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Ineficacia del tipo penal de la violencia psicológica en la ciudad de Cuenca, provincia del Azuay, en el primer trimestre del 2021

Ineffectiveness of the criminal type of psychological violence in the city of Cuenca, province of Azuay, in the first quarter of 2021

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Resumen

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Violencia Doméstica, Delito, Mujer, Derecho, Ecuador.

La prevalencia de la violencia contra las mujeres a lo largo de los años ha estimulado el establecimiento de programas destinados a lograr la no violencia contra las mujeres, principalmente a nivel internacional, así como numerosas reformas normativas nacionales e internacionales diseñadas para proteger a las mujeres de la violencia que sufren. El objetivo pretende demostrar si esta tipificación penal, puede ser considerar como una respuesta suficiente para prevenir todo tipo de violencia, e incluso llegar a erradicarla, convirtiéndose en una verdadera solución a la sociedad, al abordar no sólo una serie de políticas preventivas, sino también, de atención, protección y reparación de la víctima femenina. Por lo tanto, se realizará un análisis cuantitativo de los casos tramitados por las Unidades Especializadas en Violencia de Género de la Fiscalía Provincial del Azuay. Logrando definir que el delito tipificado en el Código Orgánico Integral Penal de Violencia Psicológica contra las Mujeres y los Miembros del Núcleo Familiar, en su artículo 157 reformado, no es una solución legal que pueda demostrar su eficacia.

Área de estudio general: Derecho. **Área de estudio específica:** Violencia de género.

Keywords:
Domestic violence, crime, women, law, Ecuador.

Abstract

Abstract

The prevalence of violence against women over the years has stimulated the establishment of programmes aimed at achieving non-violence against women, mainly at the international level, as well as numerous national and international policy reforms designed to protect women from the violence they suffer. The objective is to demonstrate whether this criminalisation can be considered as a sufficient response to prevent all types of violence, and even to eradicate it, becoming a real solution for society, by addressing not only a series of preventive policies, but also care, protection and reparation for the female victim. Therefore, a quantitative analysis of the cases processed by the Specialised Units on Gender Violence of the Provincial Prosecutor's Office of Azuay will be carried out. The reformed Article 157 of the Comprehensive Organic Criminal Code on

Psychological Violence against Women and Family Members is not a legal solution that can demonstrate its effectiveness.

Introduction

It is important to address this issue from a theoretical point of view regarding criminal selectivity, since this would be based on a criminalizing program of the State which would undertake the search for all criminal practices in order to consider them as such in the current criminal legislation of each State.

This is why Rafecas (2021) rightly states: "ETo undertake the simultaneous prosecution and criminal punishment of absolutely all practices defined as such in current criminal legislation would lead to criminalizing almost the entire population in one way or another" (p. 115).Stratenwerth"wanting to punish all guilt that has ever existed on earth would not only be an impossible undertaking in practice, but would also be absurd as a mere program" (p. 35).

In this context, Rafecas (2021) states that "any criminalizing program of the state constitutes an unrealizable enterprise as a whole, whatever the time and country to which we refer. No State, under any regime, at any time, was even close to it" (p. 115).

In fact, States obliged to respond to social demands are faced with an immense and unmanageable criminalizing program, without any awareness of true criminological research that could yield real results, with which they could consciously establish the social problems in order to choose the best State policies once they have been studied and provide a response to society and the victims of criminal conduct, but not always trigger punishment.

Under this order of ideas, Rafecas (2021) argues:

> "Faced with this monolithic reality, according to which the bodies responsible for criminal prosecution are faced with an immense and unmanageable criminalizing program regardless of the human and material resources made available, those responsible inevitably find themselves faced with an iron dilemma: either enter into a sort of paralyzing crisis (as a reaction of impotence in the face of a task that, as a whole, turns out to be impossible to carry out) or decide to select which crimes, which legal assets and therefore, what kind of authors will end up in the formal penal system."

For this reason, this research is aimed at understanding why the legislator chose to reform psychological violence as a contravention to classify it within a criminal type, and to verify whether transforming it into a public criminal action offense is effective or not against the social problem.

In order to answer this question, it is necessary to start from the point of interest, which is not to ask ourselves whether a given penal system is selective, because we know that

its answer is alwaysvamake an affirmative, but rather ask ourselves the question of how a State selects? and And who in the executive branch is in charge of criminal selectivity? (Rafecas, 2021).

In order to answer these questions, let us start from the fact that states, especially in Latin America, throughout their actions have shown very little or almost no investment in public policies aimed at studying criminologically those forms of conduct that they continually infringe and that in the long run become a social problem and that effectively infringe the criminal law, this is the reason why all criminal systems experience the same phenomenon, which is only to massively and permanently pursue a few established modalities with respect to a hundred numbers of legal assets or in response to social demands that cause social commotion by not seeing a response from the state, while the social problem remains permanently latent without any legal solution and also those recognized legal assets that are marginalized.

