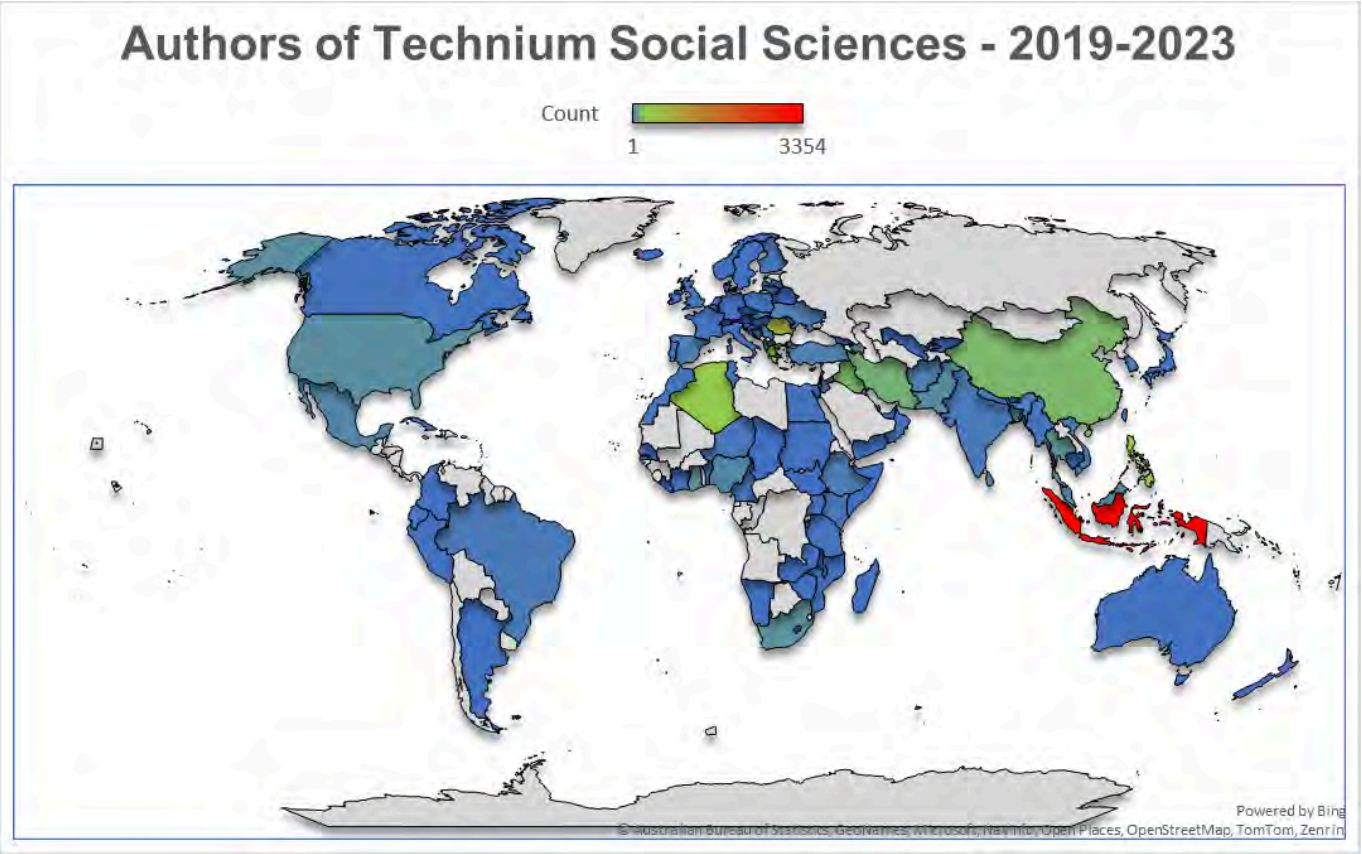

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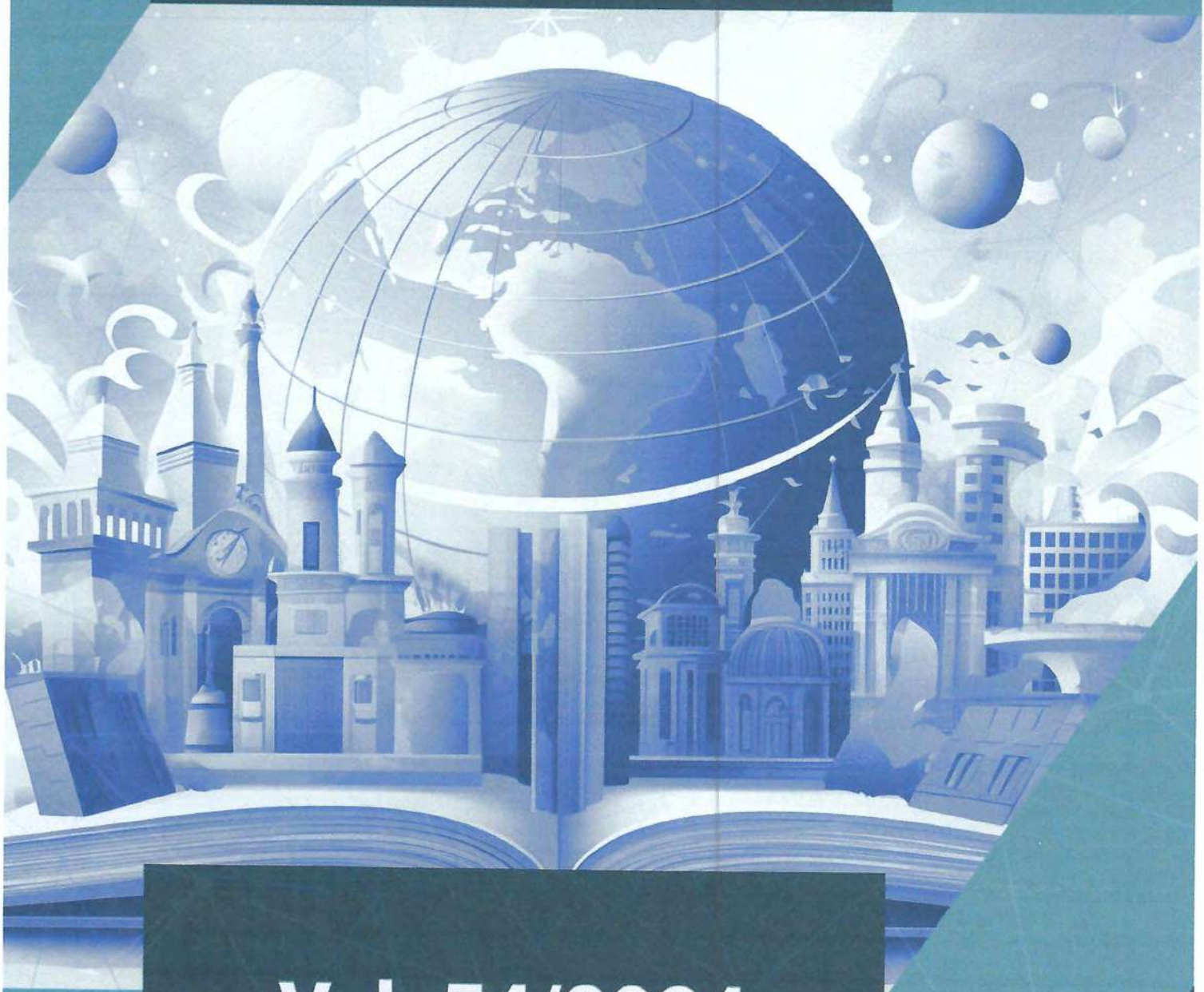

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Interruption of pregnancy in México within the framework of human rights

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Abstract. The Mexican State is part of the inter-American system, it safeguards the human rights of both the Political Constitution of the United Mexican States and the International Treaties, particularly in the interruption of pregnancy it protects the human rights to life, health, reproductive rights and non-discrimination. These human rights are analyzed in the resolutions of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Supreme Court of Justice of the Nation, to aknowledge both the international and national interpretation, which has served as a legal basis in the interruption of pregnancy in Mexico. Based on these human rights and resolutions, ten states have legislated to allow the interruption of pregnancy, due to which the legal framework of the former Federal District (D.F.), Oaxaca, Hidalgo, Baja California, Veracruz, Colima, Sinaloa, Guerrero, Baja is studied. California Sur and Quintana Roo, highlighting that they have reformed their Penal Codes and Health Laws, standardizing most of their criteria. Likewise, a legal comparison is made at an international level to highlight differences and similarities between Mexico and other countries. This issue continues in Mexico, the states continue to discuss the interruption of pregnancy.

