

Dominican Penal Code: Endless Struggle to Protect Life

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Background

Currently the Dominican Republic is one of the few countries in the world where abortion is totally prohibited. The Dominican Penal Code thus criminalizes it in its article 307,² which condemns anyone who by any means causes or cooperates directly or indirectly to cause the abortion of a pregnant woman, as well as the woman who submits to this practice.

In spite of the fact that these regulations date from 1884, the Dominican Republic has been immersed in intermittent procedures in the National Congress in search of a new Penal Code. However, since its inception, the proposals to modify the Code have contemplated maintaining the total criminalization of abortion.

Former President Leonel Fernández was the first to propose the creation of a new Penal Code, which is why in 1997 he formed a commission of jurists to draft said piece of legislation. However, in 2006 when the draft Penal Code was sent to him for promulgation, this president pointed out some modifications related to the increase in the maximum penalty and the need to include domestic violence and gender violence, so he returned it to the Chamber of Deputies to include them. After these observations, the debates did not continue and the piece ended.

Eight years later in 2014, and after certain legislative and political vacillations, Law No. 550/2014 that established the new Penal Code with completely penalized abortion was approved. However, history repeated itself when the president, former president Danilo Medina, observed and returned this aforementioned law for not having contemplated the three exemptions of criminal responsibility for the crime of abortion, which referred to (i) pregnancy as a result of rape or incest, (ii) risk to the mother's life and (iii) incompatibility of the fetus with life outside the womb.

This is why on December 16, 2014, the Chamber of Deputies accepted the suggestions of the former president and included in article 110 the exemptions of responsibility for the doctor who, in the attempt to save both lives, interrupts the pregnancy, as well as the three causes, with the exception that its configuration and protocol requirements would be referred to a

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² Law 2274 that establishes the Dominican Penal Code of August 20, 1884, Article 307. Available at: https://www.oas.org/juridico/spanish/mesicic2_repdom_sc_anex_21_sp.pdf.

special law. Immediately afterwards, that lower house sent the Penal Code to the Executive Power, which did so on December 19 of that same year.

In this way, the Dominican Republic had for the first time decriminalized grounds in a norm, although somewhat timidly because, as we have pointed out, the Penal Code itself referred its regulation to a special law. Fortunately, this code had a one-year *vacatio legis*³ and a few days before it came into force, the Constitutional Court declared it unconstitutional due to irregularity in the approval process, holding that the presidential observations should have been submitted to the approval of both chambers and not only to the Chamber of Deputies.

This meant that a new legislative process had to be started in Congress with a view to obtaining the long-awaited Penal Code. This is why in 2016 the Chamber of Deputies and the Senate began discussions of the Penal Code, but on this occasion the text that included the three grounds had been eliminated; therefore, after the congressional debates, the draft law was approved without the grounds.

Unfortunately, when it was referred to former President Danilo Medina for approval, he observed it again because it criminalized abortion without exception. A year later, reiterating their position of independence with the Executive Power, the Senators again approved the Penal Code without the grounds and passed it to the Chamber of Deputies for study. However, this piece remained stagnant in the Chamber of Deputies until it finally expired before the legislature. As will be developed below, it would not be until May 2021 that the draft Penal Code was submitted again to the Chamber of Deputies.

Pressure on congressmen and attempts to violate the separation of powers

As can be seen, the necessary modification of the Penal Code has kept Dominican society in suspense for decades without a favorable and definitive result being obtained to date. That is why when the current president, Luis Abinader, came to power in August 2020, the population was attentive to the position that he would have to assume regarding said modification of the Penal Code.

In December 2020, president Abinader said in an interview for the international newspaper *El País*⁴ that he supported the three causes that exempt the practice of abortion from penalty. The news caused a stir in Dominican society, rejection by the pro-life group and a feeling of support from abortion groups who always found advocacy on this issue in the current president's party. However, in March 2021 the leader assured that his support for

³ In civil law, the *vacatio legis* is a period of time between announcement of the legal act and its moment of entry into force.

⁴ Luis Abinader: "In the new Cold War we need a strategic relationship with the United States", *Diario El País*, December 26, 2020. Available at: <https://elpais.com/internacional/2020-12-26/luis-abinader-en-la-nueva-guerra-fria-necesitamos-una-relacion-estrategica-con-estados-unidos.html>

the three causes was a personal position and that he would not impose his criterion on the congressmen.⁵

Despite the clear position of the president, the claims of the abortionist groups did not wait for the Executive Power to demand that the congressmen of his party include the three grounds in the draft Penal Code and vote in favor of them.

For the benefit of the pro-life cause, the majority of Dominican legislators are committed to the protection of life and women, which is why from the beginning the “pro-causal” legislators saw the fight in Congress as lost. For this reason, these groups initiated strong media campaigns with public figures and influencers advocating for the inclusion of the three grounds in the Penal Code. They even established a camp in front of the National Palace for months in which day and night they demonstrated and demanded that the president impose his position on the legislators of his party.

