

The femicide in Colombia: the recognition of a social phenomenon into a crime*

Feminicidio en Colombia: reconocimiento de fenómeno social a delito

O feminicídio na Colômbia: o reconhecimento do fenômeno social ao delito

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Abstract

This article aims to show the development of the notion of femicide in Colombia. This document outlines its historical background by analyzing how the empowerment feminist movements have made the society aware of this phenomenon. It was the Supreme Court, the highest judicial body that used this notion to give a decision on an appeal. Finally the description of femicide as a separate offense was enacted as law in July, 2015, in Colombia.

Key words: Femicide, Social phenomenon, Criminal offence.

Resumen

El presente artículo tiene como finalidad evidenciar el desarrollo y construcción del término feminicidio en Colombia, a través de la descripción de sus antecedentes, hasta el momento que inicia su consolidación gracias a la motivación de los movimientos feministas, así como de mujeres en Latinoamérica, dando paso al uso del término en Colombia por parte de la Corte Suprema de Justicia, entidad que lo emplea en una sentencia que dirime un recurso de apelación. Finalmente se realiza la descripción del feminicidio como un delito autónomo, pues Colombia para el mes de Julio de 2015 sancionó la norma que lo contempla como tal.

Palabras clave: Feminicidio, Fenómeno social, Delito.

Resumo

Este artigo tem como objetivo mostrar o desenvolvimento e construção do feminicídio na Colômbia, através da descrição de sua história, iniciando sua consolidação graças à motivação do movimento feminista e de mulheres na América Latina, dando passo para o uso do termo na Colômbia pelo Supremo Tribunal de Justiça, uma organização que utilizou o termo em uma sentença a um recurso de apelação. Finalmente, se efetua a descrição do feminicídio como uma infração autônoma para a Colômbia no mês de julho de 2015 que sancionou a norma validando o termo.

Palavras-chave: Femicídio, Fenômeno social, Crime.

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Introduction

Femicide can be seen as a crime of hatred, as a genocide against women, which is possible because of the ideological and social context of patriarchalism, misogyny, and normalized violence against women. Responsibility of the State for crimes committed either by action or omission and although the direct involvement of the State is very difficult to verify, it is not the failure of due diligence that explains the impunity of femicide and violence against women (Donoso, 2008, p.9).

Recently, for Latin America and Central America, the phenomenon of femicide can be exacerbated by the phenomena of militarization, political conflict or war because it is revealed that women are still spoils of war, of sexual torture, of exploitation.

It is then femicide, as expressed by the Inter-American Institute of Human Rights, the death of a woman of any age, extreme expression of violence against women based on power, control, objectification and domination of men over women; usually resulting from repeated and systematic violence, cruelty and hatred, within the framework of the absence of an effective public policy.

As Jiménez (2012) affirms, femicide are the forms of violence that can conclude in murders or suicides of women, and it is considered as a crime against humanity, within the framework of an institutional collapse.

It is important to emphasize that violence against women has not always been termed femicide; in the past, the term uxoricide was used to denote the deaths of women who were caused by spouses, based on jealousy, and considering it as a reaction according to the husband in case of adultery.

Later, and without identifying who the violence was, it was called as a *conyugicidio* to refer to the crime of the spouse, whether male or female, to give an opening to the concept of homicide or unnatural death of a man, term that included women, thus making invisible for institutional statistics and policies the murder of women.

1. Development

1.1. What is femicide?

Rusell, argues that the term femicide arose for the first time in the text *A Satirical View of London at the Commencement of Nineteenth Century (1801)* to call “the murder of a woman”; and it was the term used to describe violent acts committed against women, first used by her to testify before the International Tribunal on Crimes against Women in Brussels in 1976, and then used by Mary Anne Warren in 1985 in her book *Gendercide: The Implications of Sex Selection*.

In 1992, Radford and Russell, in their classic text *Femicide*, refer that femicide is one of the “...most harrowing and sensitive dimensions of male violence ...”and is located in”... the final terror against women, which includes a vari-

ety of verbal and physical abuses such as rape, torture, sexual slavery, incest and extrafamilial child sexual abuse, as well as psychological aggression...” (IIRH, 2006, p.34).

