup>

A key aspect in the fallacious argumentation of ruling C-355 (2006) is the defective exercise of “weighting of rights”, by which the magistrates tried to measure two “realities” previously labeled as essentially different: the pregnant women’s “right to freedom” against the constitutionally protected “*unborn’s* welfare” (not necessarily a “right” yet)<sup>17</sup>. Although at times the Court tries to present the unborn’s life as a right, it always reminds us that it is a “developing life”, contrasting with the pregnant women’s “already developed life”<sup>18</sup>. It also stated without hesitation that there is no equivalence between the “mother’s rights to life and health and safeguarding the fetus”, and then reiterated the unconstitutionality of the measures that protect the unborn<sup>19</sup>.

Also, the Court weighted rights based on selected foreign jurisprudence that supported the decriminalization of abortion (not even referring to any

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14 Ruling C-355 (2006), paragraph 5.

15 Cf. *Ibid.*

16 An in-depth analysis of the argumentation game played by the Court in this judgment can be seen in Mora Restrepo, Gabriel, *Justicia constitucional y arbitrariedad de los jueces. Teoría de la legitimidad en la argumentación de las sentencias constitucionales*, Buenos Aires, Marcial Pons, 2009, esp. p. 155–214.

17 As a matter of fact, the Court notes that the “starting point” of its constitutionality judgment is its “statement contained in section four of this decision, relating to the fact that the unborn’s life is a constitutionally protected interest” (Ruling C-355 (2006), paragraph 10.1). The implications of labeling the *unborn’s* life as “an interest” and not as “a right” go further than mere semantics, as can be seen in the successive reasons provided by the Court in said ruling.

18 This argument is expressly stated by the Court in Ruling C-355 (2006), paragraph 10.1.

19 Cf. *Ibid.*





opposing precedents), and it granted legal value to the *suggestions* made by international Human Rights surveillance and monitoring bodies (such as the CEDAW Committee), and *non-jurisdictional* pronouncements made by entities like the Inter-American Commission on Human Rights. They are, of course, *non-binding reasons* but, in the majority judges' opinion, become the most conclusive reasoning necessary to reach the final result in exercising the weighting of rights: the pervalence of women's rights and the consequent sacrifice of the unborn's life.

#### IV. The Magical Leap from the “Decriminalization” of Abortion to the “Fundamental Right to Abortion”

Besides its impact on public opinion, Ruling C-355 (2006) has symbolized an inevitable milestone in the history of judicial precedents in Colombia and Latin America. The judgment is part of a process of “liberalization of gender policy” in the region's countries and, it was planned as such by the international NGO *Women's Link Worldwide*, which directly promoted and sponsored the claim for abortion. In fact, the organization chose Colombia as a strategic country in the region because it has a constitutional court prone to “political activity” and for being one of the most influential constitutional courts in the Latin-American world.

Ruling C-355 (2006) has immensely influenced later developments of state policy on abortion. Since the pronouncement of this judgment, several supposed “developments” of legal precedent have taken place, among which it is worth mentioning the incorporation of abortion in the Compulsory Health Plan (supposedly by virtue of having been recognized as a fundamental right), the inadmissibility of judicial officers' and institutional conscientious objections, and the punishment to all public and private institutions that refuse to perform an abortion.<sup>20</sup>

A significant case was Ruling T-585 (2010),<sup>21</sup> by which the Eighth Chamber of the Constitutional Court, held that, based on ruling C-355 (2006) on abortion decriminalization, a true and “undeniable” *fundamental right to abortion* or a *fundamental right to the voluntary interruption of pregnancy* has been established in Colombia.<sup>22</sup>

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20 See, for example, Ruling T-388 (2009), M. P. Humberto Sierra.

21 M. P. Humberto Sierra.

22 Cf. Ruling T-585 (2010), *passim*.

In this ruling there are several elements that are of particular importance from the point of view of legitimacy; that is, they demonstrate a tendency to ideologize constitutional rulings in debatable cases like abortion.