Faced with this scenario, the pro-life groups also prepared from their battle positions. Every day more young people joined the cause and bravely made their public positions on social networks and made themselves heard within the Congress itself.

However, there was no lack of attempts and requests from pro-abortion groups to the deputies that make up the Permanent Commission of Justice to include the grounds in the draft Penal Code. Even taking into consideration the aforementioned request, said Commission definitively decided to maintain criminalized abortion in the Penal Code, which is why the final report that would be evaluated in the Plenary of the Chamber of Deputies would not include the three causes.

A few days before the voting began in the Chamber of Deputies, the Political Committee of the Dominican Liberation Party, a party prior to that of the current government and that was in power for the last 16 years, announced at the end of April 2021 its support for the decriminalization of abortion on three grounds. This, added to the position of the government in power and the party line of other smaller political parties, tried to create strong pressure on the pro-life congressmen who had to remain faithful to their convictions and the people who elected them even though that could represent the rejection of their own party.

Voting in the Chamber of Deputies

On April 28, 2021, the Chamber of Deputies met to vote for the draft Penal Code, as well as for the dissenting report of some members of the Permanent Commission of Justice in which

⁵ Abinader has his position on abortion, he knows what it is. Diario Libre, March 18, 2021. Available at: <https://www.diariolibre.com/actualidad/abinader-tiene-su-posicion-sobre-el-aborto-conoce-cual-es-DO25094887>.

they again proposed the issue of the causes to despite the fact that they had already been rejected by said commission.

Despite partisan pressure and media and political blackmail, the Plenary of the Chamber of Deputies approved the Penal Code in the first reading with completely penalized abortion with a vote of 146 deputies in favor and 14 against. Likewise, the dissenting report that purported to include the grounds was rejected with an overwhelming majority of 111 votes against and 45 votes in favor.

In accordance with the provisions of articles 98 and following of the Dominican Constitution⁶, it now remains for the Penal Code to be approved in the second reading in the Chamber of Deputies and then be sent to the Senate to exhaust the same process. Once it is approved in both chambers, it would be sent to the Executive Power for enactment or observation.

We understand that President Luis Abinader would not want to go down in history as the third president who prevented the promulgation of the long-awaited and necessary criminal law, which is why we understand that he would promulgate the Penal Code once it is sent to him. We base this conclusion, firstly, on his firm stance not to interfere in the affairs of the Legislative Power and, secondly, on the fact that he has publicly said that the issue of abortion is for Dominican society to decide by means of referendum. Whether the referendum will proceed or not is not the focus of this report.

The fight goes on

Although with regard to the Penal Code the defeat for pro-abortion parties was overwhelming, they remain committed to their frustrated attempts to have the three causes included in the Penal Code. Clearly, these attempts have been unsuccessful since the Chamber of Deputies voted against the three grounds and the approved Penal Code report does not contemplate them.

It should be noted that currently a special abortion bill rests on the three grounds, but the line of argument of abortionists has been to demand its inclusion in the Penal Code because they know that if they leave it for a special law it can last for years being discussed in Congress, unlike the Penal Code, which has already become a matter of national urgency and there is a commitment to approve and promulgate said norm.

Recently, public hearings⁷ were held before Congress with the objective of listening to the population regarding other pending matters of the Criminal Code report, matters that we, once again, did not refer to the issue of abortion for the aforementioned reasons. However,

⁶ Constitution of the Dominican Republic, January 26, 2010, article 98 et seq. Available in: <https://www.cijc.org/es/NuestrasConstituciones/REPÚBLICA-DOMINICANA-Constitucion.pdf>.

⁷ They are sessions within the congress in order for the population to express its opinion on certain bills that are being studied in a commission. You can go in a personal capacity or as a representative of an organization.

the pressure is such that the pro-abortion forces demanded again in these public hearings the decriminalization of the three causes.

Even the Resident Coordinator of the United Nations (UN) in the Dominican Republic, Mr. Mauricio Ramírez Villegas, reproached the country for not having responded effectively to the supposed commitments assumed through the ratification of various national instruments. In this way, said representative violated Article 4 of the Vienna Convention on Diplomatic Relations⁸, which prohibits him from meddling in the internal affairs of a State.

Without doubt, the struggle for the life, health and dignity of unborn Dominican women and children continues. The internal pressures and those felt internationally every day are increasing, as is the budget that finances this cause.

Despite all we postulated here, we have a Congress with a pro-life majority, as well as a Constitutional Court with a majority in defense of life, so the outlook in the near future is tilted in our favor, but mostly in favor of the most powerless and vulnerable.

⁸ Vienna Convention on Diplomatic Relations of April 18, 1961. Available at: <https://www.oas.org/legal/spanish/documentos/convencionviena.htm>.