For her part, Professor Monárrez in Mexico has studied the context of Ciudad Juárez to understand and interpret the characteristics and motives of the murders of certain women, and she has also sought to establish the reason for the impunity created and sustained by the State in the face of the inevitable increase of deaths, made in the absence of research, which allows him to establish a classification of femicide as follows: family femicide (intimate and infantile), systemic sexual femicide (organized or disorganized) and femicide by stigmatized occupations (carried out by women), and conceptualizes it as the murder of women for reasons associated with their gender, considering it as an extreme form of gender violence, which is exercised by men against women in their desire for power, domination or control.

According to Carcedo and Sagot, in Costa Rica, they documented the individual experiences as collective to affirm that it is urgent to recognize the disruptions caused in the life of women by the violence exerted by men. The main objective of this study was to identify, visualize and conceptualize the effects of gender violence, taking into account three types of crime: intimate femicide, non-intimate femicide and femicide by connection (Carcedo & Sagot, 2002).

For Carcedo and Sagot, the concept of femicide also makes connections between the various forms of violence, establishing what Liz Kelly (1988) calls a continuum of violence against women. From that perspective, rape, incest, physical and emotional abuse, sexual harassment, the use of women in pornography, sexual exploitation, sterilization or forced maternity, etc., are all different expressions from the oppression of women and not disjointed phenomena. At the moment when any of these forms of violence results in the death of women, it becomes femicide (IIRH, 2006).

To explain femicide, Lagarde adds:

It is in the gender domain: characterized by both male supremacy and oppression, discrimination, exploitation and, above all, the social exclusion of girls and women, as Haydeé Birgin points out. All this, legitimized by a devaluing, hostile and degrading social perception of women. The arbitrariness and social inequality are enhanced with social and judicial impunity regarding crimes against women. That is, violence is present in different ways throughout the life of women prior to homicide. After the homicide perpetrated, it continues as institutional violence through the impunity that characterizes particular cases, such as that of Mexico, for the subjection of murders of girls and women over time. In the country there have been femicide periods linked to specific territories, where impunity favors the conditions that allow crimes and, those crimes are against women.

Now, according to Jiménez (2006) femicides show that women are usable, dispensable, abusive and disposable, and based on the cruelty and unreasonable hatred of women, expresses the inequality of power between men and women, as a reality that has remained hidden for centuries, considering women always of a lower rank than men, thinking that they are not qualified to dispose of their lives, and recreating the gender stereotypes, and the dominance that derive from them (Jiménez, 2012), it can also be understood as a war against women, which requires less unequal relationships. What is taken up by Segato (2006) is a reaction of hatred unleashed when the woman exercises her autonomy over her body, even when she accedes to positions of authority or power, and adds to the above that can also be crimes of power, in which the intentionality of killing or simply wounding or suffering does not differentiate.

For Marina Prieto-Carrón, Thomson and Macdonald, femicide refers to cycles of violence, based on the relations of oppression and subordination that patriarchal societies impose on women in the public and private spheres (Sánchez, 2010).

Ana Leticia Aguilar (2005) indicates that femicide is a widespread phenomenon worldwide, recent in Latin America, and she considers it a phenomenon “linked to inequality relations and exclusion that we, women, live in the society and that is manifested in the context of the sexist violence against us. It is not a

private matter, but a historical, social phenomenon that occurs to perpetuate male power in patriarchal societies” (Aguilar, 2005, p. 2).

Thus, the concept of femicide, in a broad perspective, refers to the murder of girls (infanticide), female fetuses (feticide), adolescent girls, and females, for the sake of gender, femicide can be committed by both men and women, but most of it is committed by men. In general terms, femicide refers to the violent death of women because they are women.

