

The case of Karla

Mental health impact of forced continuation of pregnancy

A STATEMENT OF THE MEDICAL GROUP
FOR THE RIGHT TO CHOOSE

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POR EL DERECHO
A DECIDIR:
Global Doctors for
Choice/Colombia

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Grupo Médico por el Derecho a Decidir/GDC Colombia
Red Global Doctors for Choice

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The **Medical Group for the Right to Choose** is a network of doctors from a range of specialties that fight for the timely, appropriate and comprehensive access to women's sexual and reproductive health services, with a basis in the respect for the autonomy of women's decisions. It is part of the Global Doctors for Choice network.

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Case summary¹

Karla

Karla is a female, 24 year old, middle class, college student, who discovered that she was pregnant without wanting to be. Her situation gave her such feelings of rejection and sadness that she attempted suicide twice. Due to the overt effect that this pregnancy had on her health and her wellbeing, she decided to seek the termination of her pregnancy.

Karla was assessed by a psychiatrist who certified that her mental health was affected as a result of the unwanted pregnancy, but her Health Maintenance Organization (HMO) denied her request, arguing that: «risk to the life [of the woman] must be imminent and serious in order to justify terminating the life of the fetus; medical certification must be from an

¹ All of the information that could give clues about the identity of the woman in this case has been altered in order to preserve her anonymity and privacy. In any event, the analysis of the case is done for academic and social purposes with the goal of promoting respect for women to access legal pregnancy termination services and to raise awareness in doctors about health as a state of complete wellbeing

interdisciplinary team from the HMO network; there are no legal or medical factors for the termination.» Considering that her health was indeed at risk, and that with this opinion unjustified burdens were imposed on her, Karla decided to institute a «tutela.»²

While being assessed by a forensic psychiatrist, Karla felt obligated to reveal very complex and painful elements of her life that she had not previously shared with anyone before or during the process. Underlying psychiatric problems were identified.

6 | «Karla lives in a dysfunctional family. She claims to feel distanced from her family members and experiences suffering with respect to these relationships. For that reason, she is a woman who isolates herself from family life and has little communication with her parents and siblings. She has a history of sexual abuse as a child and lives surrounded by incestuous relationships. In the development of her personality, historical and traumatic emotional elements have been accumulating that have not been able to harmoniously integrate. The management of her emotions, her way of confronting stress and frustration, as well as attachment with others have been articulated around what in psychiatry is known as borderline personality disorder. Throughout adolescence she committed several acts of self-injury and had brief unstructured hallucinatory periods. She has started several professional careers without being able to successfully adapt. Nonetheless, in recent years she has been able to get on track with her studies thanks to good performance and for the first time she feels comfortable and like she has good future prospects. She has had few emotional relationships. Her last relationship produced the unwanted pregnancy during which she attempted suicide, which is why she has decided to begin the process of terminating her pregnancy without ambivalence or doubt about her thoughts or decisions in this regard.

The psychological impossibility of taking on the mental role of a mother, a process that is normally activated by, and comes in time with, gestation, has been so severe that she does not eat for entire days, has lost her appetite, and physically attacks her womb; suicide attempts have increased, which are now of medium and high

2 The Colombian Constitution provides a mechanism to protect fundamental rights called «tutela.» It has an informal procedure, does not need a lawyer to be used and has to be resolved in first instance within 10 days.

mortality. From a psychological point of view, continuing with the pregnancy threatens her precarious psychic balance, and in her particular situation, involves perpetuating the family dysfunction that she has just begun to recognize, setting in motion a strong destructive reaction as shown through her multiple suicide attempts.

Karla is a survivor of childhood sexual abuse and a victim of incestuous relationships. Her own wellbeing is something that she is building up, and a child means giving up a place that is her own place. She is still surviving and does not have «space» for planning life around a child.»