According to,Rafecas (2021) In our country, if we compute all the crimes entered into the formal penal system (for which we must cover all criminal courts, national and provincial, adult and juvenile, criminal and correctional, etc.), we will notice that, at least, two out of three of them are robberies, frauds, scams, damages, among others), while in the remaining space, all the remaining processes linked to the other legal assets are compressed.

As we see, penal systems are dedicated to the pursuit of property crimes, so we see that this selectivity comes from the less economically favourable sectors, so the characteristic of penal systems would come from people generally excluded from the welfare state and its provision of social rights, such as education, housing, health and decent work.

Under this contextBinder (2013) states:

> "in the context of a penal system that fails to operate under criteria of equality and targets the weakest in society," and adds that "…selectivity understood as the functioning of the penal system oriented almost exclusively to the punishment (formal or through preventive imprisonment) of the poorest and most vulnerable sectors of society, is the most determining characteristic, which must be reversed. All institutions are tainted and trapped by this phenomenon and it must not be put in the background at any time" (p. 37).

That's whyqueWe can conclude from this first part of the introduction that the majority of criminal cases are entered into the penal system of each state through purely summary means or through the results of police statistics, which do not have true and effective criminological studies to identify the root causes that provoke these criminal behaviors, but rather respond to the police action that is controlling penal selectivity.

In this next segment, we will begin with one of the notable regulatory developments for the legislators, who, at the time of its conception, considered "psychological violence" as a criminal offense and not as a mere misdemeanor. Before this, such human conduct was

classified as an infraction under the now defunct Penal Code, and therefore its criminal proceedings were required under the Act on Violence against Women and the Family (repealed), and the Women and Family Police was responsible for addressing such complaints.

However, Ecuadorian legislators, after an analysis, saw the need to include psychological violence under the criminal typology, justifying this action in the national reality and in the existing social pressure that calls for the end of this behavior or at least, its reduction since it is a very frequent social problem.

Sin lugar a dudas, the categorization of human behavior and the interpretation that the legislative power gives to society constitute an accurate response to the prevailing reality faced by Ecuadorian women. This is demonstrated by the statistical data that indicate that 75.9% of women in the Azuay region who have suffered gender violence have been raped by their current or former partners. (INEC, 2011).It is important to note that the city of Cuenca, located in the province of Azuay, is among the cities with the highest reported incidence of violence against women, a fact that frequently appears in national news.

In light of these official figures that are known and are national news, this research should be carried out in order to determine the effectiveness of the criminal norm as a preventive measure or not; and thus, demonstrate the effectiveness of the criminal type of psychological violence established in theArt. 157 of the COIP, so it is important to analyze, firstly, if its classification as a crime is protecting the victim and secondly, if at the time the case is brought to the attention of the Attorney General's Office, an effective response is obtained in bringing the case to court through a sentence or the cases remain under investigation without any response.

Therefore, it is important to make known the reasons why the penal norm of article 157 of the Comprehensive Organic Penal Code is effective or not and to find a response to these human behaviors that are generating a demand for complaints without having any result and generating an increase in state resources without obtaining a response from the administration of justice, even worse from the state..

With this research andfIn light of these new reforms, this paper will analyse and attempt to demonstrate whether this criminal classification can be considered a sufficient response to prevent all types of violence, and even to eradicate it, becoming a true solution for society, by addressing not only a series of preventive policies, but also care, protection and reparation for the female victim.

Theoretical foundation

Gender violence is made up of various types of violence, such as physical, psychological and sexual, which are carried out against women or members of the family nucleus, which have generated concern at the national and provincial level and which are public knowledge, with our research analysis topic being “psychological violence”, without leaving aside briefly addressing the concepts of each of these types of violence.

It is like thisqueThe Comprehensive Organic Criminal Code, hereinafter COIP, defines them as follows::

- **Art. 156.-**"Physical violence against women or members of the family unit. – The person who, as a manifestation of violence against women or members of the family unit, causes injuries, will be punished with the same penalties provided for the crime of injuries, increased by one third" (p.60).
- **Art. 157.- "**Psychological violence against women or members of the family unit: The person who makes threats, manipulation, blackmail, humiliation, isolation, harassment, persecution, control of beliefs, decisions or actions, insults or any other conduct that causes psychological damage against women or members of the family unit commits the crime of psychological violence and will be punished with a prison sentence of six months to one year. If, on the occasion of the psychological violence, the victim suffers from a mental illness or disorder, the penalty will be a prison sentence of one to three years. If the offence falls on a person from one of the priority care groups, in a situation of double vulnerability or with catastrophic or highly complex illnesses, the penalty will be the maximum penalty, increased by one third" (p.60).
- Art. 158.- "Sexual violence against women or members of the family unit. - The person who, as a manifestation of violence against a woman or a member of the family unit, imposes himself on another and forces her to have sexual relations or other similar practices, will be punished with the maximum of the penalties provided for crimes against sexual and reproductive integrity, when it concerns children and adolescents, older adults and people with disabilities" (p.60).

