

Cadena de custodia: Valoración de prueba y tutela judicial efectiva en el procedimiento adversarial penal

Chain of custody: Evaluation of evidence and effective judicial protection in adversarial criminal proceedings

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Summary

Introducción: El presente artículo científico aborda acerca de la problemática que tiene la cadena de custodia sobre la valoración de prueba y tutela judicial efectiva en el procedimiento adversaria penal, por medio de una metodología cualitativa y variada, donde se analizan tanto los precedentes históricos del tema como su aplicación actual, fundamentándose en una variedad de metodologías como: histórico, lógico, deductivo, inductivo, analítico, sintético y dogmático. Mediante la revisión bibliográfica, se evidencia la necesidad urgente de una intervención legislativa que salvaguarde la autenticidad de la cadena de custodia y la valoración de prueba y tutela judicial efectiva en el procedimiento adversarial penal. **Objetivo:** Por tanto, el objetivo es descubrir cómo la mala gestión de la cadena de custodia por parte de la policía nacional afecta negativamente a la mayoría de los casos penales en la valoración de la prueba por parte de la Fiscalía e incluso del órgano jurisdiccional lo cual atenta contra la tutela judicial efectiva que lleva a cabo la persecución penal deslegitimación del sistema judicial integral en la aplicación del sistema acusatorio. **Metodología:** Para la adecuada elaboración se eligió un enfoque cualitativo y el empleo de varios métodos como: histórico/lógico, con el fin de analizar los antecedentes y desarrollo del tema, deductivo/inductivo, para pasar de conceptos generales a específicos, analítico/sintético, para tratar sobre las implicaciones y cuestiones jurídicas actuales; y finalmente, el método dogmático, mismo que es arbitrario que surge de la normativa y, en última instancia, proporciona apoyo teórico para este tema. La técnica fue la revisión bibliográfica. **Resultados:** Se determinó que la regulación actual en Ecuador sobre la cadena de custodia valoración de prueba y tutela judicial efectiva en el procedimiento adversaria penal, es insuficiente, lo que lleva protección de la cadena de custodia velando por la seguridad jurídica y sin vulnerar derechos. **Conclusión:** En este contexto, es exigente que la asamblea nacional en este caso los legisladores ecuatorianos intervengan para garantizar una regulación adecuada de la cadena de custodia; valoración de prueba y tutela judicial efectiva en el procedimiento adversaria penal, velando por la seguridad jurídica y sin vulnerar derechos. **Área de estudio general:** Derecho Procesal Penal. **Área de estudio específica:** Derecho Procesal Penal y Litigación Oral.

Keywords:

Evidence, criminal adversarial, chain of custody, judicial custody.

Abstract

Introduction: The present scientific article addresses about the problematic that the chain of custody has on the valuation of evidence and effective judicial protection in the criminal adversarial procedure, by means of a qualitative and varied methodology, where both the historical precedents of the subject and its current application are analyzed, based on a variety of methodologies such as: historical, logical, deductive, inductive, analytical, synthetic and dogmatic. Through the bibliographic review, the urgent need for a legislative intervention that safeguards the authenticity of the chain of custody and the valuation of evidence and effective judicial protection in the adversarial criminal procedure is evidenced. **Objective:** Therefore, the objective is to discover how the mismanagement of the chain of custody by the national police negatively affects the majority of criminal cases in the evaluation of the evidence by the Prosecutor's Office and even the jurisdictional body, which undermines the effective judicial protection that carries out the criminal prosecution, delegitimizing the integral judicial system in the application of the accusatory system. **Methodology:** For the proper elaboration, a qualitative approach was chosen and the use of several methods such as: historical/logical, in order to analyze the background and development of the topic; deductive/inductive, to move from general to specific concepts; analytical/synthetic, to deal with the implications and current legal issues; and finally, the dogmatic method, which is arbitrary and arises from the regulations and, ultimately, provides theoretical support for this topic. The technique was the bibliographic review. **Results:** It was determined that the current regulation in Ecuador on the chain of custody, valuation of evidence and effective judicial protection in the adversarial criminal procedure is insufficient, which leads to protection of the chain of custody while ensuring legal certainty and without violating rights. **Conclusion:** In this context, it is demanding that the national assembly, in this case the Ecuadorian legislators, intervene to guarantee an adequate regulation of the chain of custody; evaluation of evidence and effective judicial protection in the adversarial criminal procedure, ensuring legal certainty and without violating rights.

Introduction

This scientific article is based on the perpetual violence exercised against women, a fact that constitutes a scourge of Ecuadorian society, which despite the various public policies implemented and the constant work carried out by the multiple representatives of state organizations, to prevent, address, punish and eradicate gender violence and the murder of women for the fact of being women, it cannot be suppressed. The most unfortunate thing is that in its extreme and irreversible version it ends with the death of the victim.

In accordance, Ecuadorian criminal legislation through the Comprehensive Organic Criminal Code (2014), classifies the crime that is closest to the situation described above, which responds to femicide, providing that:

The person who, as a result of power relations manifested in any type of violence, kills a woman because of the fact of being a woman or because of her gender, will be punished with a prison sentence of twenty-two to twenty-six years. (art. 141)

Parallel to the legal panorama described as femicide, we have devastating cases such as Paola del Rosario Guzmán Albarracín, who committed suicide on December 13, 2002, after finding out that she was pregnant by the vice-rector of the institution in which she was studying, and who had sexually abused Paola del Rosario for two consecutive years, so he decided to ingest white phosphorus or imps, an atrocious act that caused her death. It is also essential to bring up the case of Gabriela Díaz Cañizares, who committed suicide on April 5, 2014 due to the emotional crisis, depression and psychological affectation due to the rape carried out against her by two subjects (Mera, 2023).

