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Adultery Grounds, Full Proof, and the Right to Privacy

La Causal De Adulterio, La Prueba Plena Y El Derecho A La Intimidad

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Abstract

Adultery in Ecuadorian legislation is one of the grounds for the dissolution of the marital bond, as stipulated in the Ecuadorian Civil Code. It has been the subject of controversy concerning the means of proving this ground. The definition of adultery is the carnal access of one of the spouses with another person outside of marriage. However, the means to prove adultery are not easily accepted in court as they may infringe upon constitutional rights, such as the right to privacy. This scientific article aims to create a critically analytical document on the evidentiary implications of the adultery ground concerning the right to privacy and its impact on the ability of the parties to provide full proof in cases of adultery. The research utilized a qualitative research methodology, along with bibliographic, analytical-synthetic, and historical-logical methods, to analyze the information obtained from various specialized sources.

Keywords: Adultery, Infidelity, Reformation, Carnal Access, Intimacy, Divorce.

Resumen

El adulterio en la legislación ecuatoriana es una de las causales para la disolución del vínculo matrimonial tal y como consta en el código civil ecuatoriano, la misma ha sido enfoque de controversia en cuanto a los medios para probar dicha causal, pues la definición del adulterio es el acceso carnal de uno de los cónyuges con otra persona fuera del matrimonio, por lo que los medios para probar no son aceptados en un juicio, pues las mismas están vulnerando derechos constitucionales como es el derecho a la intimidad, el presente artículo científico tiene como objetivo diseñar un documento de análisis crítico sobre las connotaciones probatorias de la causal de adulterio relacionadas con el derecho a la intimidad y su incidencia en la capacidad de las partes de hacer prueba plena en esta causal de adulterio, el presente trabajo tiene una metodología de la investigación aplicada fue cualitativa, además del método bibliográfico, método analítico-sintético y el histórico-lógico, analizando lo obtenido en cada fuente especializada.

Palabras Clave: Adulterio, Infidelidad, Reforma, Acceso Carnal, Intimidad, Divorcio.

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Introduction

Currently, with the progress in terms of living arrangements and people's capacity to marry, conflicts can arise when one of the spouses has committed certain acts or offenses that affect and go against the obligations that arise within marriage, such as fidelity to the cohabiting spouse. This has led to the creation of mechanisms for dissolution through the legal concept of divorce. The grounds for divorce are outlined in our Ecuadorian Civil Code, specifically in Article 110, paragraph 1, which includes "Adultery committed by one of the spouses".

The importance of this work lies in providing a theoretical foundation for various topics including family, marriage, divorce, the right to privacy, and evidentiary methods. This theoretical framework aims to facilitate the application of the law. Adultery, being a restrictive term linked to intimate sexual relations within a partnership, raises concerns regarding the admissibility of evidence, as it could potentially violate constitutional rights, such as the right to privacy. This controversial term is met with scrutiny and debate, making it almost impossible for legal professionals to justify its proof.

However, individuals affected by acts against the fidelity of their partners are impacted, and it is not always necessary to engage in sexual relations with another person. In this research project, the aim is to address the negative aspects that arise from the inadmissibility of evidence to prove the "Adultery" clause. This practice is unconstitutional as it goes against constitutional rights such as sexual freedom and the right to privacy in the analysis of the evidence presented. Therefore, this critical legal analysis research project is intended to create a draft law reforming Article 110, numeral 1 of the Ecuadorian Civil Code, which pertains to the "Adultery of one of the spouses" clause.

Currently, several countries such as Chile, Argentina, Costa Rica, and Mexico, including Ecuador, conceive adultery as the sexual relationship that a person in marriage maintains with someone who is not his or her spouse, making a difference with infidelity, which consists of breaking fidelity, specifying as betrayal, disloyalty, and deception and even humiliation occurring occasionally.

As mentioned earlier, adultery and the means to prove it are nearly impossible to substantiate since concrete evidence of the involved parties in the sexual act is required. Even when there are photographs, videos, recordings, etc., they are considered unconstitutional as they violate the right to privacy. The right to privacy can be defined as a fundamental, constitutionally recognized right, whereby an individual has the faculty to exclude or deny others knowledge of certain aspects of their life. If someone breaches this right, especially in the context of proving sexual intercourse, it typically involves capturing photographs or videos without the consent of the person being recorded. This is often done to obtain evidence for potential legal challenges.