Keywords. Constitution, human rights, international treaties, Inter-American Court

I. Introduction

This research article examines interruption of pregnancy in Mexico, a topic with a particular connection to human rights. For this reason, its constitutional foundation and that of international treaties are studied.

The resolutions of the organs of the inter-American system and the First Chamber of the Plenary of the Supreme Court of Justice of the Nation are also examined. In this regard, these legal elements have generated the framework for legal reference and interpretation regarding interruption of pregnancy in Mexico.

Consequently, the Penal Codes and Health Laws of the ten federal entities that have legislated to legalize interruption of pregnancy are studied. Similarly, an international comparison is made with countries in Latin America, the European continent, and three states in North America, to establish similarities and differences with Mexico.

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The legal framework of both national and international human rights is analyzed, along with the rulings of the highest courts; The legislation of the federal entities and international regulations on interruption of pregnancy is compared.

Within this framework, the reader is respectfully invited to explore this work on interruption of pregnancy—a topic that remains highly relevant in the legal and social spheres and will continue to be debated in Mexico.

II. Constitutional foundation of human rights

The study of interruption of pregnancy within the legal framework must be particularly analyzed based on human rights. It is important to highlight that the amendment to Article 1 of the Political Constitution of the United Mexican States, published in 2011, brought about various legal changes directly related to the interpretation and legislation on this subject.

With this amendment, international human rights treaties signed by the Mexican State attained a new hierarchical level in the national legal system. Since then, they have gained constitutional status and, therefore, are part of the Political Constitution of the United Mexican States.

In such a way, human rights were significantly expanded through various legal provisions established in international treaties, such as the American Convention on Human Rights or the Additional Protocol to the American Convention on Human Rights. In this regard, the first three paragraphs of Article 1 of the Political Constitution of the United Mexican States state that:

"In the United Mexican States, all individuals shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which shall not be restricted or suspended, except in the cases and under the conditions established by this Constitution.

The norms regarding human rights shall be interpreted in accordance with this Constitution and with international treaties on the subject, favoring individuals with the broadest protection at all times.

All authorities, within the scope of their competencies, have the obligation to promote, respect, protect, and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility, and progressiveness.[1]

In this sense, this reform implies that the section of human rights established in the Political Constitution of the United Mexican States is complemented by international treaties that the Mexican State has signed. These should be interpreted taking into account both national and international perspectives, and public authorities are obligated to promote, respect, protect, and guarantee these rights based on these principles.

It is noteworthy that this third paragraph legally regulates that public authorities must act in accordance with the principle of interdependence. This principle is interpreted to mean that human rights are linked; hence, they are united and interconnected with each other.

In this regard, interruption of pregnancy must be analyzed in accordance with the principle of interdependence, as it involves the human right to life, health, reproductive rights, and non-discrimination.

Therefore, having established the legal framework of both national and international human rights that the Mexican State must safeguard, it is important to analyze constitutional

[1]Constitución Política de los Estados Unidos Mexicanos. Artículo 1. https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf

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control to better understand the arguments of national and international courts and the binding nature of their resolutions for institutions.

III. Constitutionality control

Constitutional control has four different variants: concentrated, diffuse, mixed, and conventional, each with its own characteristics. In the case of Mexico, the first of these, concentrated control, was practiced before the reform of Article 1 of the Political Constitution of the United Mexican States in 2011.

This approach to concentrated constitutional control was modified with the reform of Article 1 of the Political Constitution of the United Mexican States, as conventionality control was incorporated at the constitutional level.