Hence, the question arises in a timely and precise manner as to how impunity influences cases of feminicide suicide by induction or assistance in the Ecuadorian state and what impact would the specific legal classification of this crime in the Organic Code have on justice? Integral Penal?, knowing that in Ecuador in 2021, 1,332 deaths were due to homicides and 880 deaths were due to suicides; However, a fact that is striking is that, in 2021 for women, the number of suicides exceeded the number of homicides, thus resulting in the figures being 177 and 127 respectively (INEC, 2022).

That is why, in faithful adherence to the cases and figures mentioned above, the immediate need arose to analyze the crime of feminicide suicide by induction or assistance, through doctrine and comparative law, with the purpose of proposing its classification in the Code. Organic Comprehensive Penal Code, which would truly constitute a legislative novelty in the Ecuadorian state and even in the Latin American sphere, thus establishing Ecuador as one of the few countries to classify it worldwide, following El Salvador, Chile and other countries; Thus focusing this research on an

exhaustive typical analysis, comparative law, doctrine and jurisprudence at an international level.

To tell the truth, once this scientific article has been developed, and upon concluding the importance of the classification of femicide suicide within Ecuadorian legislation, the imperious transcendence of the rights possessed by each of the women who live in Ecuador is clearly evident. Ecuador, and exclusively in those who are victims of any type of gender violence, managing to prevent the violation of the right to life, the right to personal integrity, the right to the protection of honor and dignity, the right to freedom, among other rights, at the same time that a prison sentence is imposed on those who induce or help the woman to end her life.

Theoretical framework

Gender violence

Femicidal suicide does not arise as an individualistic social problem; on the contrary, it is the result of a series of phenomena of gender violence, which lead to a devastating end; This instigating pandemic of the 21st century encompasses a multitude of behaviors, and several of them are still unobserved by society, or at their worst, conceived as a common event.

A vast example of what corresponds to gender violence is the case of women's suicides caused by the abuse received by their romantic partners and even by their ex-partners; Therefore, when the correlation between gender violence and suicide that occurs in women as a result of that is evident, in this section the topic will be addressed through a timeline, that is, starting from its history, conceptualization, causes and effects, to gradually go deeper into the imputation of criminal responsibility.

Regarding gender violence against women, it must be said that it is a phenomenon implemented in the earthly world for decades, thus the most accepted definition is the one proposed by the United Nations Organization (as cited in Francisca, 2011), which maintains that it is:

Any act of sexist violence that potentially or actually results in physical, sexual or psychological harm, including threats, coercion or arbitrary deprivation of liberty, whether it occurs in public or private life. (p. 20)

In this framework, gender violence is conceptualized as the coercion exerted on a specific person with the purpose of vitiating their will and forcing them to carry out a specific act. In this way, different lines can be adopted, such as physical, verbal, psychological, sexual, social, economic, patrimonial, etc.; representing certain types of coercion that have been exercised, to a greater or lesser extent, over time.

On the other hand, the evident and daily reality of gender violence is that it results as a derivation of a sexist culture established in society and that occupies numerous spaces, such as education, work, sports, politics, and especially in homes, thus generating an unbreakable structure reflected through the subordination of women to men. Thus, Lagarde's (2005) argument that places gender violence seems correct:

Within the framework of the patriarchal gender supremacy of men [...] as a mechanism of control, subjection, oppression, punishment and harmful aggression that in turn generates power for men and their formal and informal institutions. Patriarchal persistence cannot be sustained without the violence that we today call gender. (p. 16)

Based on the aforementioned, it follows that the fundamental cause of gender violence responds to the discrimination suffered by women as a consequence of the notorious inequality established to distribute social roles, a fact that exposes a woman to exercising certain functions. such as pregnancy, tending to the kitchen, cleaning the house, washing clothes, caring for the husband and children, and putting up with all types of violence, inhibiting her from working so that she is a participant in receiving her own economic income, and can exercise a financial independence; Therefore, by promoting an absolutist dependence, the probability of suffering from depression, anxiety and post-traumatic stress disorder will increase, which will initially induce suicide attempts to the point of perpetrating such an idea.

Femicide

Now, when physical, psychological, sexual, patrimonial, financial, political violence, among others, is sustained in a prolonged manner, it has the effect of the emergence of femicide, which is conceived as a systematic expression of violence exercised against women. women for strictly gender reasons. Although the conceptualization and subsequent legal meaning is significantly new in the Ecuadorian state, its construction, use and legal establishment is a historical feminist, academic and institutional achievement.

From Diana Russell, the precursor of the concept of femicide, to Marcela Lagarde, who spread the term in Mexico and Latin America, many authors seek to analyze the unquantifiable situation of women's deaths from a feminist and gender point of view, in such a way that for Russell (2006), femicide represents “the misogynistic murder of women by men, which is conceived as a form of sexual violence” (p. 16). The contexts of hatred, repulsion or rejection that men express towards a woman have the consequence of causing their death.

Paradoxically, Russell (2006) considers that other cases beyond murders be recognized as femicide, thus maintaining that:

Femicide encompasses murder and mutilation, murder and rape [...] calling femicide misogynistic murder disambiguates the sexless terms of homicide and murder [...] Femicide is the end of a continuum of terror anti feminine which includes a large number of forms of verbal and physical abuse...as long as these forms of terrorism result in death they are femicide. (p. 56)

This gender violence exercised by men would be a way of maintaining patriarchy and controlling women who depart from that line engineered by him, since what the author says is a line made by men in a way blunt and unquestionable. Violence in this perspective is exercised by those who, when they feel threatened or challenged, typically feel they have the right to use whatever force is necessary to maintain their power over women.

On the other hand, we have the contribution provided by the renowned Mexican anthropologist, Lagarde (2005), who asserts that: “femicide is the culmination of violence against women, [...] to the homicides are added the violence of injustice and impunity” (p. 151). The definition outlined by the writer highlights the designation of the term femicide, once the impunity that goes through the phenomenon was visualized, as well as the state inaction in responding to them.

In this perspective, gender violence is structural, sustained by a patriarchal gender supremacy that allows men to exercise some type of power over women, and for this reason, at the international level several countries have recognized the crime of femicide or mostly femicide, after the regulation of the former in their respective laws or penal code.