This study aims to create a document for a critical analysis of the probative connotations of the adultery clause related to the right to privacy and its impact on the parties' ability to present full evidence in cases of adultery.

Materials and Methods

In this article, a qualitative approach was employed as it helps provide a better understanding of the research objective. The bibliographic method involved a review of documents used to

determine the variables for analysis. The sources of information included specialized books on the topic, scientific articles, and relevant legislation. Additionally, the analytical-synthetic method was used to analyze and break down the subject of study, which includes adultery as a ground for divorce, infidelity, full evidence, and the right to privacy.

The historical-logical method facilitated the organized collection of data to gain a logical understanding of adultery as a ground for divorce in Ecuador and other countries. The technique used was documentary, examining the problem of proving adultery in relation to the violation of the right to privacy and the acquisition of full evidence. Phenomena were described clearly and objectively, and methodological knowledge was enhanced. The materials used included scientific articles and essays, legal journals, legislation, and technical legal websites.

Results

Adultery is defined as the sexual relationship that a married person has with someone who is not his or her spouse. In Ecuador, adultery is one of the grounds for divorce, and the party affected by the infidelity can request that the spouse's infidelity be proven to obtain a favorable judgment.

In the legal context of Ecuador, infidelity is a concept that many people associate with adultery because they consider them to be very similar words in terms of the process. However, that is not the case. The concept of infidelity encompasses many situations in various contexts, but when related to adultery, infidelity occurs when one of the cohabitants breaks the commitment of exclusivity in the relationship by having a relationship with someone outside the partnership, whether occasional or continuous. Being unfaithful to a cohabitant means breaking the effective pact on which the relationship is based and can be described as betrayal, disloyalty, deception, and even humiliation in some cases.

Indeed, the two concepts are quite different when it comes to adultery, as it specifically refers to sexual intercourse. This poses a normative issue for this divorce cause because the evidence required to prove adultery is challenging to obtain. To prove that adultery occurred, one would need solid evidence of the involved parties engaging in sexual activity, which can be considered unconstitutional as it infringes upon a person's right to privacy.

Regarding evidence, the Organic General Code of Processes, in Article 453, defines evidence as having the main objective of convincing the judge of the disputed facts and circumstances, supporting the claims of one of the parties involved, and refuting those of the opposing party. In this sense, evidence aims to persuade the judge with facts to be presented in a judicial process.

In Ecuadorian legislation, evidence is categorized into several types, which include documentary, testimonial, judicial inspection, and expert evidence. Concerning documentary evidence, the Organic General Code of Processes, in Article 193, defines it as any public or private document that records, contains, or represents a fact or declares, constitutes, or incorporates a right. For this type of evidence to be valid, it must go through an admission process, ensuring that it meets the requirements outlined in the code. Additionally, it must adhere to the principle of contradiction in a legal process, meaning that the opposing party should be aware of the evidence presented so that it can be considered when issuing a judgment. The document must be supported and verified by the responding entity.

Testimonial evidence involves a statement given by one of the parties or a third party, as defined in Article 174 of the Organic General Code of Processes (COGEP). Testimonial evidence includes both statements made by the involved parties and those provided by witnesses in a legal process. Witnesses are individuals who have directly, and personally perceived facts related to the dispute through their senses, as outlined in Article 189 of the Cogep.

Full proof is one that sufficiently reveals a fact or legal situation and does not require additional evidence for resolution. This is followed by comprehensive proof, which encompasses all types of evidence, such as documentary, expert, and testimonial. Lastly, there is incomplete proof, which relies on several pieces of evidence to support a fact or right to be recognized.

The causal of adultery, which occurs when a spouse, while still married and maintaining the marital bond, engages in sexual relations with someone other than their spouse, is a ground for divorce that can be challenging to prove in court due to the lack of full-proof evidence.

To prove adultery, it is necessary to demonstrate extramarital sexual relations, which, in practice, can be incredibly challenging since these sexual acts take place in private and discreetly to avoid detection. Full proof is comprehensive and can be submitted to the judge for a decision, as it is considered accurate when the proper means have been followed.