Likewise, conventionality control is grounded in one of the international treaties to which the Mexican State is a party, such as the American Convention on Human Rights, in its Article 1, which reads as follows:

"The States Parties to this Convention undertake to respect the rights and freedoms recognized in it and to ensure their free and full exercise to all persons subject to their jurisdiction, without discrimination for reasons of race, color, sex, language, religion, political opinions or any other nature, national or social origin, economic status, birth, or any other social condition."[2]

This article clearly establishes that the State parties are obligated to respect and guarantee the rights and freedoms indicated by this international treaty, which Mexico has signed, making it essential for this country to comply with them.

The legal basis for conventionality control is also found in Article 2 of the American Convention on Human Rights, which states the following:

"If the exercise of the rights and freedoms mentioned in Article 1 is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional procedures and the provisions of this Convention, legislative or other measures that may be necessary to make these rights and freedoms effective."[3]

In this way, the State party, as is the case with Mexico, must ensure that human rights are respected by various public authorities.

However, given that the States Parties to the American Convention on Human Rights have not primarily used legislation to endorse this international treaty, the resolutions of the Inter-American Court of Human Rights have been the main legal instrument for applying conventionality control.

Therefore, conventionality control has been developed in different judgments issued by the Inter-American Court of Human Rights, which are mandatory for the States Parties, including Mexico.

It is noteworthy how the States Parties, by failing to adapt their national legal frameworks to the American Convention on Human Rights, led the Inter-American Court of Human Rights to initiate this process by applying conventionality control through judgments.

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[2]Convención Americana sobre Derechos Humanos. Artículo 1. *https://www.cndh.org.mx/sites/all/doc/Programas/TrataPersonas/MarcoNormativoTrata/InsInternacionales/Regionales/Convencion_ADH.pdf*

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This is relevant because the arguments presented in resolutions of the Inter-American Court of Human Rights have served as a legal basis for both the Judiciary and the Legislature regarding the issue of interruption of pregnancy in Mexico, as will be analyzed in the following subsection.

IV. Human rights regarding termination of pregnancy

The main characteristic concerning interruption of pregnancy from a legal perspective focuses on the human right to life, rooted in Article 4 of the American Convention on Human Rights, which states:

"Every person has the right to have their life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of their life." [4]

The importance of the right to life is natural and evident, as well as its relevance in ensuring other human rights. Thus, the crux of the legal debate lies in defining when life begins. In this regard, the Inter-American Court of Human Rights has established a criterion in the case Artavia Murillo and others v. Costa Rica. Given its relevance to the topic under study, a somewhat lengthy excerpt is cited.

The antecedents analyzed so far allow us to infer that the purpose of Article 4.1 of the Convention is to safeguard the right to life without implying the denial of other rights protected by the Convention. In this sense, the phrase "in general" aims to allow, in the face of a conflict of rights, the invocation of exceptions to the protection of the right to life from conception. In other words, the purpose of Article 4.1 of the Convention is not to understand the right to life as an absolute right, whose alleged protection could justify the total denial of other rights.

... In the case before the Court, it is sufficient to note that this purpose implies that the absolute protection of the embryo cannot be invoked to annul other rights.

The Court has employed various methods of interpretation, which have led to consistent outcomes indicating that the embryo cannot be understood as a person for the purposes of Article 4.1 of the American Convention... Moreover, it is possible to conclude from the words "in general" that the protection of the right to life under this provision is not absolute but rather gradual and incremental according to its development. This is because it does not constitute an absolute and unconditional duty but involves recognizing the admissibility of exceptions to the general rule.[5]

Now, this criterion of the Inter-American Court of Human Rights is established for the States Parties, such as Mexico, where it is asserted that the right to life is understood as a prerogative with exceptions. Furthermore, it is argued that interpreting the right to life as absolute nullifies the guarantee of other rights.

Among the human rights considered violated by treating the embryo with characteristics of a person is the right to health, particularly that of women, as established in Article 4 of the Political Constitution of the United Mexican States, which states: "Every person has the right to health protection."

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[4] Ibidem, p. 3.