The Ecuadorian state, for its part, in its criminal regulations called the Comprehensive Organic Criminal Code (2014), classifies the crime of femicide by providing the following:

The person who, as a result of power relations manifested in any type of violence, kills a woman because of the fact of being a woman or because of her gender, will be punished with a prison sentence of twenty-two to twenty-six years. (art. 141)

To tell the truth, it was with the tragic case of the female Karina del Pozo, after the death of the twenty-year-old girl from Quito, that Ecuadorian society, tired of the extremist violence directed against the female gender, sought refuge in the unmemorable law. which bore her name, “Karina del Pozo Law”, to later be embodied in the legal figure of femicide within the legal system, with the aim of not leaving the perpetrators of this death unpunished and in turn seeking that the application of the criminal offense be absolute

and certain, which will contribute to the reduction and elimination of this social phenomenon.

It becomes essential to emphasize once again that the concept of femicide is not simply reduced to a new type of crime. The origin of the concept has to do with a much broader political debate, but the legal issue, accompanied by jurisprudential precedents, gained relevance in cases of murders carried out against Ecuadorian women, due to the particular characteristics in which hundreds of cases occurred. .

Now, gender inequality, although it puts the safety and integrity of women at risk, this factor is not enough to prove the commission of femicide as such. In the same way, gender violence in a couple is not enough to prove said crime, because:

Femicide occurs when the violent death of a woman occurs due to her condition as a woman or for reasons of gender, which requires proving not only intentionality in the death of the woman, but also that this intention was motivated by hatred or contempt for others. the woman for the fact of being a woman or for gender reasons. If this intention and motivation cannot be proven, it is not possible to attribute responsibility for the crime of femicide. Condemning a person for the crime of femicide without having configured the specific elements of this type of crime, far from contributing to the fight against femicides, ends up making the seriousness of this crime invisible. (Sentence No. 393-17-EP/23, 2023, para. 13)

Absolutely all violent deaths of women must be addressed with a gender perspective, so that in the pre-procedural and even procedural stage it is determined whether or not gender was actually the main factor that led to the end of the crime. the life of a woman in the specific case, since only through this will it be possible to deduce the procedural truth and differentiation of a crime of femicide and that of a homicide committed by a man.

Suicide

Suicide is defined by the World Health Organization (as cited in Vega, 2021), “as that deliberate act of killing oneself, which is considered a serious public health problem” (p. 108). Hence, it is understood that suicide is a premeditated act by which a subject limits his or her life with knowledge and expectation of a fatal outcome.

However, beyond completed suicide, suicidal behaviors present in a very diverse way, responding in such a way to different motivations that demand different means of intervention. In such a way that, the person who exhibits suicidal behavior will be subject to three vital components when carrying out an act that harms their life, which occur at the following levels:

a) on an emotional level, intense suffering; b) at a behavioral level, a lack of psychological resources to cope; and c) at a cognitive level, a deep hopelessness about the future, accompanied by the perception of death as the only way out. Therefore, suicide is not a moral problem. That is to say, those who attempt suicide are not cowards or brave, they are just people who suffer, who are overwhelmed by suffering and who do not have the slightest hope in the future. (Echeburúa, 2015, page 118)

In accordance with the quote displayed, in the basic component of the emotional level, the person has a feeling of suffering and intense stress, and they feel that their life is divided between dying and continuing to live; On the other hand, at the behavioral level, the passive subject has a lack of psychological resources to face his problems that he destroys for a long period of time; and finally the cognitive level is the place in which the person has discouragement about things to come, and where he sees death as the only option to face and make the problems that overwhelm him disappear.

From there it is concluded that suicide continues to be one of the main causes of violent deaths throughout the world. According to the latest estimates from the World Health Organization (2021), according to the statistics obtained, it is known with certainty that:

Every year more people lose their lives to suicide than to HIV, malaria or breast cancer, or even to wars and homicides. In 2019, more than 700,000 people died by suicide, or 1 in every 100 deaths, prompting WHO to develop new guidance to help countries improve suicide prevention and care. (p.1)

Suicide rates are also high among the most vulnerable groups, such as girls, adolescents and adult women, and when they feel that life is already unbearable, either due to gender violence experienced in a lasting way, which eats away at the psychological factor, women proceed to forge the idea that death is the only way of escape, and they externalize it through verbal or non-verbal means, planning this atrocious event, until committing suicide as such.

However, many people who carry out suicidal behavior do not want to die, in fact, writers assert that there are many more suicide attempts than completed suicides, the only thing they want is to stop suffering and that is why they may be happy not to. to have died once the suffering has been controlled and that at an extreme point they have managed to suppress the tragic end that they initially conceived.

On the other hand, it is pertinent to mention that there is a link between suicide and mental disorders, particularly depression, and that in the vast majority of cases they occur in people who commit it impulsively in crisis situations in which their ability to cope with

the stresses of life, such as financial problems, relationship breakdowns, or chronic pain and illness that occur in their lives (World Health Organization, 2021).

Furthermore, living in an environment full of conflicts, catastrophes, violent acts, abuses of power, gender violence, loss of loved ones and a feeling of isolation from those to whom one has a personal attachment or esteem, can be the main factors for people to conceive certain suicidal behaviors and execute them fully.

femicide suicide

The concept of femicide suicide was coined by the social psychologist and feminist activist Diana Russell, in her book titled “Femicide, a global perspective”, where she explains in detail that at the International Conference on Violence, Abuse and Women's Citizenship, held in Great Britain in 1996, several of the participants emphasized in their speeches the fact that some women committed suicide, driven to do so by the misogyny of their male partner and in the face of this problematization, it was she who proposed the conceptualization of femicide suicide. .