In the Official Registry Supplement No. 175 dated February 5, 2018, the "Comprehensive Organic Law to Prevent and Eradicate Violence against Women" was approved; with the objective of preventing and eradicating gender violence against women, through the creation of new public policies apart from those established in the COIP for the prevention, comprehensive care, protection and reparation of victims of violence..

One of the main justifications for the creation of this new law was precisely to seek the eradication of gender violence against women, since when considering the punitive path that this criminal type became, it was not giving results of eradication, since every day there were alarming news about femicide, which was the final result of the circle of violence against women and being the preludedel mismopsychological violence.

In this sense, on the one hand, there was undoubtedly progress when the COIP in 2014 included femicide under the classification of crime, but the path to eradicate violence was not yielding results, since this policy generated high costs, both economic and social, family and personal, not only for the victim but also for the State..

As a pressing public health issue, the inadequacy of laws addressing domestic violencegénero,whether physical, psychological or sexual, as a criminal act, makes it clear that existing measures are inadequate to ensure the prevention, protection and care of women who have been victims. To address this issue, it is essential to adopt innovative measures capable of establishing a National System for the Prevention and Eradication of Gender Violence against Women, which must be interconnected with theautoridades públicasand the participation of society, since co-responsibility is required to guarantee the safety and integrity of the victims, as well as their eventual reintegration into their life projects.

Within this new law in question, regarding the type of psychological violence, within the sixth reform provision, article 157 of the COIP was replaced., remaining:

> "Art.**157**.- Psychological violence against women or members of the family unit: The person who makes threats, manipulation, blackmail, humiliation, isolation, harassment, persecution, control of beliefs, decisions or actions, insults or any other conduct that causes psychological damage against women or members of the family unit commits the crime of psychological violence and will be punished with a prison sentence of six months to one year. If, on the occasion of the psychological violence, the victim suffers from a mental illness or disorder, the penalty will be a prison sentence of one to three years. If the offence falls on a person from one of the priority care groups, in a situation of double vulnerability or with catastrophic or highly complex illnesses, the penalty will be the maximum penalty, increased by one third.

SayingAArticle, under the Sixth Reform Provision of Law 0, published in the Official Registry, Supplement 175 of February 5, 2018, allowed to reform the requirements for the classification of damage caused to the victim, which was previously stated as:

> (Repealed)“Any person who, as a manifestation of violence against women or members of the family unit, causes harm to mental health through acts of disturbance, threat, manipulation, blackmail, humiliation, isolation, surveillance, harassment or control of beliefs, decisions or actions, will be punished as follows: 1)"If minor harm is caused that affects any of the dimensions of a person's comprehensive functioning, in the cognitive, affective, somatic, behavioral, and relational areas, without causing an impediment in the performance of their daily activities, the offender will be punished with a prison sentence of thirty to sixty days. 2) If any of the areas of personal functioning, work, school, family, or social, are affected in a moderate way, causing harm to the performance of their daily activities and therefore requiring specialized mental health treatment, the offender will be punished with a sentence of six months to one year. 3) If severe psychological damage is caused that has not been reversed even with specialized intervention, the offender will be punished with a prison sentence of one to three years."

The Ecuadorian State, as a constituent of the United Nations and the Inter-American System of States and International Regimes, recognizes violence against women as a tangible problem and defines a series of mechanisms to combat it. Consequently, in 1986, the United Nations Council resolved that any form of violence against women should be considered a transgression of their rights. In 1979, the Convention was established with the aim of eradicating all types of discrimination against women (CEDAW was approved). Later, in 1993, the Vienna Declaration and Program of Action recognized women's rights as an inherent component of human rights and, therefore, gender violence as a true attack against them.

The Convention on the Prevention, Punishment and Eradication of Violence against Women, "Belém do Pará 1994", establishes that violence directed against women covers any action or behavior that results in death, harm or physical, sexual or psychological suffering of women, based on their gender, both in the public and private spheres..

Therefore it can be understood that any form of violence againstmujer,becomes a demonstration against thehuman rights, considered fundamental for a person within their family environment, carried out by an external or internal aggressor and causing the victim a psychological condition that can range from mild to moderate or severe.

Importance of gender violence

The best authors who have conducted research on the subject of psychological violence in the criminal field have been compiled, observing that some countries in the world have had the same intention of having classified violence as a crime as in Europe and some Latin American countries, a human phenomenon that is causing a social problem worldwide and that needs to be addressed urgently.

In Ecuador, attempts have been made to address this issue legally, and it is necessary to reconsider whether Ecuador shares this vision of the legislator, since it is necessary and mandatory that there be criminological research aimed at a criminal policy that serves to classify this type of crime, such as the issue of psychological violence.

On the other hand, it is necessary to know what has been said and studied about psychological violence, its causes, manifestations and clinical aspects to determine whether or not there is psychological damage, being the basis on which the crime itself will be constituted.

