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Comparative analysis of the typification of the crime of femicide and its aggravating factors between Ecuadorian and Venezuelan legislation

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Abstract

The main purpose of the article was to make a critical and reflective comparison of the classification of the crime of femicide and its aggravating factors between Ecuadorian and Venezuelan legislation. The research was approached under the qualitative approach, the analytical-synthetic, historical-logical, comparative law and legal hermeneutics methods were applied, the type of research turned out to be descriptive and explanatory, the applied research technique was the interview with a guide of interviews as a tool. The main conclusion of the work was that victims of violence against women need a truly efficient and effective legal instrument that materializes the prevention of violence against women and contributes to the eradication of these unlawful behaviors, therefore, femicide as The most atrocious and daunting expression of the forms of violence out of hatred for the condition of being a woman must have an adequate classification, which is fully adapted to the gender perspective that protects the right of women to a life free of violence.

Descriptors

violence, femicide, aggravating circumstances.

Introduction

The crime of femicide has become a serious issue in many countries, including Ecuador and Venezuela. Despite the fact that both countries have laws that typify femicide as a crime and provide for aggravating factors, there are differences in the legal frameworks between the two countries. To shed light on these differences, a comparative analysis of the typification of the crime of femicide and its aggravating factors between Ecuadorian and Venezuelan legislation is necessary.

Recent studies have explored the issue of violence against women from different perspectives. For instance, a neutrosophic analysis of the origin of domestic violence by Arrias Añez et al. (2021) provides insights into the factors that contribute to domestic violence. Meanwhile, Torres et al. (2022) propose an inventory optimization model based on Monte Carlo simulation and genetic metaheuristic algorithm. From a scientific research perspective, Vázquez et al. (2022) examine the role of neutrosophy and productivity in scientific research. Ricardo et al. (2022) propose the use of compensatory fuzzy logic with single valued neutrosophic numbers to analyze university strategic management.

Furthermore, Iglesias Quintana et al. (2022) provide a neutrosophic analysis of the violation of the rights of pregnant working women and judicial protection, while Macías Bermúdez et al. (2020) analyze the profiles of human trafficking violence in different regions of Ecuador.

Overall, these studies provide a rich source of information and perspectives on the issue of violence against women and the legal frameworks in place to address it. A comparative analysis of the typification of the crime of femicide and its aggravating factors between Ecuadorian and Venezuelan legislation could contribute to a better understanding of the similarities and differences between the two countries in terms of legal protection for women.

The need to study the issue that arises is evidenced by the fact that the crime of femicide is the most dantesque expression of gender violence against victims of hatred for their condition of being a woman, representing a serious scourge worldwide and that in Latin America throws alarming figures in countries such as: Chile, Colombia, Mexico, Peru, Argentina, Panama, Nicaragua, Venezuela and Ecuador.

Within this context, femicide is a harmful and atrocious crime that violates the right to life and the right to a life free of violence of women who are killed by an aggressor who exercises a power relationship over the victim, there being a subordination on the part of the latter, following in the framework, This criminal type is recently created in the Criminal Codes, since the paradigm changed due to the appearance and trend of the gender perspective, so the perpetration of this criminal act is not ordinary but is a specialized competence. This criminal act transgresses the female gender of the woman who is killed, separating the legislators from ordinary murders.

In 2014, through the Organic Integral Criminal Code, the criminal type of femicide was typified in Ecuador within the catalog of crimes against the inviolability of life through article 141 and the aggravating circumstances of its commission through article 142. However, the description of the factual assumption is narrated in a superficial and not very detailed way, a legal situation that contrasts with the legal presuppositions contained in other comparative Latin American legislations, such as Venezuela's, so that an exercise of reasoning is required, linked to dogmatics and gender.

Therefore, the present investigation is of great importance, because this type of crime, violates the physical integrity of the woman and psychological of their relatives who become indirect victims, even more claiming the life of a person, that is why Ecuador as a constitutional state of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular, must take into account that due process must exist and be respected, and above all respect and protection for the weak and vulnerable gender; since a dignified life free of violence must be guaranteed, women must be guaranteed much more taking into account the principle of good living, contemplated in the (Constitution of the Republic of Ecuador, 2008).