Thus, the term femicide suicide is described as “the social phenomenon of suicides of women who were driven to take their lives due to the misogyny of their partner, or even without a relationship as a couple or family” (Russell, 2001, page 106). Thus, femicidal suicide leads to an action of deprivation of life, by self-induction, adhering to violence against women for gender reasons, denoting several elements that characterize it, such as the presence of sexual crime, abuse of power, lack of family networks, and even absence of coercion from government bodies.

Parallel to the legal panorama of femicide, since the 1990s, Lagarde (2005) observed suicide as a problem with gender characteristics closely related to what in her time she called “women's captivity” (p. 762). From this perspective, men and women turn to different modalities, means, ages and reasons for suicide; institutionalized and transversalized also by local culture. However, she stated in her first edition that:

Statistically, men commit suicide in greater numbers; On the other hand, women stand out in the attempt parameter: “men commit suicide in a higher proportion than women, and women, on the other hand, make more suicide attempts, the end of which is not death but salvation: out of compassion, solidarity, for absolution, for expiation, for punishment.” (Lagarde, 2005, p. 763)

Hence, logic can be found with the figures reflected in the Ecuadorian state, within the vital statistics provided by the National Institute of Statistics and Censuses (INEC), which reflect that, in the year 2022, 4,451 deaths were caused by of homicides and 1,143 deaths due to suicide and that, of this last cause of violent death, 892 were executed by men and 251 by women (2023).

Now, it is pertinent to bring up the regulation in international regulations regarding the crime of femicide suicide, considering in this way the state of El Salvador, which, aware of the commitments it adopted in 1995 when ratifying the Convention of Belém do Pará, and the problem represented by the suicide of women linked to gender violence, at the end of 2010 the Salvadoran legislator specified femicide suicide by induction or assistance as a criminal offense, in a new gender criminal law, this because Data on female suicides were alarming in the country, especially among young people and adolescent women, since in 2009, around 476 female adolescents committed suicide.

The aforementioned Latin American country is the pioneer worldwide in recognizing and classifying the crime of femicidal suicide, after an immutable fight for the women who made the pain of the victims who lost their lives their own, and who, to tell the truth, at first Their complaints were not taken, and if in the best of cases it was admitted, the support in the investigation was not consistent, making clear the negligence of the institutions in charge, as well as the lack of state action; However, as the years went by, it became clear that the figures that justified a close relationship between suicides and the abuse and violence suffered by women prior to taking their own lives were innumerable and remained unpunished, they decided to incorporate it into the Penal Code through legal reform.

Comparative law

The crime of femicide suicide by induction or assistance has been regulated by certain countries worldwide, with El Salvador and Chile being the pioneers on the American continent and even in the international field, who have classified it as a basic criminal figure in their regulations. , in response to the social problem of suicide committed by women linked to gender violence.

For its part, the state of El Salvador, through Decree No 520, after issuing the Special Comprehensive Law for a life free of violence for women (2011), recognized the crime of femicide suicide by induction or assistance, providing that:

Whoever induces a woman to commit suicide or helps her commit suicide, using any of the following circumstances, will be punished with imprisonment of five to seven years:

- a) That it is preceded by any of the types or modalities of violence contemplated in this law or in any other law.
- b) That the accused has taken advantage of any risk situation or physical or mental condition in which the victim may find himself, by having exercised against him, any of the types or modalities of violence contemplated in this or in any other law.

c) That the inducer has taken advantage of the superiority generated by the pre-existing or existing relationships between him and the victim (art. 48).

The Salvadoran criminal regulations establish two governing verbs for the perfection of the crime under study, with the verb inducing being the initial verb and, in the background, helping the female to consummate the act of attacking her life, whose acts coming from the active subject are closely related to three types of violence, such as community violence, which is perpetrated by acts and omissions of individual or collective agents that infringe the fundamental rights of women, giving rise to symbolic violence; In another field is institutional violence that falls on actions by any public or private servant that hinder the use and enjoyment of women's rights, thus perfecting economic violence and omissions; and finally the type of workplace violence that develops in the workplace, reflected through physical, psychological and emotional violence.

At the same time, the State of Chile has recognized the crime of femicidal suicide, after the promulgation of Law No. 21,523 (2022) or better known as the Antonia Law, which “modifies various legal bodies to improve procedural guarantees, protect the rights of victims of sexual crimes, and avoid their revictimization” (header), providing that several modifications be introduced in the Penal Code (1874), and that in its pertinent part provides the following:

Whoever, on the occasion of previous acts constituting gender violence, committed by him against the victim, causes the suicide of a woman, will be punished with the penalty of minor imprisonment in its maximum degree to major imprisonment in its minimum degree as author of femicidal suicide.

Gender violence will be understood as any action or omission based on gender that causes death, damage or physical, sexual or psychological suffering to women, wherever this occurs, especially those circumstances established in article 390 ter. (art. 390)

Undoubtedly, the Antonia Law, enacted in recent years, has provided the Chilean state with essential guidelines to protect the rights of women, victims of gender violence that results in their death, and that in most cases resorting to ordinary justice, they were humiliated and even re-victimized, a fact that is not foreign to the Ecuadorian reality.

The crime of femicidal suicide prescribes as the governing verb the causing death of a woman, in strict subjection to gender violence, leaving it for granted that the active subject of this crime is the man, and the one who perfects it due to various circumstances, such as refusal on the part of the female to enter into a relationship of a sexual or sentimental nature, the consequence of the female having exercised some type of

occupation in the sexual field, such as prostitution. Likewise, the crime under study fits after the commission of rape, or misogyny due to the sexual orientation or gender identity of the victim, as well as a perpetrate subordination of power relations between the aggressor and the victim (female).