According toCamacho G,(2014) states:

> In Latin America and the Caribbean, until the 1990s, violence against women, especially violence within the family, was considered a private matter in which the State should not intervene. On the other hand, little was known about the magnitude of the problem, so there was a tendency to assume that violence against women occurred in isolation, and was not seen as a social or public policy problem. And in Ecuador it was no exception, so that no woman who suffered

> violence from her partner had the possibility of reporting or demanding punishment for the aggressor, since a provision of the Code of Criminal Procedure prohibited reporting between spouses or between ascendants or descendants, who are usually witnesses to violent episodes within the family. In addition, this type of violence against women was not classified in the country's laws. It was only in the late 1980s that the country began to speak of violence against women in the public arena, as a result of the actions of the women's movement to draw attention to this fact, and the dissemination of the results of the first investigations and studies carried out by civil society organizations, which showed the magnitude and seriousness of the problem. (p. 16)

The State of Ecuador has officially supported several international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 198 and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of Belém do Pará (1995).,Furthermore, the State of Ecuador has committed to the binding terms of the Beijing Platform for Action (1995), by placing your signature. These conventions and agreements apply to allestados partes.

In 1994, the first Women and Family Police Stations were created, as the first instances of administration of justice considered as specialized and aimed at preventing, addressing, judging and punishing domestic violence that has been committed against women both on a personal and emotional level. In 1995, the Law was enacted103against violence against women and the family, allowing women who have been victims of theirparejas,may have access to protection and justice, becoming an important effort to more accurately address the current social problems..

Until 2006, the Ecuadorian State sought to respond to the social problem of gender violence by framing it solely as a criminal offense, and it was not until 2007, under the government of former President Eco. Rafael Correa, where, through Executive Decree No. 620, dated September 10, 2007, the eradication of gender violence was declared as one of the national priorities, addressing it from different areas that allow the implementation of a National Plan focused on the defense of human rights to fight against this national reality..

Methodology

The research had a mixed, descriptive and transversal approach. A literature and documentary review was carried out to establish theoretical foundations under the context of Ecuadorian legislation.For the present analysis, it was necessary to officially request official data from the Azuay provincial prosecutor's office on complaints of psychological violence and therefore also on complaints of non-compliance with legitimate decisions of the competent authority in order to record how many of them, once reported, have failed to comply with the protection measures granted to the victims, data that will help reflect the ineffectiveness of the law, since we will verify whether the complaints filed only in

the first quarter of 2021 have had a response or have managed to be brought to court or are still under investigation and the reason or legal impediment to their progress.

As part of the methodology applied for the analysis of the cases, a purposive selection of the files of each specialized gender prosecutor's office was carried out during the first three quarters of 2021. The aforementioned files were examined according to a validated case analysis form, which is commonly used by accredited higher education institutions in the region, such as the Universidad Javeriana in Colombia and the Universidad de los Andes (Colombia). The analysis form comprises several elements, including, among others, the data, circumstances, and common facts related to the victims in each file. The aim was to identify a common thread between these elements, in addition to identifying potential legal obstacles that could arise throughout the investigation. Finally, the status of the cases in question was also examined and whether victims continued to file complaints for similar types of conduct.

Results

Official data show that in the first quarter, that is, January, February and March of 2021, in the Specialized Gender Violence Units of the Provincial Prosecutor's Office of Azuay in the Cuenca Canton, field of study, 711 complaints have been filed between the crime of psychological violence and failure to comply with the preliminary investigation stage, likewise more than 90% have protection measures, and 100% of these data do not provide the reason why they have not been brought to court.

As we can see in the following tables, carrying out a quantitative analysis we have regarding the results of the information provided by the Provincial Prosecutor's Office of Azuay:

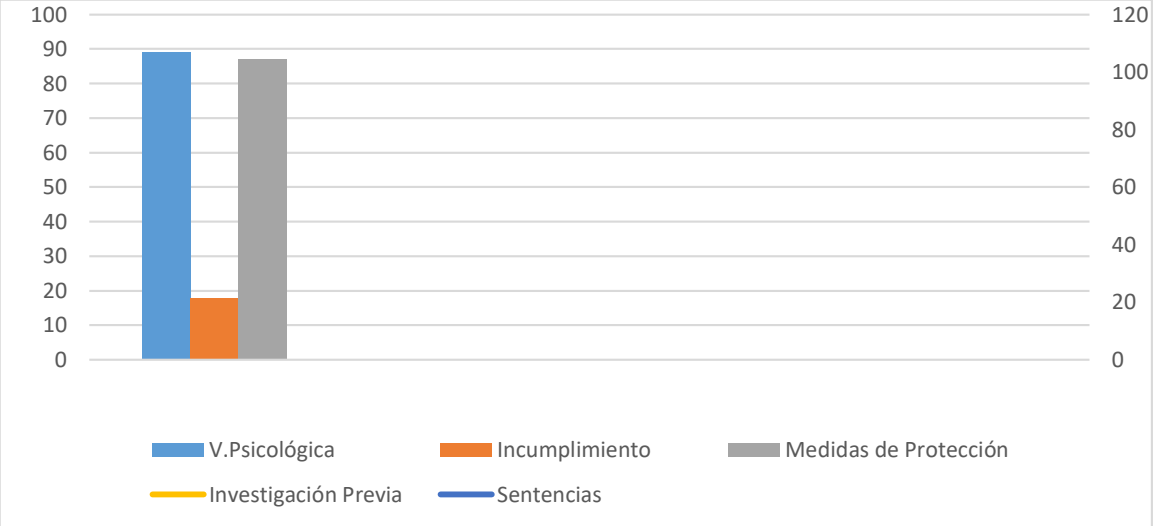
Gráfico1

Complaints: psychological violence and non-compliance (Cuenca Canton, First Quarter, year 2021)