2. Femicide in Colombia

2.1. First stage: Social phenomenon

Femicide is exercised every day and in all areas; it constitutes the concrete manifestation of gender inequality and discrimination, and one of the most recurrent and widespread human rights violations in the world: the right to security, integrity, freedom and dignity of the person. Violence against women and girls precludes the enjoyment of rights and freedoms on an equal footing with men, most of which is perpetrated to preserve and reproduce situations of subordination, and that puts the victim at risk in such a way that they can derive in their death. Girls, young women, adults and the elderly are at constant risk of suffering violence in different spheres, and virtually all of them, at some point in their lives, have been victims of violence or have experienced their threat simply because of being women (UN Women and others, 2011).

Violence against women is a Human Rights

problem, a problem of citizen security that directly affects women, and indirectly to their family and society.

Violence seen as a problem of violation of Human Rights is based on the fact that it is against its human rights, which are indivisible, inalienable and imprescriptible as it is established by the International Conference Vienna Convention on Human Rights of 1994, it affects the right to life, liberty and security of person enshrined in Article 3 of the Universal Declaration of Human Rights, and Article 5 of the same, which states that no one will be subjected to torture or to cruel, inhuman or degrading treatment or punishment. It also creates a violation of Articles 3, 6, 7 and 9 of the International Covenant on Civil and Political Rights.

It also violates Article 4 of the American Convention on Human Rights or the Pact of San José, which states that everyone has the right to their life be respected; of Article 5, which states that everyone has the right to respect for their physical, mental and moral integrity; and Article 7, which indicates that everyone has the right to liberty and personal security.

The Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, known as the Belem do Pará Convention, states in its preamble that violence against women constitute a violation of their human rights and fundamental freedoms and totally

or partially restrict the recognition, enjoyment and exercise of such rights and freedoms to women; also it points out that it is an offense against human dignity and a manifestation of historically unequal power relations between women and men. Article 3 stipulates that every woman has the right to be free from violence, both in the public and private spheres, and Article 6 states that this right includes, among others, the right to be free from all discrimination and the right to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination, a position that is similarly adopted by the Committee on the Elimination of Discrimination against Women whose General Recommendation No. 19, affirms that violence against women constitutes a violation of human rights (IIHR, 2006).

It is now seen as a problem of citizen security, since it is characterized by ungovernability and inability to respond to the sectors affected directly and indirectly (GGM, 2005, p. 14), which was also endorsed by the Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights in her report on the situation of women's human rights in Guatemala.

The rapporteur also points out that there is no formulation of effective public policies in the area of citizen security, and specifically addressed to women coupled with the absence of studies on domestic violence, which highlights the absence of such policies (CIDH, 2005).

Under this scenario in Colombia, femicide does exist, although it is difficult to determine the real situation of femicide, since one of the greatest difficulties is the lack of information on underreporting and the bad record of the data, as well as the confusion in the concepts of homicide of women in general and femicide like murder of women by the fact of being women. It is necessary to emphasize that this problem of registration constitutes an important limitation to be able to know with more precision the problem of femicide, since a difficulty that prevents to determine the magnitude of the problem and to establish possible solutions (Huertas, 2013).

In Colombia, according to report of the Instituto Nacional de Medicina Legal Ciencias Forenses in 2002-2009, it was established that the main victims of couple violence are women with a total of 312,928 women beaten by their husbands, partners or ex-husbands, with a marked increase from 36,460 in 2002 to 54,192 in 2009; that is to say that in 2002, 99 women were victims daily of intimate partner violence and in 2009, 148 (Instituto Nacional de Medicina Legal, 2009), Bogotá had 12,171 in 2002, increasing to 17,368 in 2009. In 2004, there were 12,187 cases of personal injuries, and in 2009 there were 41,889 cases of sexual violence. In 2004, there were 3,179 cases, of which there were 4,293 cases of homicidal violence in 2009; during the period between 2002 and 2009 11,976 murders were established. According to the Alta Consejería Presidencial de Equidad para la mujer shows that for 2010, out

of a total of 57,875 cases of mistreatment of the couple, 51,182 correspond to women, and that for this same year on sexual violence 16,916 sexological opinions are reported in women who were sexually abused.

In this way, Colombia, according to the III Informe Internacional Violencia contra la mujer en las relaciones de pareja, developed by the Centro Reina Sofía, which carried out a study in 135 countries of the world, presents one of the highest rates in South America regarding crimes of femicide, especially in the couple area, and it was located within the first countries, as well as Puerto Rico, as the places in which approximately half of the murders of women are executed with firearms.