For its part, the Republic of Ecuador, recognizes a criminal figure with total proximity to the crime of femicide suicide typified by Latin countries and mentioned in previous lines, thus recognizing in the Comprehensive Organic Criminal Code (2014) the figure of instigation to suicide, whose criminal law provides that:

The person who induces or directs, through threats, advice, specific orders, challenges, through any type of existing verbal, physical, digital or electronic communication, a person will be punished with a custodial sentence of one to three years. to cause harm to himself or put an end to his life, provided that it is demonstrable that said influence was decisive in the harmful result. (art. 154.1)

Ecuadorian criminal regulations only sanction conduct that instigates suicide, this as of 2019 after a reform to the legal text, whose nature of the crime lies in the perpetration of acts that endanger the protected legal good such as life or limb. personal integrity, whether through severe injuries or even the consummation of the same leading to the death of the passive agent, all this due to the persistent incitement or suggestion of the active subject, leading to countless psychological and social factors, which contribute to the consummation of the atrocious act.

The instigation of suicide by establishing the life of the suicide as a legal good requires interdisciplinary work, both constitutional and criminal law, strictly because the Constitution of the Republic of Ecuador (2008) recognizes and guarantees the “right to the inviolability of life” (Art. 66, number 1), leaving for granted the State's duty to establish mechanisms for the prevention and eradication of this behavior in society.

On the other hand, the presence of the active subject of the crime is imposed, who must have legal capacity to carry out the typical, unlawful and guilty conduct, which induces or directs the passive subject to act harmfully against himself, being in control of the event in their hands, thus constituting an autonomous criminal type. Hence, several doctrinaires analyze instigation to suicide from a perspective of co-authorship.

Now, from the field in which the passive subject operates as such, which could well be of the female or male gender, in accordance with the global approach to the classification of instigation to suicide, the psychological factor will be the main source of analysis in this type of crime, the practice of a psychological autopsy being essential, carried out by a forensic sociologist expert, accredited by the Council of the Judiciary, since said expert evidence allows us to know the historical reality of the facts, being that:

The psychological autopsy is a technique that is used when there is doubt between the hypotheses of accident, suicide or homicide and seeks to reconstruct the behavioral style of the deceased or the deceased, by evaluating several aspects: (i) whether the person had a motive to commit suicide; (ii) his vulnerabilities; and (iii) the study of his personality based on a retrospective evaluation of his life. (Case of Digna Ochoa and Relatives VS. Mexico, 2021, para. 126)

The expertise that responds to the psychological autopsy has as its sole objective to assess the mental state of the passive subject at the time of the execution of the act, since suicide is part of a group of violent deaths, and therefore it becomes essential to rule out whether in effect, it is a homicide disguised as suicide or if the victim actually ended his own life. Furthermore, it is imperative that this expertise be practiced since it constitutes an auxiliary means for the judge to issue his decision in accordance with the conclusions reached within the report, which will be closely related to the historical truth of the facts.

Cases of femicide suicide in Ecuador

In this section, some of the most controversial cases of the Ecuadorian state will be brought up where the consummation of a crime of femicide suicide is evident and which, because this legal figure is not typified within the legal system, have been resolved through a legal figure with greater proximity and in the worst of cases several have remained unpunished. Thus, with the aim of exemplifying cases associated with this crime, narratives that have been constructed through media reports, interviews with family and friends of the victims, jurisprudence and analogy of international media cases are used. .

As the first controversial case, the teenager named Paola del Rosario Guzmán Albarracín is brought up, who, while studying at the Dr. Miguel Martínez Serrano Technical Tax College of Commerce and Administration, and at only sixteen years of age decided to finish with his life on December 13, 2002. This event caused great shock in his classmates, friends, and of course in his family, who shared the pain and indignation over what happened, because:

[...] since she was 14 she was abused by the vice-rector of the school, he is a man of almost 60 years of age, who had the silence of teachers, doctors, fathers and mothers, as well as state authorities, to abuse not only from Paola, but also from other girls at school. After two years of sexual and psychological abuse, Paola, who felt “in love” with her exploiter, decided to ingest white phosphorus to end her life. (Palomo, 2021, p. 247)

At the beginning of the 21st century, the violence exercised against women and girls within the educational framework was of great magnitude, even more so within the

Ecuadorian sphere, where girls and adolescents were located in the first lines to become victims of their teachers and administrative authorities, due to the sexist culture that prevailed in those times, qualifying them as “typical aggressors” (Palomo, 2021, page 248), as reflected in the case of Paola Guzmán Albarracín, who at the instigation of an authority educational of the institution where she studied, she maintained relationships with him, in order to have a certain type of benefit in her academic development; and the degree of domination that the aggressor exercised over the victim under study was prevailing, to the point of exercising total subjection that would result in the suicide of the female.

Curiously and advantageously, the victim left three letters before his death. “The text of two of them (one in draft), were addressed to the Vice-Rector, expressing that she felt “deceived” by him, who had “had” other women, so she decided to take poison because she could not bear “so many things that I suffered” (Palomo, 2021, page 249). It follows that Paola was not the only victim of that aggressor, but on the contrary, it was only through this case that the vice-rector was stripped of a position poorly carried out against the students. Thus Moreno (2014) confirms that:

Gender-based violence, linked to school, has effects on low performance, irregular attendance, school dropouts, absenteeism and low self-esteem. Violence can also have physical or psychological health implications and can have serious long-lasting effects. (p. 9)

The consecutive acts of sexual violence carried out against Paola Guzmán Albarracín were reflected in the suicide after ingesting the imps, and as a consequence of the high degree of suffering that she suffered, mostly psychological, thus affecting her rights, such as that of the life and personal integrity of the woman. In this way, the Inter-American Court of Human Rights (Case of Guzmán Albarracín et al. VS. Ecuador, 2020) held that:

[...] The suicidal behavior showed to what extent the psychological suffering was severe. The direct attacks on the rights of the girl and the institutional tolerance towards them generated evident harmful consequences for her. The situation of violence indicated, then, implied an impact on Paola Guzmán Albarracín's right to a dignified existence, which was closely linked to the suicidal act that she committed. (para. 257)

In parallel, the case of Miss Gabriela Díaz Cañizares, who committed suicide on April 5, 2014, is a case that faithfully exemplifies the violence exercised against women, thus disturbing their emotional and psychological stability, degenerating into thus their full development, as well as their freedom and security. To tell the truth, this event occurred due to:

[...] the emotional crisis, depression and psychological affectation that left her being raped by Messrs. Iván Rivadeneira and Fausto Saavedra on July 22, 2013, at night, when they were at a meeting at the address of Mr. Saavedra, located on Princesa Toa and Condorazo streets, in the city of Riobamba-Ecuador. (Pino, 2023, page 28)

The unfortunate media case of Gaby Díaz was aired through a public action, since it was directed for the crimes of indecent assault, rape and statutory rape, where the female, unable to bear all the trauma as a result of the physical affectation and emotional that he carried on him for the acts committed against him, he decided to end his life, leaving behind a femicidal suicide crystallized, where the behavior of the active subjects and that of the victim is visualized, however, by then and To date, the type of crime that appropriates such conduct has not been classified in Ecuadorian criminal legislation, in order to punish the perpetrators according to the circumstances.