Fountain: Elaboración propia a partir de los Data obtained from the Provincial Prosecutor's Office of Azuay (1st Quarter 2021)

Gráfico2

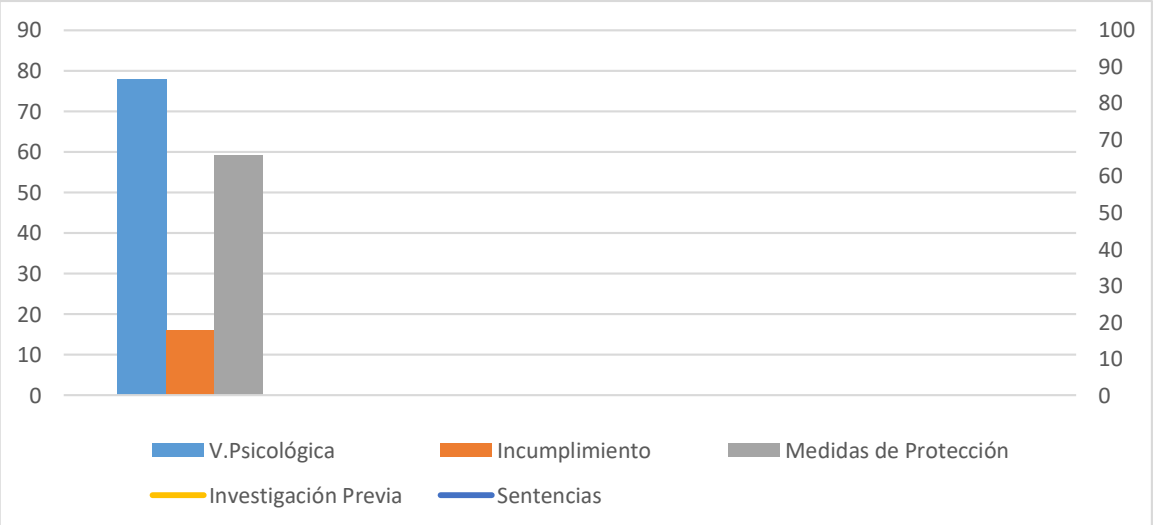
Complaints: psychological violence and non-compliance (Cuenca Canton, First Quarter, year 2021)



Fountain: Elaboración propia a partir de Azuay Provincial Prosecutor's Office (1st Quarter 2021)

Gráfico3

Complaints: psychological violence and non-compliance (Cuenca Canton, First Quarter, year 2021)



Fountain: Elaboración propia a partir de Azuay Provincial Prosecutor's Office (1st Quarter 2021)

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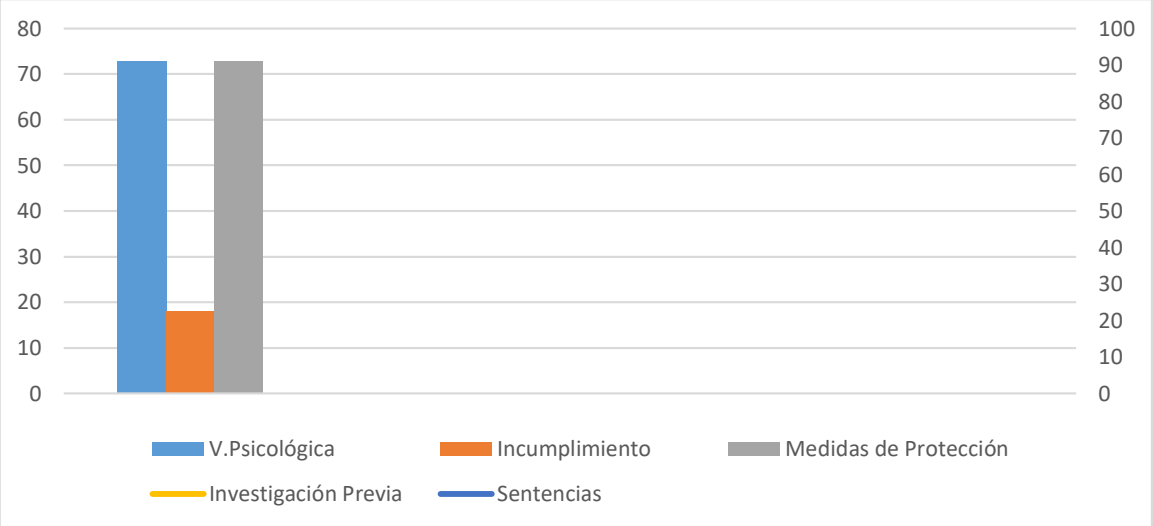
Gráfico4

Complaints: psychological violence and non-compliance (Cuenca Canton, First Quarter, year 2021)



Fountain: Elaboración propia a partir de Azuay Provincial Prosecutor's Office (1st Quarter 2021)

Discussion

Today, we find ourselves in a society with an all-encompassing organic criminal regulatory framework. Within this framework, the phenomenon of psychological violence has been elevated to the category of a criminal offence, and is no longer considered a mere infraction, but is recognised as such under the auspices of a clearly defined legal procedure.