The right to privacy is an essential and irreplaceable pillar in a person's life that should not be infringed upon and belongs exclusively to the individual. It is the right of every person to exclude or limit others from knowledge about their private life, which includes intimate matters that they wish to keep confidential and not make public. It also extends to emotions and behaviors that develop progressively as individuals freely develop their personalities. Therefore, every person has the right to know and control when and with whom they share various aspects of their personal life.

Given what adultery, full proof, and the right to privacy mean, these three concepts are closely related when determining and proving the adultery grounds before a judge. Engaging in sexual relations with someone other than one's spouse is a significant issue in marital relationships, as it undermines the legal institution of marriage. This leads the affected person (spouse) to file a lawsuit to request a divorce, with adultery as the grounds, which must be proven in court with full and legitimate evidence. However, for reasons of safeguarding the right to privacy, obtaining such evidence is challenging.

It is important to note that videos of sexual acts cannot be presented without the consent of those involved, as they have the right to privacy. Such evidence is not considered admissible due to the violation of rights. On the other hand, presenting such evidence exposes the sexual life of the individuals involved, thereby infringing on their right to privacy. This presents a complex challenge in how to prove the existence of adultery without infringing on rights, and it is something that should be addressed and considered in legal regulations. Due to the limitations lawyers face in presenting full proof, they often resort to presenting circumstantial evidence, which, given the nature of the case and the facts, allows the judge to determine the certainty of the matter.

It is important to consider that marriage involves various rights and obligations, and it is based on fidelity. Exclusivity in the relationship is expected in a marriage between two individuals, and the involvement of a third party breaches the boundaries of respect and fidelity. When adultery occurs, it directly challenges the principles on which a marriage is founded, making divorce an unavoidable option.

In Argentine legislation, according to Article 198, spouses owe each other fidelity, assistance, and support. Therefore, being involved with another person damages the foundation of marriage. Additionally, Article 202 states that causes for legal separation include adultery, but the marital bond is not dissolved until a divorce decree is issued.

In Costa Rican legislation, Article 48 of the Family Code states that committing adultery by either of the spouses is considered grounds for divorce. It is important to note that adultery can be proven through two types of evidence: "direct" evidence, which involves verifying that one of the spouses is having sexual relations with another person outside of the marital bed, and "indirect" evidence, which relies on testimony from witnesses called by the spouse affected by the partner's infidelity.

In Mexican legislation, Article 267 of the Civil Code indicates that either of the spouses can request a divorce due to the adultery of their partner, provided that it has been properly proven. This action takes six months, and the countdown begins from the moment knowledge of adultery is acquired. Adultery carries several legal consequences concerning children and assets. In terms of parental authority, the person who commits adultery may lose it if it is determined that the well-being of the minor is at risk. However, they still have the right to maintain relationships with their children, considering the best interests of the child. Regarding assets, any donations made by the adulterous person before or during the marriage may be revoked. If a child is born from an extramarital relationship, they may be referred to as an "adulterine" child.

In the legislation of Chile, the first paragraph of Article 132 of the Civil Code states, "Adultery constitutes a serious breach of the duty of fidelity imposed by marriage and gives rise to the sanctions provided for by law." The sanctions explicitly established by the legislator for cases of adultery are outlined in the Bello Code and the Civil Marriage Law. Among the sanctions related to adultery, firstly, it serves as sufficient grounds for declaring divorce, thereby ending the marriage.

Another sanction established by the Civil Marriage Law, different from divorce, is the declaration of the judicial separation of spouses. This can be requested in cases of adultery since such behavior constitutes a serious breach of the duty of fidelity imposed by Article 27 of marriage and is therefore considered an attributable fault that represents a serious violation of the duties and obligations imposed by marriage. Judicial separation of spouses, unlike divorce, does not terminate the marriage. It preserves all personal rights and obligations between the spouses, except for those whose exercise is incompatible with separate living, such as cohabitation and fidelity duties, which are suspended. Thus, the adulterous spouse loses the right to inherit from the innocent spouse.

Discussion

The issue of adultery in divorce and separation cases is a delicate matter. Full proof is an essential requirement to establish guilt in cases of adultery, but it is important to consider measures that protect the right to privacy of the parties involved. In this regard, a solution to address this issue could be the implementation of judicial procedures that safeguard the privacy of individuals without compromising the pursuit of truth and justice in cases of adultery.