The Court of Criminal Guarantees based in the canton of Riobamba, in its written ruling, considered that a post-trauma stress disorder was generated and included an analogy between the condition generated in the victim and the fear factors maintained by the World Health Organization. Health (WHO), to the point of concluding the following symptoms:

1. Gabriela Díaz was afraid of losing her life, for her physical and emotional integrity. 2. Permanent fear of re-victimization, due to acute depressive symptoms, which caused depression to increase. 3. Re-experimentation, which is the manifestation of all the symptoms such as irritability, sweating, dizziness, changes in character, all of this generates post-trauma stress with a picture of moderate anxiety with risks, that is, with autolytic ideas, which led him to take a decision, according to the data collected, post-traumatic stress occurs due to a case of extreme sexual violence, which affects her emotionally to the point of entering into a degree of fear for her physical integrity and fear of foreign factors [...]. (Indecent attack, rape and statutory rape, 2015, page 24)

The traumatic experience that Gabriela Díaz lived plunged her into an acute depression as explained in the preceding paragraph, who from the beginning feared for her integrity, and how could she not do so, if she was raped by two subjects who, according to versions of her mother It is known that they were former schoolmates. On the other hand, within the case in which the case of the female under study was heard,

[...] a psychological autopsy has been judicialized, which covers the psychological part and the social environment, the accredited specialists said that this case entails all the symptoms of a case of rape, in addition to that it entails a case of sexual violence. gender, that as a result of the attack she suffered post-

traumatic stress, in the opinion of the professionals who were able to indicate that what she said and the state of emotion she presented was consistent with a crime of sexual abuse. (Indecent attack, rape and statutory rape, 2015, page 50)

Curiously, the Court of Criminal Guarantees based in the Riobamba canton declared the defendants Iván Vinicio Rivadeneira Luna and Fausto José Saavedra Cuadrado guilty of the crime of rape, which to date the attributable act was classified in Art. 512, paragraph 2 of the Penal Code, currently repealed. This sentence has been of great analysis in undergraduate and postgraduate degree works, since the death of the female as such as a result of violence to the right to sexual freedom was never considered, going so far as to consider that “a violate the principle of proportionality and legal security of the prosecuted persons” (Pino, 2023, page 28), because “the illicit conduct of the author of the transgression must be proportional to the legal good affected and the guilt with which he acted. the author” (Case of the La Rochela Massacre v. Colombia, 2007).

Methodology

The research was based on a solid qualitative approach, which included an exhaustive literature review and a solid theoretical foundation. This phase required a detailed study of the background, generalities, meaning and interpretation of the crime of femicide suicide by induction or assistance. A high-level descriptive approach was adopted, which made it possible to identify relevant criteria from writers and doctrinaire experts on the subject, as well as analyze specific cases in which Ecuadorian women were instigated by their aggressors to the point of deliberately making the decision to end the crime. their lives.

The methods used were mainly inductive-deductive, starting from particular ideas to reach general conclusions. Multiple reliable sources related to authors who defend the existence of the crime of femicide suicide by induction or assistance were used. In addition, the analytical-synthetic method was applied to break down and synthesize the information collected from the interviews with experts. To complement the analysis, the comparative method was used, which allowed us to contrast the international legislation that typifies the crime of femicidal suicide by induction or assistance in El Salvador and the crime of femicidal suicide in Chile, establishing similarities and differences with Ecuadorian legislation as a contribution. to this study.

Regarding the techniques used, documentary review and interviews were used. The instruments used were the questionnaire and the questionnaire, considered ideal for the purposes of this research. The main objective was to collect information that would allow evaluating the need to classify the crime of femicide suicide by induction or assistance in the Comprehensive Organic Penal Code of Ecuador, based on legal precedents and thus enriching the legal debate in the country.

Results

This scientific article was based on interviews with three participants, who respond to two judges of the Multicompetent Judicial Unit based in Gualaquiza - San Juan Bosco, province of Morona Santiago, and the Fiscal Agent of the same canton. The activities were carried out in the natural environments of the institutions in which they work, and those who were previously informed of the terms of the research and the informed consent, so that it could be accepted and answered by the participants.

1. How would you describe the crime of femicide suicide by induction or assistance?

Judge 1.- Suicide is understood as a way of causing harm to oneself, taking one's own life, and the term femicide comes from the word female, and refers to crimes in which exclusively a person of female gender, and induction or help is suggesting something to someone or helping someone do something, so it would be deduced that the crime of femicide suicide by induction or help implies the death of a woman because someone invites her to kill herself or He incites through words, actions or in turn helps him to perfect his death.

Judge 2.- It is essential to make a distinction between two things that are already established in the Comprehensive Organic Criminal Code, instigation to suicide and harassment, because it is quite subjective to determine whether a woman's suicide occurred because of of instigation by her partner, which should be related to gender violence, or on the contrary, if a woman was harassed to the point of taking her own life, so it becomes very complex to define said crime as such. .