Methodology

This article was developed under the qualitative modality, through which findings were obtained on the typification and aggravating factors of the crime of femicide comparing Ecuadorian and Venezuelan legislation, which allowed to propose reforms that allow to make viable the guarantees so that women or those who, due to their condition of gender, are considered women are not victims of violence.

Theoretical methods

Inductive Deductive

Deductive and inductive reasoning is very useful for research. The deduction allows to establish a link between theory and observation and allows to deduce from the theory the phenomena object of observation. Induction leads to the accumulation of isolated knowledge and information. (Dávila, 2006, p. 181)

The inductive-deductive method was applied since, through the analysis of the current situation of the phenomenon under investigation, the data obtained with the investigation and the objective reality, linked to the typification and aggravating factors of the crime of femicide, were analyzed after a comparative analysis on the typification established in Ecuadorian and Venezuelan legislation.

Analytical Synthetic

This method refers to two inverse intellectual processes that operate in unity: analysis and synthesis. Analysis is a logical procedure that makes it possible to mentally decompose a whole into its parts and qualities, into its multiple

relationships, properties and components. It allows to study the behavior of each part. The synthesis is the inverse operation, which mentally establishes the union or combination of the previously analyzed parts and makes it possible to discover relationships and general characteristics between the elements of reality (Rodríguez & Pérez, 2017, p. 186).

The analytical-synthetic method was used since, through the decomposition of the variables of the subject, which, when studied individually, led to a clear vision of how their interaction originated the problem, linked to the typification and aggravating factors of the crime of femicide through a comparative analysis of Ecuadorian and Venezuelan legislation.

Historical Logical

This method is integrated into a research structure or research process to gather evidence of events that occurred in the past and its subsequent formulation of ideas or theories about history or to understand various rules or methodological techniques to analyze relevant data of a historical topic, allowing the researcher to synthesize the information to build a coherent information of the events that occurred associated with the object being studied (Torres, 2020, p. 4).

The historical-logical method was applied through the study of the antecedents that lead to femicide and thus punish this crime with more seriousness, since to reach the solution of a phenomenon it is necessary to study its evolution, after making a comparison between Ecuadorian and Venezuelan legislation.

Particular methods of the legal sciences

Hermeneutic method

A general theory of interpretation, dedicated to the attentive inquiry of the author and his textual work, therefore, wants to achieve the understanding of a text has to deploy a receptive attitude willing to let itself say something by the argument" (Gómez, 2006, pp. 173-174)

Legal hermeneutics was applied in this research since through this method it was possible to study the current norms of the Ecuadorian and Venezuelan legal system through a comparative analysis, where it was possible to verify the lack of suitability of the legislators at the time of typifying the crime of femicide and its respective aggravating factors.

Comparative Law Method:

Also called analogical method, according to (Witker, s / f) in it, it is about reasoning by analogies starting from two situations or similar systems, when knowing the result of one of them, there is the perception that the other, will have very similar consequences, that is, when in an institution in force in different countries, it is applied with different or similar criteria.

In the case of the investigation, the Comparative Law method was applied, reviewing what is established by the criminal legislation in force in Ecuador and Venezuela on the typification of the crime of femicide and its aggravating factors, which allowed to optimize those already established and in this way achieve an assertive prevention, punishment and eradication of this crime.

Research techniques and tools

Techniques

The technique used in the present research is the interview:

Semi-structured interview: They present a greater degree of flexibility than structured interviews, because they start from planned questions, which can be adjusted to the interviewees. Its advantage is the possibility of adapting to subjects with enormous possibilities to motivate the interlocutor, clarify terms, identify ambiguities and reduce formalisms (Díaz, Torruco, Martínez, & Valera, 2013, p. 163). An in-depth interview of the grounded theory was applied to key informants or experts to triangulate the information with the results obtained from the hermeneutical analysis.

Instruments

An interview guide was used as an instrument

Interview guide: "An interview guide is, by definition, the holistic instrument we use for data collection during the fieldwork of some qualitative research, mainly those carried out with interview methodologies" (Meneses, p. 9).

Population and sample

Population

The interview was directed towards the judges of the Judicial Unit of Criminal Guarantees of the canton Quevedo (3) and prosecutors (2); and judges in the phase of Control, Hearings and Measures Trial with Competence in crimes of Violence against women of Venezuela (3) and prosecutors (2) in matters of violence against women for a universe of 10 people.