[5] Corte Interamericana de Derechos Humanos, *Caso Artavia Murillo y Otros ("FECUNDACIÓN IN VITRO")vs. Costa Rica*. Sentencia de 28 de noviembre de 2012 (Fondo, Reparaciones y Costas), pp. 81 y 83. https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf

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In this regard, the First Chamber of the Supreme Court of Justice of the Nation, through Amparo 1388/2015, established a precedent for the human right to health in relation to interruption of pregnancy, highlighting the following aspects:

Based on the foregoing considerations, this First Chamber concludes that interruption of pregnancy motivated by health risks, and its appropriate and timely provision, falls within the normative scope of the right to health and its protection—as envisaged by the Constitution, international treaties, the constitutional doctrine of this First Chamber, and the jurisprudence of the Inter-American Court—since it is an action whose primary objective is to promote, preserve, or restore the health of the pregnant person, including achieving a state of physical, mental, and social well-being...

In principle, as clarified in the development of this ruling, the refusal of the responsible authorities to grant the complainant's interruption of pregnancy meant that they deprived her of a medical care service that is part of the normative scope of the right to health protection. The responsible authorities overlooked that interruption of pregnancy for health reasons has the essential purpose of restoring and protecting the health of the pregnant person. This health is being affected not only by the pregnancy but also by the physical or mental ailment that arises or worsens with its continuation.[6]

While it is true that this legal protection refers to interruption of pregnancy for health reasons, it also establishes a criterion indicating that this medical practice must be carried out as a human right, guaranteed by the Political Constitution of the United Mexican States and international treaties in which the Mexican State is a party.

Furthermore, another human right under the principle of interdependence concerning interruption of pregnancy is related to discrimination, which is prohibited in the fifth paragraph of Article 1 of the Political Constitution of the United Mexican States, stating:

"All forms of discrimination motivated by ethnic or national origin, gender, age, disabilities, social condition, health conditions, religion, opinions, sexual preferences, marital status, or any other that violates human dignity and aims to annul or diminish the rights and freedoms of individuals are prohibited."

Regarding international treaties on the human right to non-discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, in Article 3, states:

"The States Parties shall take in all fields, and particularly in the political, social, economic, and cultural fields, all appropriate measures, including legislative measures, to ensure the full development and advancement of women, with the aim of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on equal terms with men."[7] As for numeral 11, it is mentioned that:

"The Member States shall take all appropriate measures to eliminate discrimination against women... in particular:

f) The right to protection of health and safety in working conditions, including safeguarding reproductive function."[8]

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[6] Primera Sala de la Suprema Corte de Justicia de la Nación. *Amparo 1388/2015*, pp. 59 y 74. https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2019-04/AR%201388-2015%20-%20190404.pdf

[7] Convención sobre eliminación de todas las formas de discriminación contra la mujer. Artículo 3. https://www.ohchr.org/sp/professionalinterest/pages/cedaw.aspx

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Therefore, the Member States, as is the case with Mexico, through various authorities, including the branches of the State, must guarantee human rights by prohibiting discrimination, which is linked to interruption of pregnancy.

Also, in interdependence with the human right to health and interruption of pregnancy, the Inter-American Commission on Human Rights, as the body promoting them in the inter-American system, urged the States to adopt comprehensive and immediate measures to respect and guarantee sexual and reproductive rights.

Thus, from the human right to health under the principle of interdepence, reproductive rights are derived in relation to interruption of pregnancy. In this regard, the Interamerican Comission on Human right states that:

The right to reproductive health covers all aspects related to the reproductive system, as well as the ability to enjoy a satisfying and risk-free sexual life and to have the freedom to decide whether to procreate, when to do so, and how often. The Commission also emphasizes the negative impact of laws that completely criminalize interruption of pregnancy on dignity and the rights to life, personal integrity, health, as well as the general right of women to live free from violence and discrimination.[9]

In this way, the human rights established in the Political Constitution of the United Mexican States, in the international treaties of which the Mexican State is a part, as well as the resolutions of the First Chamber of the Supreme Court of Justice of the Nation, the Inter-American Court of Human Rights, and the reports of the Inter-American Commission on Human Rights, have created the legal foundation for interruption of pregnancy.