Prosecutor.- The crime of femicidal suicide is not classified in Ecuadorian criminal legislation, but it could well be considered that the intentional act by a person who creates an environment of violence to instigate the female to commit suicide; However, Art. 154.1 of the Comprehensive Organic Penal Code typifies instigation to suicide, whose causal link converges in that a person induces or directs another to cause harm to themselves or to take their own life; crime that is quite similar to the one mentioned at the beginning, with the difference that the legislator never made an explicit relation to women as victims, so the possibility of the legislator being able to create a specific and autonomous criminal type would not be diminished. regarding femicide suicide.

2. What legal challenges does the Ecuadorian state submit to in the face of gender violence that results in the death of women?

Judge 1.- The Ecuadorian state owes a great debt to its population, because at the international level it always tries to fight against femicide, but Ecuador has largely been unable to counteract this type of crime that has to do with women. Therefore, it would be said that the challenges are of great magnitude since a policy should be implemented that

combats femicide from the roots, whether because someone kills a female or because someone induces a woman to commit suicide.

Judge 2.- I consider that in order to determine if a femicide suicide has been committed, it is not a question of whether it is typified in the Comprehensive Organic Penal Code, but on the contrary, this would be proven through an autopsy study. forensic examination in which a multidisciplinary team participates, including psychologists, psychiatrists, doctors, among other professionals, with the aim of determining the existence of a causal link between the suicide of a female and the responsibility of her partner or ex-partner, which in truth , I consider it impossible because the penal system is insufficient to determine this type of behavior.

Fiscal. - There are multiple challenges, starting from public policies as well as from the point of view of the classification of a crime with an explicit context such as femicide suicide. Regarding public policies, we would talk about crime prevention and protection of people who find themselves in a circle of violence, and policies regarding the sanction of certain acts that constitute gender violence.

With regard to the crime of femicide suicide, it is complex to understand it as an autonomous and specific criminal type, for the simple reason that the death of the female motivated by certain oppressive behaviors on the part of the partner or ex-partner is not the result that would have been looking for the person who is oppressing, because, when seeking to punish a person from a criminal point of view, they are normally punished for the acts that they wanted to provoke, but not for the acts that have been provoked without meaning to, thus promoting the space of a pre-intentional homicide.

3. How can the Ecuadorian state help eliminate the stigmatization associated with gender violence that ends the lives of women?

Judge 1.- One of the first options is education from the first school years, where work should be done on gender equality and conditions, as well as addressing the issue of sexuality of men and women, delving into the area of biology. , denoting the difference exclusively in the biological aspects of each man and woman; However, constituting us all as people, we have the same rights and obligations. Logically, certain things differentiate us such as studies, economic position, culture, etc., but that is no impediment to respecting others.

Judge 2.- It must be taken into account that gender violence has a greater presence in rural and indigenous communities, and this unfortunate fact is due to the lack of gender violence prevention policies, to such an extent that It has allowed that in the majority of cases in which protective measures are issued in favor of women, the perpetrators become victims, since the women who have been subjected to violence are subject to

discrimination by their partner, maintaining colloquial terms such as “Ah, you have denounced me, now you are not going to have anything to eat”, so it would be considered convenient that when granting protection measures, these should be accompanied by their own means of subsistence, because as long as they continue to depend economically from their perpetrators, they will have to endure any type of violence, which would ultimately lead to a possible suicide of the victims.

Fiscal. - Society has given rise to certain deep-rooted thoughts, which lead to thinking that certain roles are assigned to certain people based on their gender, as well as certain behaviors, which would lead to one of the main causes of gender violence. , so it would be necessary to work on education from the earliest classrooms in boys, girls, and adolescents, so that these causes are uprooted from their intellectual canons. This would lead to generating an understanding from their most intimate consciousness in these subjects, that people are born equal and that therefore they all have rights, only in this way could devastating cases such as femicides and suicides by instigation be avoided.

4. Do you consider it necessary to classify the legal figure of femicide suicide by induction or assistance in Ecuadorian criminal legislation? Because?

Judge 1.- Yes, it could be considered for a legal reform, so that the crime is classified with its respective governing verbs and thus comply with international parameters in relation to the defense of the female gender; However, we must be aware that if we are going to establish a criminal type, we must have the relevant and precise tools to make it effective, that is, to reach a successful sentence, because it would be useless to have multiple criminal types. if they are not applied properly.

Judge 2.- I personally consider that classifying the crime of femicide suicide by induction or assistance would be a dead letter, because the Ecuadorian state is not prepared to provide the technical and legal tools to determine that a female committed suicide due to such casualties, which which would lead to an impossible fact, since we are talking about the subjectivity of a person who dies, because it would have to be demonstrated that the responsibility of the active subject in this fact, which must be typical, illegal and guilty, every time that suicide itself is a behavior carried out by the suicidal person, and it should be proven that her partner or ex-partner instigated or helped her to commit it.

At the same time, I allow myself to comment on an experience that deals with a marriage, where the spouse had an extramarital relationship and that, after his wife found out, she proceeded to complain to him; However, the husband cynically told her that “if she did not agree that he had a mistress, he would commit suicide like his daughters.” This fact was not prosecuted as such because the woman accepted said relationship and decided to continue with her marriage; However, a case of femicide suicide by induction could have been perfected here, since the spouse suggested that he end her life.

Fiscal. - I do not consider the classification of this criminal figure to be transcendental, because the crime of instigation to suicide is already regulated, so working and developing a specific criminal type for femicide suicide by induction or assistance, would not help eliminate violence. of genre. On the contrary, I maintain that creating a criminal offense linked to the crime of psychological violence, developed in Art. 157 of the Comprehensive Organic Penal Code, would be positive, in the sense that, if psychological violence has caused death in the female, In the form of suicide, demonstrating that the behavior of the alleged aggressor and the causal link to the result are found, it should be considered with the same seriousness as femicide.