Ecuador	Judges of the Judicial Unit of Criminal Guarantees of the Quevedo Canton	3
Ecuador	Tax	2
Venezuela	Judges in the phase of Control, Hearings and Measures Trial with Competence in crimes of Violence against women of Venezuela	3
Venezuela	Prosecutors on violence against women	2
Total:		10

Analysis of interviews

Interview questions addressed to the judges of the Judicial Unit of Criminal Guarantees of the Quevedo-Ecuador Canton and prosecutors and to the Judges of Control, Hearings and Measures and Trial of Maracaibo-Venezuela and prosecutors.

Question:	Answer:
1. What do you think are the causes that provoke the crime of femicide?	1. In due course of confinement 2. Machismo 3. Hatred of the female gender 4. Discussions in ethyl state 5. Amenazas 6. Celos 7. Rejection of the victim to the aggressor
2. How many cases of femicide have you resolved in general terms during the last two years?	Currently 196 until 2021 throughout Ecuador, now in the city of Quevedo is registered until 2021, 10 cases, with 1,342 complaints of domestic violence. In the case of the Venezuelan country, the interviewees stated that, every 38 hours, a case of femicide occurs in the country and the figures increase considerably.
3. What type of procedure governs the processing of femicide cases?	In the case of Ecuador, femicide is carried out under the ordinary procedure provided for in the Organic Integral Criminal Code, while, in Venezuela, crimes of violence against women are processed through the special procedure circumscribed in the Organic Law on the Right of Women to a Life Free of Violence.
4. What is the maximum penalty for this crime of femicide?	In this question, they said that, in Ecuador, the penalty ranges from 22 to 26 years in prison, but if there are aggravating factors, the upper limit is applied and with the exercise of criminal dosimetry the quantum of the penalty could exceed 30 years applying the rules of article 44 of the Organic Integral Criminal Code (COIP) in force. While in Venezuela the penalty ranges from 20 to 25 years in prison and aggravated from 28 to 30 years in prison.

Question:	Answer:
<p>5. Do you believe that the current regulations on violence against women are totally adequate and contribute to the prevention, punishment and eradication of the crime of femicide?</p>	<p>In this question, the interviewees, the Venezuelan judges and prosecutors stated that the current regulations are assertive, because they are oriented in the gender perspective and for that reason the specialized Organic Law on the right of women to a life free of violence was enacted, in which a special procedure is circumscribed that governs the processing of criminal matters related to crimes of gender violence. There are judges and prosecutors specialized in the matter.</p> <p>However, in the case of Ecuadorian judges and prosecutors, they argued that the classification and aggravating factors provided for in the Organic Integral Criminal Code linked to femicide is insufficient, they stated that the current norm does not find prudent sanctions that ensure the protection of women and members of the family nucleus, since it does not depend on them but on the legislator to adapt stricter rules than sanctions to these people who commit these crimes. In addition, they argued that femicide is aired by the ordinary process and a special procedure should be followed.</p> <p>Therefore, based on the interview conducted with judges and prosecutors, it moves to a general analysis based on personal criteria of the current situation of the crime of femicide, under the following arguments: The most prominent causes that cause femicide are: Machismo, the patriarchal system, hatred of the female gender, discussions in an ethyl state, threats, passionate and professional jealousy, envy, rejection of the victim to the aggressor and the current confinement, likewise the interviewees said that in the city of Quevedo is registered until 2021, 10 cases with 1,342 complaints of domestic violence, It was also established that the maximum penalty for this crime is 22 to 26 years in prison, but if there are aggravating factors it can add up to 34 years 8 months, according to the Organic Integral Penal Code (COIP) in force and finally, 3 of the Ecuadorian interviewees, stated that in the current norm there are no prudent sanctions that ensure the protection of women and members of the family nucleus, since it does not depend on them, but on the legislator to adapt stricter rules, which punish these people who commit these crimes.</p> <p>For their part, justice operators in Venezuela point out that the processing of femicide cases is aired through a special procedure that is suitable because it is intervened by specialized prosecutors and judges with a gender perspective.</p>

Results

Crime

The crime, in the strict sense, is defined as a conduct, action or omission typical (typified by law), unlawful (contrary to law), guilty and punishable. It implies an infringing conduct of criminal law, that is, an action or omission typified and punishable by law (Delgado, 2017, p. 5).