Previously, the COIP was establishedIn its article 157, paragraphs 1, 2 and 3, it was necessary to demonstrate that there was serious, mild or moderate psychological damage, which caused a serious problem in that most complaints were not brought to court, since there were a series of obstacles, starting with the lack of human and technical resources of state entities and the lack of support during the complaint process, which caused several complaints to have no end.

On the other hand, Ecuador does not have a scientific study to determine what clinical aspects victims of psychological violence should consider to establish in the expert field whether or not there is damage, that is whyqueIt will be necessary to bring studies that have been carried out on this clinical aspect because the human being is a different and individual world.

In the province of Spain in the year 2014 la Doctora Alicia Ballester y Lian Villanueva, conducted a study on 127 women victims of psychological abuse and 55 men reported to

determine their psychological state through the MCMI_III method (United States method, Million Clinical Multiaxial Inventory III) in order to determine the influence of sociodemographic variables and abuse on the scores of said method, reaching the conclusion that when assessing psychological violence it is often more difficult to identify and evaluate it, which is why it is suggested to punish severely according to the frequency with which it occurs and the subjective impact it represents for the victim.

In 2013, Murcia, the journal Anuario de Psicología published a study on the psychological and personality characteristics present in men who abused their partners, with the aim of carrying out a technical review of the psychological and personality characteristics of the aggressors convicted of violence against women during the relationship, focusing on three types of studies for later analysis: assessment instruments, type of samples and typologies found.

In 2011, a desk research was conducted to compare and contrast forensic psychological evaluation with clinical evaluation. This research succeeded in incorporating the term "psychological" into legal language as a result of the disparities discovered between clinical evaluation and forensic evaluation.

DevelopmentsTtheoretical on legal assets affected

Let us start from the need for the affected legal asset so that the punitive power of the state can intervene. To do this, let us start from the fact that the condition for criminal classification would be that the conduct is prohibited and that it is projected as offensive, detrimental or at least endangers individual or collective interests.

According to the COIPin itsArt. 18 establishes criminal offences as: typical, unlawful and culpable conduct whose sanction is provided for in this code.

> In hisAArticle 25 states: "Typicality: criminal types describe the elements of criminally relevant conduct." In its Art. 29 it establishes regarding unlawfulness by establishing that: "for criminally relevant conduct to be unlawful, it must threaten or injure, without just cause, a legal asset protected by this code. And finally, in its Art. 27 it states: "Fault. - the person who violates the objective duty of care that personally corresponds to him/her acts with fault, producing a harmful result. This conduct is punishable when it is classified as an infraction in this code.

Given the above, it would follow that any prohibited conduct does not in any way affect third parties, and therefore the state's punitive power, in the context of a State of law, is left without any justification, since this conduct would not result in any result that could be considered worthy of being criminally punished..Rafecas. 2021(p.67)

AffirmsMir Puing(1995):

> The unlawful act must be seen above all as an act that compromises the existence of legal rights: the principle of harm or injury (nullum crimen

> sine injuria), linked to the exclusive protection of legal rights, must be the starting point of criminal unlawfulness" (p. 122-123). Although the author rightly clarifies that such unlawfulness presupposes not only the will of the Law to avoid the unlawful act, but also the possibility of achieving it through motivation (idem, p.123).

From this point, the constitutional principle of harmfulness is based as a foundation for the State's punitive claims, which would result in the concept of legal good that Criminal Law refers to social values or interests for the personal fulfillment of each individual.

Rafecas,(2021), rightly concludes that the agreement with Roxin, a very influential criminal offender of the second half of the centuryXX,is justified in the context of legislative restrictions. Roxin argues that the principles of the Constitution represent the only limitation on the legislature since its creation. Consequently, the legally binding political good, in the context of criminal law, can only be derived from the principles enshrined in the Fundamental Law of our State of Law based on individual freedom, which delimits the punitive power of the State (Roxin,1997, p. 55-56).

The same author also states that in a democratic model of State, the legal rights susceptible to criminal law cannot have any place in the consecration of moral or religious values, for the reason that within a democratic State, the rule of law has the obligation to also give protection to minorities, who are commonly the object of discrimination, precisely because of their different beliefs or values.

