

ADPF 54

Pregnancy Termination of Anencephalic Fetuses

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Marco Aurélio

Decision Date:

April 12, 2012

Matter:


CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) challenging the understanding that the pregnancy termination of an anencephalic fetus is a crime of abortion. It argues that anencephaly is a medical condition that prevents the fetus from surviving outside the womb. Therefore, the obligation to continue the pregnancy would be unreasonable because it would violate women's rights to dignity, autonomy, health, and sexual and reproductive freedom (article 1, item IV; article 5, item II; article 6; and article 196 of the 1988 Federal Constitution).

LEGAL REASONING

- 1.** Anencephaly is a congenital disorder in which the fetus has a severe neurological defect that affects the functions of the cortex and cerebral hemispheres, resulting in a lack of sensitivity, mobility, and integration of almost all bodily functions. This condition makes life outside the womb impossible. Therefore, there is no need to invoke the right to life of the anencephalic fetus, since there is no potential for life.
- 2.** This condition causes great suffering to pregnant people, who have the right to decide to continue the pregnancy freely and autonomously. Criminalizing the termination of pregnancy in these cases would violate the right to dignity, autonomy, and health.
- 3.** Moreover, Brazil is a secular State, and its legal system must maintain a stance of religious neutrality. In this sense, religious beliefs or private moral convictions cannot influence public health policies and criminal laws.

DECISION OF THE COURT

The Federal Supreme Court declared unconstitutional the interpretation of the Penal Code that considered the termination of the pregnancy of anencephalic fetuses a crime. The Court also guaranteed women the right to decide whether to continue the pregnancy in such cases, based on the fundamental rights to human dignity, health, autonomy of will, and sexual and reproductive freedom, protected by the 1988 Federal Constitution.

ADDITIONAL NOTES



part 1



part 2



part 3



part 4



part 5

