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The suspension of the substance of the procedure in crimes of violence against women or members of the family nucleus and family stability

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Abstract

The suspension of the substance of the procedure in crimes of violence against women or members of the family nucleus and the family, covers physical and psychological violence in which there is no serious damage, because they are injuries that reach up to 30 days of inability; and in psychological violence it reaches when the sentence is 1 year, being actions such as verbal abuse, blackmail, discrimination, being possible to suspend the substantiation of the process at the request of the victim to the prosecutor so that the Judge orders compliance with measures and the psychological rehabilitation of the aggressor. The suspension of the substance of the procedure is a legal instrument used in criminal law to ensure the safety of victims of violence against women or members of the family nucleus and preserve family stability. As Vázquez, Ricardo, and Hernández (2022) explain, this measure consists of "the temporary suspension of the development of the criminal

proceedings, allowing the victim to be relocated or protected while the legal process continues." This tool is crucial in protecting victims of domestic violence and ensuring that they can seek justice without fear of retaliation. Moreover, as Ricardo, Vázquez, and Hernández (2022) argue, legal research can have a significant impact on addressing social issues, including gender-based violence. In their study, they suggest that "legal research can contribute to the identification of solutions that protect victims, prevent further violence, and promote the well-being of families affected by violence" (p. 549). Leadership is also essential in the transformation of higher education to address social issues effectively. As Viteri et al. (2021) note, "university leaders must be committed to creating a culture of respect for diversity and inclusion, where gender-based violence is not tolerated, and victims are supported" (p. S2-31). There are tendencies to think that acceptance into this legal institution is a window to re-victimization by not sanctioning the aggressor, but in reality it is a quick solution to the problem of physical and psychological violence, since upon acceptance a series of means is imposed. and conditions to the aggressor who must comply with them, otherwise the penalty established by law will be imposed. Having as objective an analysis of the violence and application of the suspension of the procedure in crimes against women and members of the family nucleus whose purpose was family stability. It is important that the use of this legal institution be intensified since it is guaranteeing the stability of the family, the rehabilitation of the aggressor and family coexistence in the future.

Keyword

Psychological physical violence, family, suspension, procedure.

Introduction

The suspension of the process in crimes of violence against women and members of the family nucleus arises at the same time as the new reforms that were implemented in the Organic Integral Criminal Code, which entered into force as of July 21, 2020 after the reform law to this Code was approved, This new reform brought with it a new unified, special and expeditious procedure aimed at directly punishing crimes of violence against women and members of the family; Therefore, this is consolidated as a mechanism through which the execution of the criminal process is paused according to the category of procedure that is being executed, whether ordinary, special, expeditious or unified, special and expeditious, this legal figure is an alternative means to the continuation of the process that is subject to the imposition of obligations by the court to the defendant and must have the It came from the prosecutor's office and the victim. (Castillo Alvares, 2018)

In article 651.3 of the Organic Code Integral Penal has been determined "the suspension of the process", this suspension is formalized at the request of the same victim undoubtedly something new for our legislation and that has caused a dilemma at the same time, this suspension will be approved by the prosecutor who is in charge of the process, As the process continues its course with the collaboration of the victim and it is in case of not continuing with it, the prosecutor

will no longer authorize the suspension of the process in order to stop accusing the aggressor. (National Assembly, 2021)

Gender violence in the couple is characterized by the intermittency of its execution and the alternation of states and situations of tension and violence with others of tranquility, calm and even affection. According to the Instituto Nacional de las Mujeres, (2020) this intermittency is characterized by following a cycle with three stages:

Phase 1. Accumulation of tension: During this period mood changes are sudden, frequent and unforeseen, bad mood and anger arise before any complication in coexistence, aggressive reactions to any frustration or discomfort.

Phase 2. Explosion of Violence: This phase is characterized by the discharge of tension generated in the previous phase whose trigger can be an insignificant motive such as a look or a simple gesture; The intensity and degrees of this violent externalization is versatile, so it is important not to fall into the common error of conceiving aggression only as a discharge or explosion, since its execution is variable, being able to manifest itself actively or passively.

Phase 3. Honeymoon: Its main characteristic is the decrease in tension and an incipient increase in affective manipulation, being able to adopt several modus operandi such as apologies and promises not to commit violent acts, the recognition of guilt and promises of changes in order to generate a "resurgence of the relationship".

The victimization of women deepens as well as their dependence on the abuser, since this phase aims to make the victim abandon the idea of leaving the relationship through emotional and affective harassment, which generates that the victim withdraws any type of charge when conceiving the idea of the absence of danger before the habitual coexistence, which in the future will be consolidated as the main trigger for a new cycle of violence.