That is why Rafecas concludes, 2021that:

> "The requirement of an injury or endangerment (as the case may be) to legitimize criminal punishment is not limited to the qualitative dimension, but also contains a quantitative requirement, which given the actual practices of our penal models (characterized by penal selectivity and the proliferation of cases of little penal relevance), constitutes a crucial aspect to take into account here, in the sense that, in order to enable punitive power, the injury or endangerment must have a certain entity, a certain seriousness, to satisfy the requirement of harmfulness.(p.71)

Based on the topic presented and debated by the legislative body in August 2014, coinciding with the creation of the COIP, and after a subsequent round of debate, the category of criminal activity related to "psychological violence against women or members of the family unit" was officially established in this regulatory framework.

It is clear that behaviours such as psychological gender violence violate legal rights that are constitutionally protected, such as a person's physical, psychological and personal integrity. As a result, it is the responsibility of the State to ensure that people can live in a society free from all forms of violence. The inclusion of psychological violence in the COIP has led to the discussion and reform of more severe sanctions for this behaviour.

However, it is important to consider the impact of these punitive measures on the victims of violence.

As Larrauri (2011) points out, even feminist groups themselves have criticised the use of severe penalties, arguing that criminal intervention should only be used in exceptional circumstances and that women are more concerned with protection than punishment. Therefore, the priority of women's society is the provision of support and protection, rather than punishment. It is essential that legal intervention in cases of psychological violence is effective in providing protection and support measures to victims.

The United Nations Declaration on the Elimination of Violence against Women defines violence against women as any act of violence based on a person's gender that results in physical, sexual or psychological harm or suffering. This includes threats of violence, coercion or arbitrary deprivation of liberty, regardless of whether the incidents occur in the public or private sphere.

When talking about what “gender” is, there is a need to understand “gender violence”, which will be emphasized a lot when talking about one of its manifestations, such as psychological violence.Zaikoski(2008) described that “it is the social or cultural construction based on biological, historical difference, in short, which as such has been changing over time and space, acknowledging the receipt of violence caused by the social model of male domination over women” (p.118).

Therefore, based on this definition, we are concluding that the broken gender will be that of women, who have been physically, sexually and psychologically abused for years in the past.

According toLamas M.(2000)conceptualizes gender as “The set of ideas, representations, practices and social prescriptions that a culture develops from the anatomical difference between the sexes to symbolize and socially construct what is "proper" to men (the masculine) and what is "proper" to women (the feminine)" (p. 65).

The author rightly refers to what he says: “All social life is framed in differences organized in pairs: white-black, strong-weak, outside-inside, public-private, man-woman, which correspond exactly with the characteristics attributed to each sex. In addition to these binary categories being established (you have one of the two, never both), they are hierarchized.” (Zaikoski, 2008, p. 120).

Let us remember that violence in all its forms includes, as stated above, the violation of the fundamental human rights of a person within the family environment, both externally and internally, as is the case with psychological violence, which produces effects on the victim's psyche, in a mild, moderate or severe way.

In this sense, Núñezdel Arco y CarvajalThey state: “The consequences of this type of violence are more pronounced when it is psychological, because as we well know, a physical wound can be treated and cured, but if the damage is psychological, the victim

is condemned to having to relive the events, producing over time a deeper wound that is sometimes even impossible to cure..”(p.7)

Psychological violence must be understood as the prelude to femicide, since the so-called domestic or intra-family violence is generally caused between people with direct emotional relationships such as the family nucleus, since it is there that it is exercised through psychological coercion and causes harm to the victim.

According to research byRubio (2019), the initial stage of gender-based violence can be compared to a prelude or a harbinger of the most serious form of abuse. This prelude often involves psychological violence, which often turns into physical violence and causes further harm to the victim.

La socióloga Silvina AnfuseShe also explains that the root cause of psychological violence against women is the devaluation of their worth. The constant use of tactics such as emotional manipulation, ridicule, threats and disrespect is aimed at stripping women of their autonomy and self-esteem, leading to their subordination and loss of self-esteem.

Therefore, it is important to understand that victims of gender-based violence are trapped in a cycle of violence that not only affects them but also their family members. Therefore, state intervention must focus on addressing the victim's psyche to break the cycle of violence.

The cycle of violence begins with psychological violence, which is the first stage involving verbal insults, humiliation and devaluation by the abuser. If left unaddressed, the victim can easily become trapped in a vicious cycle of violence, leading to physical and sexual abuse and, in extreme cases, death.

It is therefore crucial to address the issue of gender-based violence at its initial stage to prevent it from developing into more serious forms of abuse.

Statistics presented in the above-mentioned context reveal that the incidence of femicides is alarmingly high in Argentina, as a woman is a victim of such heinous crimes every 30 hours, and the number of such cases increases every year. According to a UNICEF report (2018),Between 2008 and 2014, 1,808 cases of women who lost their lives due to gender-based violence were recorded. In Mexico, the situation is equally worrying: seven women lose their lives every day, which places it among the G-20 countries where women are most vulnerable, after India, Saudi Arabia, Indonesia and South Africa., según la ONU (2016)In Ecuador, the seriousness of the problem is highlighted by the fact that 6.06 out of 10 women have suffered gender violence, and the number of femicides rose to 80 in 2017, not counting women under 15 years of age., según el INEN (2017).