Colombia occupies the second position in Latin America with a percentage of 71.27% of commission of crimes against women in the household, the first position is occupied by Mexico; Colombia is also ranked third in the world ranking, which starts Cyprus with 303.15%. Regarding crimes in the field of couple or ex-couple, the country recorded one of the largest increases between 2000 and 2006, taking second place with 51.28%, again behind Cyprus.

2.2. Second stage: Supreme Court

On March 4 of this year, the Supreme Court of Justice, Room of Criminal Cassation, with a speech by Dr. Patricia Salazar Cuellar, issued the first sentence that recognizes the femicide.

The situation that gives origin to the sentence is: The accused served as the husband of the victim, with whom she had a daughter, an infant who by the time of the act was six years old.

Three years before the murder, he once delivered nine stabs to his wife, according to the testimony of the victim's sister he did so within the framework of an attack of jealousy. Then, even when the victim was convalescing, the perpetrator stayed with her, against her will, in order to threaten her with taking the daughter if she forced him to leave. The named sister says that he never stopped harassing and intimidating her, letting her know that she was his property or no-one, and that he would kill her.

She describes the sentence in her argument as a background to the femicide, the case settled by the Inter-American Court of Human Rights in the judgment of November 16, 2009, issued in the case of Gonzalez and others known as Campo Algodonero vs. Mexico, who referred to femicide, such as the murder of a woman for gender reasons.

The case presents three cases that occurred in Ciudad Juárez, Mexico. The first one is the case of Esmeralda Herrera Monreal, in the complaint, the petitioners allege the international responsibility of the United Mexican States for the irregularities in the investigation of what happened to Esmeralda Herrera Monreal, who disappeared in Ciudad Juarez on Oc-

tober 29, 2001 when she was 15 years old, and she was found murdered on November 7 of the same year because the State did not assume the task of prompt search, and on the contrary, the authorities disqualified the fact assuring that 'surely had gone with the boyfriend', no document of the autopsy was given and it was reported that the cause of death was 'indefinite', when the body with only eight days of missing, had neither face nor hair, authorities assured the mother that animals, the wind and the earth had destroyed him, yet the rest of his body was naked and intact and it was found face down. Blood and hair samples were taken for DNA testing of the father and mother and no results were given at the date of the complaint. The authorities say that the two murderers are in jail, the mother doubts 'because there is no conclusive evidence to assure or deny it the latter demonstrating the lack of seriousness in the follow-up of the case and manifest negligence and irregularities in the investigations'.

The second case is about Claudia Ivette Gonzalez, against whom Mrs. Josefina González Rodríguez, mother of the victim, filed a complaint imputing responsibility to the State for irregularities and inconsistencies in the investigation of the facts. The disappearance is denounced on October 11 and at the Office of the Attorney General did not accept the complaint because they considered that it was too late. They take DNA samples, the results of which have not been received as of the date of the complaint.

The last case is that of Laura Berenice Ramos Monarrez who disappeared in Ciudad Juárez on September 22, 2001 when she was 17 years old, and her body was found between the 6 and the 7 of November of the same year. The petitioners allege the international responsibility of the State of Mexico for irregularities regarding: the authorities assert that one of the eight bodies found on November 6 and 7, 2001, corresponds to the victim, however not the mother nor the family are allowed to identify the body, nor have they shown photographs of the lifting of the body. The mother came often to request information from the Assistant Attorney without being received, the day she was received she was told “to keep waiting”. The mother has taken data that could serve as lines of investigation and have not been taken into account.

Following the sentence mentioned, it was determined that it was a woman victim of abuse by a man who was not related to her on a level of equality but of subordination, generated in part by the male chauvinism that ground the existence in the Penal Code of 1890 of a rule which it regarded as “absolutely innocent” of the conduct of a man consisting of “committing murder in the person of his legitimate wife, or of a descendant of the murderer, living by his side honorably, who is surprised in a carnal act with a man who is not her husband; or the one that commits with the person of the man that finds lying with one of the referred ones; and the same will be done in the case of surprise, not in a carnal act, but in an-

other dishonest, approximate or preparatory of it, so that he cannot doubt the illicit treatment that exists between them” (Judgment SP 2190, 2015).