In conclusion, the opinion of the forensic psychiatrist indicated that: «*Continuing the pregnancy carries with it, for the woman being examined, a worsening of her symptoms of mental disorder with evident risk to her life, insofar as suicidal ideation increases along with the risk that it may be consummated.*» He made clear though that termination of the pregnancy did not represent a solution to her disorder and that, «*in any of the possible scenarios it was recommended that the woman being examined receive psychological and/or psychiatric treatment, even as an inpatient if necessary.*»

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The court decision

Despite her critical mental state, *Karla* was not able to terminate her pregnancy legally because the judge determined she was ineligible for a legal abortion and that therefore her fundamental rights were not being violated. The judge argued that «*the certification³ presented by the woman does not emphatically conclude that the diagnosis given to the woman cannot be treated nor that the danger is imminent and serious; for that reason she does not meet the requirement of the certification,*» and assumed that the condition could be remedied by the HMO, which «*offered to begin psychiatric treatment and assume responsibility for the woman's health inasmuch as they do not find that there is a risk to her life.*»

3 Under Colombian laws, a medical certificate stating that the pregnancy represents a risk for the women's health is the only requisite to obtain a legal abortion on health grounds.

Our position

We, the doctors of Global Doctors for Choice (GDC) in Colombia, have carefully analyzed Karla's case with scientific seriousness and commitment to the health and rights of women with whose life circumstances we deal on a daily basis.

- a) **The request for a Voluntary Termination of Pregnancy (VTP) cannot be turned into a process for mistreating women.**

As doctors from different specialties, we are discouraged and disappointed by the actions of psychiatrists and judges in this case in which, as in other cases that we are aware of, not only did they not guarantee fundamental rights to a woman who went to them for protection, but she was also subjected to what that can be considered a cruel, disrespectful and intimidating way of treatment. In particular, Karla's subjection to revealing her private life beyond what was necessary information for these judges and doctors to make a swift decision is considered by GDC to be a form of psychological torture on their part. Forcing Karla to expose her personal and intimate dramas to «achieve» authorization for a VTP and in that way protect her rights is an act of institutional violence.

b) When mental health is at risk, termination of a pregnancy is legal and is a right. A medical opinion supporting the existence of this risk cannot be ignored.

When the risk has already been documented by a doctor (by two different specialists in Karla's case), any other interpretation by judicial agents or by other health professionals is unnecessary for this risk to be understood as true, and for a legal abortion to be performed. GDC considers that Karla's case constitutes a clear indication for VTP, due to the risk to her health and life under the terms established in Judgment C-355 of 2006.⁴ It is not acceptable that she has been denied this right, forcing her to incur further harm resulting from the continuation of her pregnancy.

Medical evaluations verified not only the risk but also the impact on Karla's mental health. Nonetheless, the explanations and inaccuracies about the appropriateness of a VTP generated confusion, leading Karla to bear the disproportionate burden of a pregnancy that was emotionally and mentally unbearable for her.

In an attempt to not take on the case, the psychiatrist explained that a VTP would not improve her basic psychiatric condition, leading the judge to erroneously interpret that this right did not apply to Karla. Major inaccuracies and a misinterpretation of the law resulted in an underestimation of the risk, including an argument for the lack of imminent risk of death and arbitrarily requiring that the degree of risk be severe. This is not required by the law; on the contrary, it is clear that a woman decides the severity of the risk she is willing to undergo, based on a process of consideration and decision-making in which nobody can intervene.

Medical doctors have been designated by the Constitutional Court to be the ones that determine the existence of a mental health risk. When the conclusion is reached that the risk exists, the professional has performed a

⁴ Judgment that depenalized abortion on three special circumstances in Colombia: health to the woman's health or life, non-viable fetal malformation and rape.

complex integration of clinical elements and scientific evidence in addition to its medical common sense that is outside the scope and sphere of the judicial participants.

We do not understand why the administrative staff of the HMO takes on the responsibility of denying or authorizing a VTP. Medical certification is sufficient to begin the administrative process, and at no time can it be demanded that the certification must come from a medical peer review or from a doctor that belongs to the HMO network.

In Karla's case, the existence of a history of mental health problems was dissociated from a worsening as a result of the pregnancy, ignoring the fact that health is a continuum.

Imposing requirements not outlined in the law such as judicial intervention to authorize a VTP or an expert report by a specialist, as well as the requirement of the need for a serious or imminent risk to health in order to obtain a VTP, constitute a violation of Colombian law. Ignorance of the essence and structure of the law results in acts outside of the legal framework, such as denial of VTP services, representing a threat not only to women, but also to society.

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c) The medical act of certification must remain within reasonable limits.