This background shows that the punitive path of criminal law must be taken with a case analysis to determine whether criminal law should be created out of necessity in the face of this type of problem, for which the author Daniel Rafecas (2021) clearly explains:

> "The reason for this second postulate is as transcendent as it is little taught, and consists of the following: throughout the West, the main penalty of penal models is that of imprisonment. As we know, this kind of penalty falls on the freedom of the accused. Now, in a constitutional State of law, freedom is one of the most appreciated universal values, recognized at the top of the axiological pyramid. If this is so, every State must seriously justify, there when it decides to materialize the deprivation of any person of such an important value, while resorting to it only when it is the last possible resort.*parsatisfactorily resolve an intersubjective conflict*". (p.56)

Conclusions

It is clearly imperative for the State to provide timely, comprehensive and effective responses to violence against women. While criminal law is a fundamental tool to combat this social problem, it is not the only timely solution, as demonstrated in this article. We therefore assert that punitive measures, including the enactment of stricter laws for cases of psychological violence and violations of legitimate decisions taken by the competent authority in matters of domestic violence, have not proven to be the solution demanded by victims. In fact, victims often have to go through several trials to obtain a sentence. The long and arduous judicial process can re-traumatize victims, who are no longer content with receiving only protective measures. In addition, more than 90% of cases are subject to a pre-investigation, and victims may have to re-report their case due to the continuing cycle of violence.

The reform and classification of psychological violence as a crime did not lead to a better response from the justice system. A quantitative analysis indicates that most complaints are related to psychological violence against women, and more than 99% result in protective measures, but not in sentences. In the first three months of 2021 alone, there were a total of 711 complaints, with a high demand for complaints that did not go beyond the pre-investigation phase.

It is therefore clear that the problem of violence against women cannot be solved solely through legal changes in response to social pressure, particularly from feminist groups. It requires reflection and implementation of the process, including criminological investigations to determine the root causes of the victim's continued involvement in the cycle of violence, as well as the social barriers that prevent the filing of complaints. This will allow for the creation of specialized public policies that are prompt and timely for the victim, as a constitutional guarantee, not only during the reporting process but also before and during judicial proceedings.

The Provincial Prosecutor's Office of Azuay, in the canton of Cuenca, has four prosecutors specialising in gender violence. However, the lack of a technical team that can immediately carry out the relevant training often causes victims to abandon criminal proceedings and continue to suffer a cycle of violence.

In fact, despite the veracity of this public policy, both the reform of the COIP in its article 167, which promoted the transformation of psychological violence by not determining the degree of affection, and the establishment of the Law against Violence and its eradication, have also

advanced certain conceptualizations, such as the recognition that psychological violence can occur not only in the domestic sphere, but also in other scenarios such as education, work, sports, state and institutional, among other public, private, community spaces, and even virtual or cybernetic, where gender violence can be exercised.

On the contrary, while the COIP serves as a punitive legal instrument, the reforms have incorporated a special procedure for judging and sanctioning cases of domestic violence, including those involving psychological violence, through which, on the basis of the principle of minimum penal intervention, it stipulates the suspension of the procedure, which gives the aggressor the opportunity not to be subjected to a prison sentence, but to comply with certain conditions to improve his behavior towards the victim and, therefore, restore their family relationship.

In conclusion, it is imperative to find a solution to this difficult social situation, which is becoming more and more exacerbated, and therefore to confront this type of violence. Consequently, we have come to the conclusion that the solution does not lie in the expansion of the penal system, but in the establishment of protection, monitoring and prevention policies that combat the patriarchal culture that still predominates in our society, particularly in Cuenca, and, therefore, in improving the public administration system.

Through the collection of information and statistics provided, it is undeniable that psychological violence causes harm. Consequently, immediate treatment is necessary to avoid any serious consequences, such as femicide. The punishment and treatment of this type of violence must conform to the constitutional principles of proportionality and include financial and community measures along with prevention, monitoring and rehabilitation actions for all parties involved, including the victim, the aggressor and their families. This is intended to ensure that family members do not become victims of the system in which they live. Incarceration must be avoided in all cases.

Since underdeveloped countries face economic challenges, it is difficult to implement the concept of therapeutic justice. However, the state must invest in public health issues, since psychological treatments are part of health and both victims and perpetrators and their families must undergo these treatments. To achieve this, specialized centers must be established to provide psychological treatments to people involved in domestic violence crimes. In this way, compliance with the decisions of the ordinary justice system and the indigenous justice system can be guaranteed.

Finally, to encourage victims of psychological violence to report or seek justice, alternative measures that promote comprehensive psychological reparation must be implemented through public policies. These policies must prioritize the prevention and treatment of this type of violence for both the victim and their children. State authorities, such as the Ministry of Education, the Ministry of Public Health, the Ministry of Economic and Social Inclusion, the Ministry of Justice and the Judicial Council, as well as authorities and leaders of indigenous communities and peoples, must work together to achieve this goal.

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