Of course, for the time, the same mandate did not exist when the woman discovered her husband in a carnal or preparatory act with another woman. It also recognizes the existence of expressions of the dominant male that do not recognize the freedom of his partner.

Thus, the above arguments lead to the conclusion that not all murder of a woman is femicide and is cause of aggravation of article 104 of the Penal Code. It is required, in order to constitute that conduct, that the violence that causes it is associated with the discrimination and domination of which it is subject, and that it is recognized that the cause of the death to a woman by the fact of being woman, when the violent act that produces it is determined by the subordination and discrimination of which it is a victim, generating a situation of extreme vulnerability. This environment of femicidal violence, which is an expression of a long tradition of predominance of men over women, is basically the one that has supported the legislator to consider more serious that type of violence that is generated in a context of inequality and that seeks to legitimately counteract with the measure of criminal nature examined and same with the others of another nature adopted in Law 1257 of 2008.

Finally it determines that it is clear that a

murder of a woman is given for reasons of gender when “the mistreatment of a man to keep the woman under constant and constant control of her, to intimidate her, to increase the intensity of her siege and aggression as soon as she comes close to giving up “to belong to him” and the death that in the end causes him “not to be anyone else’s.”

However, it clarifies that this additional element that contributes to the configuration of the punitive aggravating factor of femicide, referring to discrimination and domination of the woman, implicit in the violence that causes his death, must be proven in the criminal process so that the criminal reproach can be generated to the author. Consequently, in no case can it be deduced from the simple circumstance that the perpetrator is a man and the victim a woman, on the contrary, it must be based on evidence demonstrating the abuse of power situation in which the victim was. But the same behavior also occurs when the death of the woman is a consequence of the violence against her that happens in a context of domination (public or private) and where the cause is associated with the instrumentalization of which it is object.

2.3. Third stage: The crime

For the month of July 2015, Colombia sanctions the Rosa Elvira Celys law, in memory of the woman who was the victim of a femicide, with the aim of typifying the femicide as an autonomous crime, guaranteeing due diligence, suitability and opportunity in the investigation

and punishment of violence against women for being women and adopting strategies to sensitize society.

Thus, the norm typifies femicide as an autonomous crime, conceptualizing it as the extreme form of violence against women, whether in the public or private sphere, consisting of a set of behaviors that lead to violent death against women.

This behavior can occur in the following circumstances: to have tried to establish or return to a relationship with the victim; to maintain or have maintained with the victim family, conjugal, marital union, cohabitation, intimacy, courtship, friendship, companionship or work relationships; to commit the crime in group rituals; to use the body of the victim to satisfy sexual instincts or commit acts of genital mutilation or any other type of physical or psychological aggression or suffering.

The norm finds justification in the obligation to guarantee respect and recognition of the human rights of women in charge of the State, which emanates from the treaties signed by the International Community, includes the obligation to adopt legislative measures that tend to ensure their enjoyment protection and access to an effective remedy for the realization of justice. These are achieved through the issuance of a new Legislation that is incompatible with the content and scope of the treaty. These legislative measures, in particular when it comes to the rights to life and to the physical

and mental integrity of criminal rules intended to punish acts that constitute attacks against these rights (Toledo, 2008).

In addition, the Colombian context in which domestic violence is developed is the main circumstance in which women are murdered in the country with 11.7% of the 1,444 cases, although in a 65 % of them, the circumstances of the event are unknown. Counting only the cases in which there is a report on the conditions in which the homicide occurred, domestic violence was the circumstance that led to the fact in 34% of cases, followed by 29% in which the circumstance was interpersonal violence and 21% socio-political violence (Ramirez, 2015).

The 125 cases identified of murders perpetrated by the couple or ex-couple correspond to facts of femicide, that is to say, every three days a woman was murdered for being so, which results in an 81% rate of homicides in which the victim is a woman (Ramirez, 2015).

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