One of said defects is related to the public knowledge of the ruling, which was published by the media before being duly published and notified by the Constitutional Court.<sup>23</sup> Another element is the obvious leap from decriminalizing of abortion (and thus of its exceptional nature, pursuant to the cases specifically allowed in 2006) to establishing abortion as an alleged fundamental right by the Constitutional Tutelage Review Chamber<sup>24</sup> – in opposition to the Plenary Chamber’s judicial precedents, which have a superior legal value. It is still surprising that the so-called “undeniable” character of the right to abortion, mentioned in the ruling, had to be “explained” and “supported” by the Chamber on no less than twenty-two occasions while the ruling was being written. This had to be explained, of course, because the alleged undeniable character of the right to abortion had not been even supported briefly or implicitly by the Court in its 2006 ruling.

The Court’s analysis in Ruling T-585 (2010) was based on the premise that the Court had established the right to reproductive self-determination as a fundamental right in 2006. However, that was not what the Court held in 2006. Rather the Court’s ruling in 2006 was limited to forced pregnancies and involuntary sterilizations and contraceptive methods imposed without consent as violations of laws and treaties on human rights. Furthermore, though the Court did refer to the 1994 International Conference on Population and Development in Cairo, the reference therein to reproductive rights was only regarding their freedom to decide on the number and spacing of their children. Thus, in fact, at no point did any of the sources mentioned by the Court state that “reproductive self-determination” is an aspect of a so-called “fundamental right to abortion.” (Moreover, this understanding of “reproductive health” has been confirmed at the international level. For example, the European Parliament has expressly stated that in no case does the Cairo conference support, suggest, establish or determine that reproductive health includes abortion).<sup>25</sup>

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23 Indeed, the ruling was published online by *Diario El Tiempo*, on Friday, December 3, 2010, at 10.05 p.m. For more information about this and other decisive aspects of Ruling T-585 (2010), please see “Motion for Dismissal”, filed by the Public Prosecutor, on December 13, 2010 (available from: <http://www.procuraduria.gov.co/descargas/131210comunicacion.pdf>).

24 One of the three chambers that make up the Constitutional Court of Colombia. See footnote N° 11.

25 European Parliament, December 4, 2003: Oral Question (H-0794/03) for Question Time at



In addition, in Ruling C-355 (2006), the Court did not equate reproductive self-determination with the so-called “fundamental right” to abortion. On the contrary, it stated that “no order to decriminalize abortion or to prohibit criminal regulations by national legislators is implied” from “the constitutional and international rules” analyzed in regard to women’s fundamental rights.<sup>26</sup>

In addition, Ruling T-585 (2010) instructs health care entities to implement a “quick diagnosis protocol” if (i) doctors speculate that the mother’s physical and mental health is in danger or (ii) the mother claims the same. Said instruction is preceded by the false assertion by the Court that the lack of such a protocol in the past meant that the right to abortion could not be realized.<sup>27</sup> On the contrary, the case file does not show proof of the patient’s having requested the health care entities to practice an abortion before the legal proceeding, nor is there medical evidence of a threat to life related to the pregnancy.<sup>28</sup> Furthermore, once the Constitutional Tutelage action<sup>29</sup> was filed, the judge of original jurisdiction ordered that a medical examination be performed, and the Instituto de Medicina Legal (Legal Medicine Institute) concluded that the patient enjoyed good health in general—thus, not meeting at least one of the legal requirements to have access to abortion—though the Institute still advised an “examination by a gynecologist”. Following this advice, the judge ordered a new examination by a gynecologist-obstetrician, who stated that the patient “does not have at the moment” any disease that “puts her life at imminent risk as established by the law to interrupt the pregnancy”.<sup>30</sup>

Finally, another significant point is that the author of the majority

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the part-session in December 2003 pursuant to Rule 43 of the Rules of Procedure by Dana Scallon to the Council. In the written record of that session, one reads: Posselt (PPE-DE): “Does the term ‘reproductive health’ include the promotion of abortion, yes or no?” - Antonione, Council: “No”.

