

OBSERVATIONS ON THE ORGANIC LAW PROPOSAL AMENDING ORGANIC LAW 10/1995, OF NOVEMBER 23, OF THE "SPANISH PENAL CODE, TO PENALIZE HARASSMENT OF WOMEN WHO GO TO CLINICS FOR THE VOLUNTARY INTERRUPTION OF PREGNANCY".

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The Explanatory Memorandum justifies the proposal aimed at "guaranteeing a security zone around the health centers that facilitate the voluntary interruption of pregnancy in such a way as to guarantee the privacy of women, their freedom and physical and moral security, as well as their right to free movement. It takes as a reference a report prepared in 2018 by the Association of Accredited Clinics for the interruption of pregnancy (ACAI), which states that "organized groups approach women with photographs, toy fetuses and proclamations against abortion before they enter the clinic. clinic".

For this reason, it proposes adding a new article to the Organic Law 10/1995, of November 23, of the Penal Code (art. 172 quater) which, in its first section, defines as typified behaviors those actions aimed at promoting, favoring or participating in concentrations in the vicinity of places enabled to interrupt pregnancies, establishing as a legal presumption of a "iuris et de iure" character, that such behaviors cause an impairment of the freedom or privacy of those women who intend to exercise their right to voluntary interruption of pregnancy.

Bearing in mind that the crimes of harassment and coercion are already are typified as criminal offences, we are therefore faced with a clear example of authoritarian-totalitarian conception of criminal law author that emerges as a political reaction from the most absolute discretion, raising serious doubts about its constitutionality and legality, as it considers criminal the persuasive effect that they can provoke those citizen initiatives aimed at developing activities

carried out within the limits of the rights, meeting and demonstration (art. 21 EC), participation (art. 23.1 CE), ideological and religious

freedom (art. 16 CE), expression and dissemination of thoughts, ideas, opinions (art. 20.1.a) CE), keys in any democratic system, therefore, even when developing peacefully, without making threats or disturbing public order, or pose any danger to persons or property.

We must remember that the exercise of the rights of expression and dissemination of thoughts, ideas, opinions, cannot be restricted by any type of prior censorship (art. 20.2 CE), and much less be punished with prison sentences, since abortion is can and should give their opinion freely, something elementary that this Proposal of Law rejects. Likewise, that the right of direct participation of citizens in public affairs (as claimed in article 23 CE) in relation to article 9.2 CE, which attributes to the public powers the function of "facilitating the participation of all citizens in political, economic, social and cultural life" must be duly protected, since it is essential for the development of our democratic system.

In addition, it is confirmed in this Law Proposal the will to limit those spaces in which the citizen can freely exercise their political rights for lawful purposes without exceeding the normal limits with damage to third parties, without taking into account that the inconvenience that may be caused in the exercise of these fundamental rights constitute a natural consequence that has been accepted by our jurisprudence and constitutional doctrine.

Thus, the STC 85/1988, of April 28, recognizes that:

“Historically, the right of assembly emerged as an autonomous intermediate right between the rights of free expression and association, which currently maintains such an intimate doctrinal connection with them, that it may well be said, in a first approach to the subject, that the right of

assembly is a collective manifestation of freedom of expression exercised through a transitory association,

being conceived by the scientific doctrine as an individual right in terms of its holders and a collective right in its exercise, which operates as an instrumental technique placed at the service of the exchange or presentation of ideas, the defense of interests or the publicity of problems or claims, constituting, therefore, a channel of the participative democratic principle».

Therefore, it is the constitutional jurisprudence itself that reinforces the protection of the right to assembly and demonstration, recognizing that "in a democratic society, urban space is not only an area of circulation, but also a space for participation" (STC 66/1995, of May 8, FJ 3). In addition to the fact that, according to him, it constitutes "one of the few means available to citizens to be able to publicly express their ideas and demands" (STC 301/2006, of October 23, FJ 2). In this same sense, the STC 42/2000, of February 14, established that:

"The exercise of this right, by its very nature, requires the use of public transit places and, given certain circumstances, allows the occupation, so to speak instrumental, of the roads", acknowledging that "holding this type of meeting usually produces disturbances and restrictions in the movement of people and, for what is of interest here, of vehicles" (SSTC 59/1990, FJ 6; 66/1995, FJ 3). However, such findings do not lead this Court to consider that when the exercise of this fundamental right entails the aforementioned restrictions, it is not constitutionally legitimate, but rather, on the contrary, to understand that "in a democratic society, urban space is not only an area of circulation, but also a space for participation "(STC 66/1995, FJ 3)».

This right of demonstration therefore fulfills an instrumental function of the right of direct participation that makes use of public space (STC of February 4, 1983); as well as freedom

of expression, inextricably linked with political pluralism. For the High Court, this becomes a prior and necessary condition for the exercise of other rights inherent to the functioning of a democratic system, such as precisely the rights of political participation of citizens (STC 12/1982, of March 31, FJ 3).

In this regard, the doctrine of the European Court of Human Rights (ECHR, of March 5, 2009) is equally relevant:

«[it is] evident that any demonstration or meeting in a place of public transit causes a certain degree of disorder in the development of daily life and certain inconveniences, such as traffic closures, street closures, public address systems [...] but in the absence of acts of violence by demonstrators, it is important that the public powers display a certain tolerance towards peaceful gatherings, so that the freedom of assembly is not without content, even in those cases in which it has not been previously communicated to the competent authority"

This participatory desire is also supported by treaties and protocols, as well as recommendations from international institutions and organizations. In particular, in the European sphere, the principles embraced by the Charter of Fundamental Rights of the European Union (EU), the White Paper «European Governance» (2001) or the Recommendation of the Committee of Ministers of the Council of Europe, of 6 December 2001, on citizen participation in local public life. These documents and instruments

also incorporate measures to favor the right of the so-called "active citizenry" to information and participation in the political cycle, promoting a culture of democratic participation interwoven with the so-called "good governance" models.