These sources have also shaped the legal approach to interruption of pregnancy, starting from the analysis of the human right to life to determine the viability of this medical procedure. Furthermore, it has been established that, based on the principle of interdependence, other human rights are interconnected, such as the right to health, reproductive rights, and non-discrimination.

V. Interruption of pregnancy in Mexico's federal entities

Based on the aforementioned legal criteria, legislation regarding interruption of pregnancy has been enacted in ten federal entities of Mexico, including the then Federal District, Oaxaca, Hidalgo, Baja California, Veracruz, Colima, Sinaloa, Guerrero, Baja California Sur, and Quintana Roo. The legal reforms of both the Penal Codes and Health Laws in these entities have been analyzed to highlight the main characteristics of the amendments.

In their respective Penal Codes, the ten federal entities previously defined interruption of pregnancy as the death of the product of conception at any time during pregnancy. The reforms to these legal frameworks standardized the following criterion: interruption of pregnancy is the interruption of pregnancy after the twelfth week of gestation, with the exception of the state of Sinaloa, which allows this procedure up to the thirteenth week.

Regarding this time period, the federal entities of Veracruz, Colima, Baja California Sur, and Guerrero did not legally establish the following medical reasoning: pregnancy is the part of the human reproductive process that begins with the implantation of the embryo in the endometrium.

[9] Comisión interamericana de Derechos Humanos, exhorta a todos los Estados a adoptar medidas integrales e inmediatas para respetar y garantizar los derechos sexuales y reproductivos de las mujeres, 27 de octubre de 2017. *https://www.oas.org/es/cidh/prensa/comunicados/2017/165.asp*

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Six federal entities established the criterion that a woman who voluntarily undergoes an interruption of pregnancy or consents to another person doing so after twelve weeks of pregnancy should face fines and penalties for both parties. The penalties vary; for example, it is stated as 3 months to one year of imprisonment. However, states such as Veracruz, Colima, Baja California Sur, and Sinaloa specified other terms, such as the following:

They shall be subject to 15 days to two months of treatment in freedom, consisting of the application of comprehensive health measures in respect of their human rights or community service. Therefore, these federal entities, instead of fines and penalties, implement general actions.

Another standardized aspect among the ten federal entities is the classification of the crime of forced interruption of pregnancy, which is defined as the interruption of pregnancy at any time without the consent of the pregnant woman. Penalties vary from three to ten years.

Also, concerning the Penal Code of the federal entities, the criterion of establishing exclusions from criminal responsibility in cases of interruption of pregnancy has been standardized. For example, when the pregnancy is the result of rape or when there is a danger to the woman's health.

Regarding the Health Law, the federal entities of Mexico City, Hidalgo, Baja California, Colima, and Sinaloa have legislated on interruption of pregnancy, while the other five states have not. In this study, the three main characteristics that have been legally regulated are highlighted.

1. Legal interruption of pregnancy must be a service provided free of charge by Health Institutions.

2. Medical personnel who, due to their religious beliefs or personal convictions, are opposed to interruption of pregnancy may conscientiously object and, for that reason, excuse themselves from participating, with the obligation to refer the woman to be attended by non-objecting medical personnel without delay. Conscientious objection cannot be invoked when interruption of pregnancy is urgently required to safeguard the health or life of the woman.

3. Implementation of permanent programs on sexual education, reproductive rights, responsible motherhood, and fatherhood. Family planning services aim to reduce interruption of pregnancy rates by preventing unplanned and unwanted pregnancies, as well as decreasing reproductive risks.

These are the main characteristics in the Penal Codes and Health Laws of these ten federal entities, which have harmonized their legislation in fundamental aspects.

VI. International comparison

International comparison of interruption of pregnancy is important to highlight similarities and differences between Mexico and other nations, starting with Latin America. It is noteworthy that, among 19 Latin American countries, four allow legal interruption of pregnancy at the woman's request under any circumstance. Cuba has permitted it since 1965 up to 12 weeks, Uruguay since 2012 within the same timeframe, Argentina implemented it in 2021, extending the period to 14 weeks, and Colombia, mandated by the Constitutional Court, allows it up to 24 weeks starting from 2022.