In recent years, gender-based violence has gone from being a private and hidden problem to a public problem, since the great publicity that cases of gender violence are receiving has highlighted the real dimensions and causes of the problem, and this conversion of gender violence into a public problem has prompted public authorities to take action on matters to address the causes of the problem and to provide adequate care to the victims.

Therefore, from this recognition of the attacking nature of gender violence to fundamental rights such as freedom, equality, life, security and non-discrimination, proclaiming in our constitution, the involvement of public authorities in each of the areas is required: The legislator dictating the legal norms that are precious, such as Law 103, the COIP, and others that must complement and develop; The administration of justice, through the creation of the courts of the specialized units on domestic violence and prosecutors' offices specializing in domestic violence, adapting measures for the protection and repression of violence against women; and the Public Administrations, through the fulfillment of the various functions that correspond to them.(Echeburúa, 2019)

This institution at the international level is not new since they are part of the normative bodies of Venezuela, Colombia, Bolivia, Paraguay, Argentina, Peru, Chile and Ecuador, whose application focuses on ordinary procedures, as well as special procedures on gender violence or transit that deal with crimes that carry a non-burdensome penalty, That is, it is not capable of being applied in criminal types that generate a great magnitude of damage caused, being very burdensome, because they impose a considerable penalty.

In the Ecuadorian legal context, the conditional suspension of the process was incorporated as a legal tool focused on being an alternative method of resolving criminal conflicts through Official Gazette No. 555, dated March 24, 2009 in the Law Amending the Code of Criminal Procedure and the Criminal Code, which included this special procedure that mainly sought to ensure that the defendant has an opportunity to improve the situation. of a criminal process instituted against him and at the same time a cost to the State was avoided when the oral and public trial took place; This substantiation will begin only with the request of the victim and the authorization of the prosecutor, which seeks to grant the aggressor the opportunity to obtain the extinction of the criminal action against him in exchange for compliance with a series of obligations imposed by the court aimed at receiving psychological treatment and uprooting the patriarchal behavior that generates outbreaks of violence against the victims trying to maintain family stability.

Methods

The predominant modality in this article is qualitative because its objective is the description of the objects of analysis and the socio-legal approach.

Within legal research they are of a dogmatic – legal and sociological legal nature, since their object is aimed at the resolution of a legal problem and the perception and social impact.

The scope of the investigation allows to indicate the result to be obtained from it, so its legal scope is of several types:

Exploratory in that it investigated the most relevant aspects of the research problem, Descriptive since a certain spatio-temporal situation was analyzed in order to highlight the characteristics of the object of study; Explanatory since it allowed the study of causal factors within a legal framework; and finally, Propositional in order to point out the shortcomings in terms of the legal practice of a certain in order to specify the corrections and evidence the appropriate changes in order to propose a legal solution.

The research was formulated under the theoretical and qualitative theoretical levels.

At the theoretical level, methods of several types are used: Analytical – synthetic which allowed a detailed analysis of the information, since being part of a level of theoretical knowledge facilitates knowing the complexity and most relevant aspects, as well as the integration of all the elements and components obtained through the analysis and systematization of them; The inductive –

deductive method allowed the application of procedures starting from basic premises in order to establish the existing problem; The exegetical method made it possible to take as a starting point the positive legal texts in order to determine the scope of the norm through a systematic analysis.

At the qualitative theoretical level, it was formulated in Comparative Law which allowed to confront similarities and differences of the different legal systems at the world level in order to understand and propose an alternative that allows the improvement of the system at the national level.

The present research will be carried out through the analysis of research results under a legal guideline in the field of criminal law.

Results

According to data from the Attorney-General's Office, 19,975 cases of violence were registered nationwide, with psychological violence being the most common form of coercion, ill-treatment and forms of discrimination against women and members of the family. Being the main aggressor on a regular basis the father or head of the household.

Delito	Sep19 - Feb20	Mar20 - Ago20	Variación porcentual
Violencia psicológica contra la mujer o miembros del núcleo familiar	14.005	11.404	-18,6%
Abuso sexual	4.712	2.515	-46,6%
Violación	3.246	2.213	-31,8%
Violencia física contra la mujer o miembros del núcleo familiar	2.311	1.888	-18,3%
Incumplimiento de decisiones legítimas de autoridad competente (violencia intrafamiliar)	1.592	1.211	-23,9%
Acoso sexual	930	520	-44,4%
Femicidio	134	115	-14,2%
Violencia sexual contra la mujer o miembros del núcleo familiar	149	93	-37,6%
Actos de odio (violencia de género)	8	13	62,5%
Violación incestuosa	0	3	

Figure 1. Statistical data

Source: Attorney General's Office (2020)

Retrieved from: <https://www.primicias.ec/noticias/sociedad/ecuador-casos-violencia-genero-emergencia/>

According to statistical data provided by the Judicial Unit on Violence against Women or members of the family nucleus based in the Ambato Canton, Tungurahua Province, there are 8375 cases entered with a total of 5614 and 2871 judicial proceedings, with a low rate of acceptance of the suspension of the proceedings.