26 Ruling C-355 (2006), paragraph 7, in fine.

27 Cf. Judgment T-585 (2010), No. II-30.

28 The “Motion for Dismissal”, filed by the Public Prosecutor (p. 26 and subsequent pages), states that the Constitutional Court may have “altered” the evidence in the case file, since it was confirmed that a medical prescription stated “threat of abortion”—referring to the patients medical records—instead of “request of ‘abortion’”, as transcribed by the Court. The Prosecutor confirms the foregoing by having a phone conversation with the case treating doctor herself, as can be read in the motion (cf. p. 27).

29 See footnote N° 11.

30 Cf. *Ibid.*, p. 15.

opinion in the case knew that the woman had aborted outside the health system,<sup>31</sup> which means she had aborted illegally (i.e., she was not covered by the three exceptions permitted in the 2006 court decision). Thus, in the Public Prosecutor's opinion the judgment condones criminal behavior.<sup>32</sup>

## V. Conclusion

Both the decision and the procedure followed by the Court when deliberating, writing and publishing Ruling C-355 (2006) give rise to several legal objections, which, in turn, amount to being ground for nullity requests to the Court, however unsuccessful. Beyond doubt, the most serious of all defects, which represents an obvious judicial fraud, was adding a paragraph about the inadmissibility of institutional conscientious objection while writing the judgment—four months after making the decision in the Plenary Chamber—this being an aspect that was not debated by the judges and, therefore, not put to the vote. The fact that this occurred is confirmed by the official Court Records as well as by the assertions of the dissenting judges.<sup>33</sup> It is also worth noting that, based on this paragraph, the Court has been developing its legal precedents in order to annul the right to conscientious objection, not only for institutions—public or private—but also for judicial officers.

Similarly, the way a Constitutional Tutelage Review Chamber<sup>34</sup> treated

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31 Cf. Judgment T-585 (2010), N° I-17.

32 Cf. "Motion for Dismissal", cit., esp p. 26 and 65.

33 Indeed, in their joint dissenting opinions to Ruling C-355 (2006), magistrates Monroy and Escobar state: "We want to make it clear that the reason [for dissenting with the ruling] refers exclusively to the issues discussed and decided upon in the Plenary Chamber, and not to the other issues (such as the inadmissibility of institutional conscientious objection or the immediate application of the ruling without a previous regulation) that were not defined within the deliberations that led to the ruling pronouncement, as can be confirmed by the corresponding records". Also, magistrate Tafur states the following: "this dissenting opinion only contains aspects included in said paper and, therefore, were not elements that the Plenary Chamber should have analyzed or debated, such as the elements related to very important issues having special incidence like the inadmissibility of institutional conscientious objection or the immediate entry into force and legal effect of the ruling, without action by a constitutionally competent body, which is the usual course and should have been followed here".

34 See footnote N° 11.



abortion in Ruling T-585 (2010) four years after a contrary ruling denotes not only a lack of commitment and respect towards jurisprudential precedent, but is also a clear, unjustified exercise of judicial activism, which leads to the conclusion that, in cases like abortion, there seems to be definite “ideological impositions” or “political agendas” at work. Moving from the decriminalization of abortion in three particular circumstances to its alleged character as a fundamental right, by altering the facts and overlooking the possible crimes committed by the plaintiff, leads to the conclusion that in cases like the current one, it is not possible to find a rational criteria in the rulings, which succumb to the arbitrariness of those who hold absolute power.<sup>35</sup>

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35 Two recent decisions by the Court should be noted. First, in February 2012, the Plenary Chamber rejected the request to annul the ruling filed by the General Prosecutor of Colombia, holding that Ruling T-585 (2010) was in accordance with the decision of 2006 (“if the fundamental right to reproductive self-determination comprises the voluntary termination of pregnancy, then the latter is also fundamental.”) The second decision was Ruling R-841 (2011), published on February 26, 2012. In this ruling, the Court states that abortions can be practiced at any time during the gestating period, even during the 9th month of pregnancy. The ruling states that one of the factors to be considered is “her desire” to have an abortion. This final remark—making preeminent “[the woman’s] desire”—seems to indicate that in the future, the Court will accept fewer requirements that limit abortion, and demonstrates the judges’ growing disrespect for human life.