An alternative to protect the right to privacy in cases of adultery could be to use circumstantial evidence instead of full proof. Circumstantial evidence involves evaluating clues and indirect

evidence to infer the existence of adultery. Circumstantial evidence can include testimonies from third parties, evidence of communications and records, as well as contextual details and suspicious behaviors. For example, presenting compromising text messages or emails, sightings of the spouse with a third party in compromising situations, or notable changes in behavior can be relevant clues to infer the existence of adultery.

However, it is important to note that circumstantial evidence is not conclusive proof by itself. It requires careful interpretation and objective evaluation by the courts and legal professionals to determine its validity and relevance in the specific case. One advantage of circumstantial evidence is that it allows for greater flexibility in presenting evidence. By not relying solely on direct evidence, diverse sources of information can be considered to construct a strong line of reasoning. This can be especially useful in cases where the lack of direct evidence makes it difficult to prove guilt. Using this approach could minimize the need to disclose intimate details or sensitive personal information that would affect the privacy of the parties involved.

In Argentina, divorce is governed by a no-fault divorce system, where it is not necessary to prove the guilt of either party. In this context, adultery is not considered grounds for divorce, and full proof is not required. Instead, divorce can be unilaterally requested by one of the parties without having to demonstrate the guilt of the other spouse. A contrasting example is in Colombia, where adultery can be invoked as grounds for divorce, but full proof of sexual intercourse must be presented for the divorce to be granted. In terms of the right to privacy, there is a widespread concern about protecting the privacy of individuals involved in divorce proceedings. In all countries, efforts are made to avoid unnecessary disclosure of personal information and intimate situations that may affect the emotional and psychological well-being of the parties.

It is important to note that the grounds for adultery itself can affect the right to privacy of individuals. Initiating a legal process based on sexual intercourse outside of the marital bond, i.e., "Adultery," can expose private details of the personal lives of the parties, which can cause emotional stress and harm their psychological well-being. The right to privacy of third parties could be affected in cases of adultery, especially if testimonial or documentary evidence involving individuals unrelated to the marriage is required. In these cases, it is essential to ensure that individuals not directly related to the case are not adversely affected by unnecessary disclosure of confidential information.

To safeguard the right to privacy in cases of adultery, courts and legal professionals must be aware of the need to handle personal information carefully and restrict the disclosure of intimate details only to what is strictly necessary to resolve the case. In Ecuadorian legislation, respect for fundamental rights, including the right to privacy, is a principle enshrined in the Constitution. Therefore, any judicial proceedings related to the grounds for adultery must be conducted fairly, impartially, and with full respect for human rights.

Some of the solutions that could be considered are to reform the grounds of "adultery" to "infidelity," the definition of which includes affectionate relationships of short or long duration with individuals other than the official spouse, often maintained in secret. This is in contrast to "adultery," which involves sexual relationships with individuals other than one's spouse. Through this reform, the use of circumstantial evidence may become possible, as its purpose is to establish a sequence of events that will lead to a key fact.

Even though adultery is one of the grounds for divorce under Article 110 of the Civil Code, the burden of proof becomes difficult because obtaining it would violate rights such as privacy.

Based on the results obtained, another solution could be to incorporate unilateral termination of marriage, as is the case in Argentina.

Finally, with the existence of this ground within marriage, one way to safeguard the rights of the parties in the process could be to suggest that this ground be replaced by "irreconcilable differences," as applied in the United States. This would aim to protect the rights of both parties and where the burden of proof would not become unconstitutional.

Conclusions

- The ground of adultery has consequences that arise from it, and therefore, it deserves to be regulated. This ground involves one of the spouses having sexual relations with someone outside of the marriage, an act that should be proven through any type of evidence presented by the parties' defenders.
- The right to privacy is inherent to human beings and is a fundamental right. Sexual matters are developed in privacy, and one's sexual life is one of the aspects that fall under this right. Thus, no evidence should be admitted if it goes against this right.
- Adultery, being a sexual act and closely related to intimacy, is challenging to prove because the evidence presented to demonstrate the sexual intercourse of one spouse with someone outside the marriage often violates the individual's privacy, making them inadmissible.
- Obtaining full proof of adultery is difficult because it would require the consent of the parties involved. If such evidence is presented during a hearing without consent, it will not be considered due to the right to privacy.

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