Regarding the other 10 Latin American countries—Bolivia, Brazil, Chile, Costa Rica, Ecuador, Guatemala, Panama, Paraguay, Peru, and Venezuela—interruption of pregnancy is allowed only under specific circumstances. The three main circumstances are when the woman's life is in danger, when the fetus has a life-incompatible malformation, and in cases of rape.

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In El Salvador, Haiti, Honduras, Nicaragua, and the Dominican Republic, interruption of pregnancy is prohibited under any circumstance; this practice is not allowed for any reason.

In the European continent, out of 42 countries, 40 have approved interruption of pregnancy under various modalities. However, in the remaining two nations, Malta and the Vatican City, interruption of pregnancy continues to be prohibited.

To conduct a more specific analysis, the reference is taken from the United Kingdom, France, Italy, Spain, and Germany. It is worth noting that these countries allow interruption of pregnancy at the woman's request, when her life is at risk, due to life-incompatible fetal malformations, and in cases of rape. The United Kingdom (Ireland) specifically allows interruption of pregnancy at the woman's request.

Having said that, the following information will highlight the country, the legal gestational limit for interruption of pregnancy, the legal framework governing it, and the year from which it is regulated.

In the United Kingdom, interruption of pregnancy can be performed up to the 24th week under the Interruption of pregnancy Act of 1967. France legally regulated interruption of pregnancy with a 12-week limit under the Veil Law in 1975.

Italy, on the other hand, approved Law 194, which includes rules for social protection of maternity and voluntary termination of pregnancy. The procedure can be carried out up to 90 days of gestation, starting from 1978.

Regarding Spain, it is established that interruption of pregnancy can be performed up to the 14th week of gestation. This is regulated by the "Ley de Plazos" (Timeframe Law), which addresses sexual and reproductive health and voluntary termination of pregnancy. The law has been in effect since 2010. Finally, the German Federation decriminalized interruption of pregnancy and allowed it up to the first 12 weeks of pregnancy in the Penal Code starting from the year 1995.

In the case of the United States, specifically in the state of California, interruption of pregnancy was legalized without specifying a specific time frame. It is regulated that, through good-faith medical confirmation, the viability of the pregnancy to term is not possible, as stated in the Health and Safety Code approved in 1995.

On the other hand, in New York, it is established that the permitted period for interruption of pregnancy is up to 24 weeks according to the Public Health Law since 1970.

While in Washington, the Interruption of pregnancy Laws were approved without specifying a specific period for the practice of interruption of pregnancy, and a proper medical judgment is required to indicate it, starting from 1992.

This comparison allows us to highlight that, on an international level, the mentioned countries establish different legal timeframes for allowing interruption of pregnancy. They specify particular circumstances under which this medical practice can take place, or it is prohibited under any circumstance. Additionally, the laws came into effect or were legalized in different years, indicating diverse criteria.

In contrast, in Mexico, the ten federal entities that have legislated on interruption of pregnancy have adopted almost homogeneous criteria, such as the 12-week timeframe under any circumstance. This coincides with the criteria in countries like Cuba, Uruguay, France, and Germany.

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VII. Conclusions

First: Human rights serve as the main legal foundation to allow interruption of pregnancy in Mexico, as they are implicit in the Penal Codes and Health Laws of the federal entities that have legislated on the matter.

Second: Resolutions from the organs of the inter-American system and the Supreme Court of Justice of the Nation have generated the legal interpretation of human rights that underpins the legislation of the federal entities that have legalized interruption of pregnancy.

Third: Exercising their sovereignty within the federal system, federal entities have decided to either prohibit or permit interruption of pregnancy. As a result, ten states approve it, while the remaining twenty-two legally prohibit it.

Fourth: The legal debate on interruption of pregnancy continues to be active in various federal entities of Mexico, and undoubtedly, human rights remain at the center of both legislative and judicial discussions.

Fifth: Federal entities that have allowed interruption of pregnancy have largely harmonized their legislation. Therefore, if other states reform their legal frameworks, their amendments to Penal Codes or Health Laws will undoubtedly be very similar.

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