Crimes are unlawful behaviors that deserve punishment or punishment. Thus, they are mainly characterized by being: Guilty and contrary to the law. Unlawful and legally defined actions (Armenia, 2018).

Based on what is specified by the authors, it can be concluded that the crime is an action or omission that contravenes the legal system, which is punishable for violating criminal laws. It is an unlawful and culpable behavior of a person as a perpetrator or aggressor. Therefore, the researchers agree with the position of the cited authors and no epistemic distance is kept.

Femicide

Femicide is an autonomous crime characterized by the fact that the death or endangerment of a woman's life occurs as a response to the breakdown or non-compliance with a gender stereotype imposed on women by certain behaviors or attitudes that subordinate them (Toledo, 2016, p. 82).

Continuing in the context, femicide represents the violent death of women for reasons of gender, typified in our penal system as femicide, it is the most extreme form of violence against women, according to (Araúz, 2019, p. 55).

The researchers agree with the position taken by these two writers because femicide represents the most extreme form of violence against women and constitutes a breach of the female gender, so there is no epistemic distance.

For its part, the Integral Organic Law for the Prevention and Eradication of Gender Violence against Women of 2018, defines femicide as the "act by which a person kills a woman for the fact of being a woman or for her gender condition, as a result of power relations manifested in any type of violence, in accordance with the provisions of the Organic Integral Penal Code"

In general, it is understood that femicide is the intentional murder of an adult, adolescent or girl woman because she is a woman, or those who, for reasons of gender, are considered women, within the framework of hatred that the aggressor feels to the female gender, which is why the investigators keep epistemic distance with the assumption of fact provided for in the Organic Integral Penal Code that typifies the crime of femicide in the article 141 and which includes the aforementioned law in force on violence against women, because it does not include the factor of hatred that the aggressor feels for the victim when committing the crime that kills the victim and that can be triggered by different circumstances such as passionate jealousy, professional jealousy envy, personal insecurities of the

aggressor, sexual desire for the victim, rejection of the victim to the aggressor, power relations and subordination, among others. As a result, the classification provided for in the aforementioned article is insufficient and not fully assertive.

Discussion

Femicide is detonated by the hatred felt by the perpetrator against the victim's condition as a woman at the time of the criminal act, motivated by passionate jealousy, professional jealousy, envy, anger at the rejection of the deceased, among other circumstances, so this crime represents the most dantesque expression of violence against women by ending the life of the female. In this sense, since it is more harmful, it deserves a more severe sanction by virtue of the magnitude of the damage caused in harmony with the principle of proportionality that must exist between the commission of the punishable act and the sanction as a legal consequence.

Therefore, according to the perspective of the researchers, this element of hatred of the victim's gender must be reflected within the factual assumption that describes the typification of the crime of femicide. Legal situation that is not foreseen in article 141 of the Organic Integral Criminal Code but that is provided for in article 73 of the Organic Law on the Right of Women to a Life Free of Violence of Venezuela.

However, in the same way, during the commission of the scourge of femicide, particular situations are configured that aggravate the criminal act that are far from the ordinary sphere since it is a crime of a specialized nature. In this scenario, Article 142 contemplates aggravating circumstances that are somewhat decontextualized because of the absence of circumstances that operate during the perpetration of the crime that is enshrined in Article 74 of the Organic Law on the Right of Women to a Life Free of Violence of Venezuela.

It is worth mentioning that the gender, machismo and the patriarchal system have a lot to do with the incidence of femicide due to the power relations of the aggressor over the victim and the subordination of the latter with the perpetrator, which activates the circle of violence and the fear of reporting, which could prevent this unfortunate scourge.

Arrias Julio, Moreno Pamilys and Paucar César, (2020), in their research "The typification of forms of violence in the Ecuadorian legal system", argued that: Violence against women is a great problem that has no borders and its tentacles attack women of all races, creeds, ethnicities and ages through the perpetration of various forms of violence that represent actions typified as crimes in the different world legislations, among which are:

Therefore, we must be aware that violence against women in Ecuador has acquired capital dimensions, so this serious problem must be faced head-on, and in this sense, the Comprehensive Organic Law for the Prevention and Eradication of Gender Violence Against Women does not adapt in a real and objective way to the harmful context represented by gender violence in the country, very attractive

theoretical articulated content that loses effectiveness by not having the procedural part, referring to the COIP all the prominence of application that is outdated by not contemplating all the forms of violence that exist, by treating the criminal types of femicide and psychological violence in the wrong way, contemplating the character of contravention in an erroneous way for physical violence. Because of the above, victims need a truly efficient and effective legal instrument that materializes the prevention of violence against women and contributes to the eradication of these unlawful behaviors.