YEAR	CASES ENTERED	Records	Trials	Acceptance of the suspension of the substantiation
2021	4446	2875	1671	8
2022	3939	2739	1200	12
TOTAL	8385	5614	2871	20

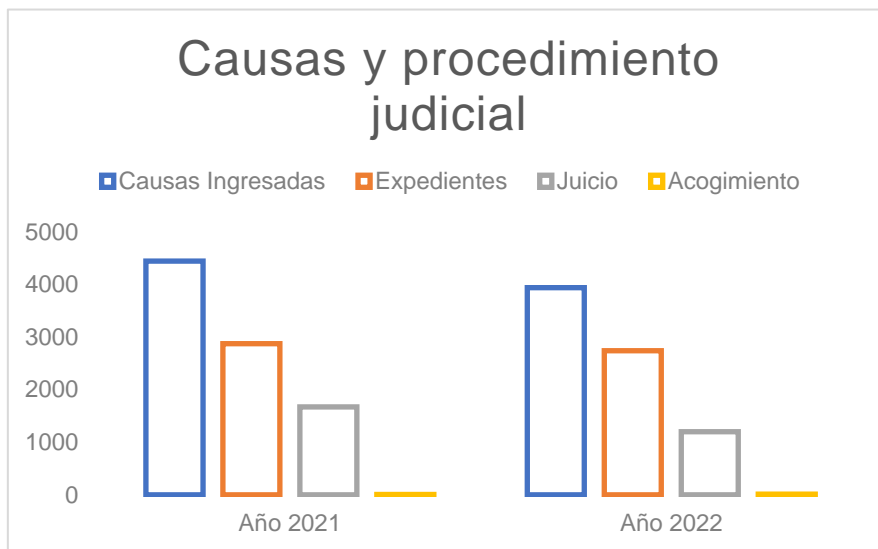


Figure 2. Statistical data

Source: Judicial Unit of Violence against Women or members of the family nucleus based in the Ambato Canton, Province of Tungurahua – Year 2022

Discussion

Domestic violence is a very serious expression of aggression and ill-treatment, manifested in different forms and levels, bearing in mind that, in most cases of domestic violence, the victim is usually the woman and such violence is often expressed in a context of a relationship.

In Latin America, there are few states that do not have strategies, plans or laws aimed at regulating a comprehensive rehabilitation focused on the active subject of domestic violence, at the national level, Ecuador is one of the countries that still lacks this legal figure because there is no express legal or political provision aimed at promoting the participation of aggressors in the prevention of domestic violence.

At the international level, countries such as Costa Rica, Chile and Ecuador welcome the concept of conditional suspension of proceedings, the application of which is feasible at any stage of the criminal process until before the trial hearing, suspension of the case that operates within a period of two to five years, time in which the person prosecuted must comply with the conditions and parameters established by the competent authority, and, in case of unjustified non-compliance, the application of the process is revoked and the ordinary trial route will continue.

According to the authors Díaz Basurto, Arrias Añez, & Paucar Paucar, (2022) in the work "Socio-legal analysis on the figure of the conditional suspension of the process in criminal matters" the suspension has a series of requirements and conditions for the application and subsequent benefit of this legal tool, in which the judge must take into consideration that the person prosecuted should not have fiscal instruction by Another crime, much less a sentence, in addition must not have benefited from this suspension or another similar, and mainly that the defendant accepts to undergo medical treatment, whether psychological, sex education, and relapses in the case of having some type of vice, these through the Ministry of Health, an organ belonging to the State, as indicated by the Magna Carta.

Conclusions

The Ecuadorian State has opted, through its regulations and the incorporation of the suspension of the conduct of the procedure, in cases of violence against women and members of the family nucleus, giving as options when physical violence does not exceed 30 days and psychological violence its penalty does not exceed one year. this kind of forgiveness of which the victim asks the Prosecutor, so that the aggressor is subjected to psychological therapy in order to lower his degree of aggressiveness and be incorporated into the family nucleus; and in this way safeguard the family.

The family unit is affected by physical and psychological violence, with the aggressor usually being the father of the family; due to several factors; When denouncing the victim and for the sentimental ties, family, for love of their children in many options they decide to forgive them and continue with the circle of aggressions, but at present there is the legal figure of the suspension of the substantiation of the procedure, whose legal nature is to maintain the psycho-emotional stability of the family, trying to heal the wounds.

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