5. How can the judicial system improve its response to crimes of femicide suicide by induction or assistance?

Judge 1.- The judicial function could improve the treatment of these crimes, thus specializing judges at the national level, since in the same Gualaquiza canton there are multi-competent judges who hear multiple cases on all subjects, forcing them to study and train themselves alone to resolve in a correct manner in accordance with the Law, since if the judge specializes, the judge deepens his knowledge in gender violence or femicidal suicide, he will have a much more specific view to resolve cases of this nature.

Judge 2.- The most essential thing that the judicial system must execute is to provide all the mechanisms and personnel, in each of the public institutions, such as doctors, psychologists, social workers, so that they can urgently address cases that include violence against women. , since the Ecuadorian reality and exclusively gualaquisense is devastating, to the point that this Multicompetent Judicial Unit does not have a multidisciplinary team, made up of a doctor, psychologist, social worker and other professionals who should intervene in cases of domestic violence.

Such is the case of a psychologist, who plays a fundamental role in verifying the degree of affectation that a woman suffered, whether mild, serious, moderate, or if failing that, the affectation suffered could lead to suicide, because we as judges have We must base our decision on real facts, duly verified, counting on the certainty and security of the facts.

Fiscal. - I specify that in the event that it were to develop, the positive thing would be for it to be incorporated as one of the modalities of psychological violence. In this case, first of all, it would be up to the organizations in charge of investigating this type of crimes to have trained personnel to carry out those essential expert investigations, which in this case would constitute a fundamental psychological autopsy, as it is a complex and investigative technique. of which very few professionals, specialists in forensic psychology, can take charge.

In this way, it is necessary that the State Attorney General's Office adopt public policies in accordance with effectively investigating everything that relates to this type of situation, because as is currently the case, if a woman commits suicide, no action is taken. type of investigation, since it is quickly assumed that no crime was involved, leaving behind the possible connection between psychological violence and that woman's self-lytic decision to be forgotten.

Analysis and interpretation of the results

From the interviews carried out, it can be stated that the crime of femicide suicide by induction or help exclusively protects the life of the woman, as long as she is under any of the circumstances of domestic violence, that is, whether the partner or ex-partner after promote constant psychological, physical, economic, sexual violence, among others, to the female, suggesting that she cause harm to herself, attacking her personal integrity, or at its most extreme, helping her to perfect said act atrocious, with the aim of making the female commit suicide.

Faced with the constant deaths of women, the implementation of public policies for the prevention of femicides and femicidal suicides, protection against domestic violence, rigorous punishment for acts of gender violence, and strict consideration of the classification of new legal figures that regulate criminally punishable acts.

Beyond the policies that the Ecuadorian State could well implement to counteract all types of gender violence, its first duty would be to seek eradication, which would be possible through rigorous education, where equal conditions would be instilled. between the female and male gender, thereby preventing the development of sexist behavior, forms of discrimination, “stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination” (Convention of Belém Do Pará, 1994), with the purpose of allowing the use and enjoyment of the rights that protect human beings, fully recognized in the Constitution of the Republic of Ecuador and international treaties.

With regard strictly to the consideration of a possible classification of the legal figure of femicide suicide by induction or assistance, a division of positions is perceived, since from one angle the regulation of said crime is considered pertinent, but with the rigor of establishing its governing verbs in a clear and concise manner, which to tell the truth, would have to be the instigation and help to the female, which would encourage the active subject, who would radically be a man, to attack her life and personal integrity .

On the other extreme, there is the refusal to regulate a new criminal figure, due to the simple fact that the Ecuadorian State is not in the capacity to carry out said punishable act, since it requires accurate implementation of technical and legal to determine the responsibility of the active subject and thus confirm a favorable sentence for the victim.

Furthermore, a penal figure closely related to the crime of femicide suicide by induction or assistance is considered to already exist, such as instigation to suicide, which is contemplated in Art. 154, numeral 1 of the Comprehensive Organic Penal Code.

However, what the legislator could consider is the development of a third section within the crime of psychological violence stipulated in Art. 157 of the Comprehensive Organic Penal Code, where reference would be made to this type of violence in its maximum expression, which produces the death of the female, thus understanding it as a pre-intentional homicide.

In this thread of ideas, the function of the judicial system that is prevailing in the face of the constant suicides of women by induction or assistance is deduced, since for long decades the specialization of judges in multiple cantons of the country has been ignored, requiring them to administer justice as one of its prevailing duties, lacking specialization in certain matters, since only in this way would the prosecutor of the case have the ideal preparation to resolve specific cases. Additionally, the implementation of mechanisms and a professional community specialized in various sciences would be required.

Conclusions

- The concept of femicidal suicide by induction or assistance represents a significant innovation worldwide, emerging at the beginning of the 21st century as a response to the tragic reality of women who, victims of gender violence, go so far as to take their own lives. Feminist activists, upon highlighting this problem, sought to conceptualize it to urge states at the international level to classify it, with the primary objective of protecting the lives of women and punishing those, mainly men, who exert a negative influence that leads to the victim to suicide, whether through physical or psychological violence.
- At the international level, two countries have stood out for being pioneers in the classification of this crime in their criminal legislation. El Salvador, through the promulgation of the Special Comprehensive Law for a life free of violence for women in 2011, recognized femicide suicide by induction or assistance as a crime. For its part, Chile incorporated the crime of femicide suicide in Law No. 21,523, known as the Antonia Law, enacted in 2022. These advances reflect the state's will to counteract the influence of the aggressor on the victim, either through oppressive words or actions, which lead her to suicide.
- In the Ecuadorian context, devastating cases have been witnessed such as that of Paola del Rosario Guzmán Albarracín and Gabriela Díaz, who were victims of sexual and psychological violence that culminated in suicides. This shows the negligence of public institutions and the lack of state action in the protection of these women. The judges have pointed out the lack of mechanisms and specialized

personnel to address these cases, urging the need for a legal reform that classifies the crime of femicide suicide by induction or assistance in the Comprehensive Organic Penal Code. This reform is aligned with the provisions of international treaties, which seek to protect the integrity and right to life of women.

Conflict of interests

There is no conflict of interest in relation to the article presented.

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