When a woman has requested voluntary termination of a pregnancy that puts her health at risk, she is not requesting an ambivalence or a doubt be resolved; neither is she asking for outside approval or authorization. The medical act regarding a VTP is restricted to the identification and certification of a risk to health or to life. The current law does not contemplate a gradation of the risk in order to recognize the health exemption for a VTP and therefore does not call on the doctors to qualify the risk. Nor does it limit the exemption to those cases in which the impact or the risk cannot be dealt with or treated in another way (psychiatric treatment, hospitalization, etc.) or dismiss it when the VTP does not solve or cure the woman's underlying condition. The essence of the health exemption calls upon the will of the woman to be, as a free moral agent and through her conscience, the one who takes responsibility

for deciding whether or not she runs the risk, and therefore to terminate or to continue the pregnancy. The doctor is not asked to authorize the woman to terminate the pregnancy and therefore it is not appropriate to express his or her degree of agreement or disagreement with the woman's decision. The doctor's responsibility does not go beyond the identification and certification of the existence of a risk. A human possibility cannot be completely medicalized for the woman. The VTP is not a medical act, but a human act.

- d) **Conscientious objection cannot be turned into an unjustified denial of medical services.** It is clear that many of the barriers that women suffer in gaining access to a VTP come from a hidden practice of conscientious objection in an attempt to prevent the exercise of their rights. When a doctor objects he or she must openly make it known. Verbalizing or explaining the personal conflict that is triggered through his/her participation in the VTP process prevents their objection from becoming a concealed barrier. Objection is a profound and serious decision, not a circumstantial one, which should be made publicly so that those who do not object may appropriately provide the service. Conscientious objection should also be exercised under strict consideration of the guidelines that the Constitutional Court has established, including the immediate and effective referral to a non-objecting provider, refraining from interfering in the provision process, and the obligation to provide information that is accurate, unbiased and not for persuasive purposes.⁵ Under no circumstances do administrative or judicial personnel much less institutions have the right to conscientious objection.
- e) **VTP prevents increased damage to the woman's health and its denial exacerbates the risks to her health.** The woman who has requested a voluntary termination of a pregnancy that puts her health at risk has already undertaken a mental process regarding the decision not to continue a pregnancy, which has profound implications on the psyche. The forced continuation of the pregnancy, in addition to potentially increasing the damage to her health, decreases her possibilities of human development. The denial of a VTP leads to an impact on mental health because it is a way of hindering

5 Constitutional Court Judgment T-388/2009.

the development of the personality, free choice without interference and the continuation of one's life plan.

There is sufficient scientific evidence that supports the association of unwanted maternity with an impact on the health and wellbeing of women, increased risk of depression, psychosocial stress and anxiety during pregnancy, and in the long term. This association is even more intense in cases of forced continuation of pregnancy, understood as a denial of the right to abort, as occurred in the case of Karla.^{6,7,8,9,10}

In cases of such extreme rejection of pregnancy, forced continuation of the pregnancy could culminate not only in long-term effects for the woman, even including her death, but also in filicide. Therefore, the VTP is a way of not only preserving the health of the woman but also of preventing a catastrophic outcome.

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 - 8 Lau Y., Keung D.W. «Correlates of depressive symptomatology during the second trimester of pregnancy among Hong Kong Chinese». *Soc Sci Med.* 2007 May;64(9):1802-11.
 - 9 Iranfar S., Shakeri J., Ranjbar M., Nazhad Jafar P., Razaie M. «Is unintended pregnancy a risk factor for depression in Iranian women?» *East Mediterr Health J.* 2005 Jul;11(4):618-24.
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Conclusions

- We, being aware and respectful of Colombian law, consider compliance with the constitution and application of Judgment C-355, which legalized abortion in Colombia under three circumstances, to be fundamental.
- GDC is committed to providing the best standards of care based on scientific evidence, and it believes that unwanted pregnancy and its forced continuation affect a woman's mental health. There is sufficient evidence to demonstrate that continuing with an unwanted pregnancy increases the risk of experiencing mental health problems. From that point of view, every woman in this situation is faced with a risk to her health, which she is not obligated to assume within the framework of judgment C-355/2006; she therefore she has the right to terminate her pregnancy.
- Respectful of women as patients, we invite all health personnel, through their professional work, to contribute to the respect and protection of women's

human rights and particularly of their right to health, to life and autonomy – regardless of their moral position or religious affiliation.

- Conscious of our medical duty, we express our disagreement with the imposition of barriers in the access to legal abortion services.

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