After having carried out the comparative analysis between articles 141 and 142 of article 142 of the Organic Integral Criminal Code (2014), alluding to the typification of the criminal type of femicide and its aggravating circumstances as de facto cases and articles 73 and 74 of the Organic Law on the Right of Women to a Life Free of Violence of Venezuela, (2021), linked to the typification of the crime of femicide and aggravated femicides, the following proposal is proposed to article 142 of the Organic Integral Criminal Code.

Aggravating circumstances of femicide. - When one or more of the following circumstances occur, the maximum penalty provided for in the preceding article shall be imposed:

1. Have tried to establish or re-establish a relationship of couple or intimacy with the victim.
2. There is or has existed between the active subject and the victim family, marital, coexistence, intimacy, courtship, friendship, companionship, work, school or any other that implies trust, subordination or superiority.
3. If the crime is committed in the presence of daughters, sons or any other relative of the victim.
4. The victim's body is exposed or thrown in a public place.
5. When the act was committed in contempt of the victim's body or for the satisfaction of sexual instincts.
6. If during the action of the crime, both sexual or physical assaults are presented unbecoming of the crime.
7. If the action is committed under a presidential decree of state of emergency.
8. When the act was committed during the execution of the crime of trafficking in women, girls and adolescents or by organized crime networks.

Conclusions

From the theoretical foundation on the crime of femicide and its aggravating factors comparing Ecuadorian and Venezuelan legislation, it is concluded that: Through the authors' criteria, it has been specified that the crime of femicide is the intentional murder of an adult, adolescent or girl woman because she is a woman, or because of her gender, in the framework of hatred that the aggressor feels to the female gender, constituting a serious scourge to the detriment of the human dignity of the victims, undermining their most precious legal asset such as life and their prerogative to live it free of violence.

From the diagnosis of the current state of the crime of femicide and its aggravating factors in Ecuador comparing Ecuadorian and Venezuelan legislation, it is concluded that: Violence against women because of their gender status in Ecuador has acquired capital dimensions, so this serious problem must be faced frontally, and in this sense, the Comprehensive Organic Law for the Prevention and Eradication of Gender Violence Against Women is not adapted in a real and objective way to the harmful context represented by gender violence in the country, very attractive theoretical articulated content that loses effectiveness by not having the procedural part, referring to the COIP all the prominence of application that is outdated by not contemplating all forms of violence that exist, When dealing with the criminal type of femicide that does not contemplate a suitable factual assumption in its typification, as well as does not enshrine all the aggravating factors that can be configured during the commission of this criminal act.

From the development of the comparative, critical and reflective legal analysis on the typification of the crime of femicide and its aggravating factors between Ecuadorian and Venezuelan legislation aimed at reforming articles 141 the element of hatred to the condition of being a woman and 142 of the Organic Integral Penal Code, incorporating new aggravating factors, it is concluded that: The victims of violence against violence need a truly efficient and effective legal instrument that materializes the prevention of violence against women and contributes to the eradication of these unlawful behaviors, therefore, femicide as the most atrocious and dantesque expression of the forms of violence due to hatred of the condition of being a woman must have an adequate typification, that it fully adapts to the gender perspective that protects the right of women to a life free of violence, with specific aggravating circumstances that are configured during the commission of the crime as occurs in Venezuelan legislation in favor of the preservation of due process, effective judicial protection and legal security, avoiding impunity to the detriment of the human rights of the victim for the sake of an efficient and effective administration of justice, articles 141 and 142 of the Organic Comprehensive Criminal Code must be reformed.

In this regard, with the application of the qualitative modality and the use of interviews, it was evident that there is certainly a need to adapt the legal system, recalling that women are victims of gender-based aggression leading to a situation of vulnerability, so it is necessary to implement changes in articles 141 and 142 of the Organic Integral Criminal Code.

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