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LADB Staff

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Chilean Divorce Law Encountering Obstacles

by LADB Staff

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After a two-year delay, the Chilean Senate has begun debate on a bill that would legalize divorce. If it eventually passes, Chile would no longer be one of the few countries in which divorce is not possible. Chilean President Ricardo Lagos said in late July on BBC World that he was confident the bill will become law. Cecilia Perez, Minister for the National Service for Women and in charge of seeing the bill through, said, "It would be absolutely unacceptable for Chile to be without a divorce law as we go further into the 21st century."

The 48 senators began debate on the divorce bill July 29. Although members of the governing Concertacion coalition remain upbeat about the prospects of passage, there are still major stumbling blocks, principally the strong opposition by the Catholic Church hierarchy in Chile. Surveys indicate, however, that between 70% and 80% of Chileans favor passing a divorce law.

Chile and Malta are the only countries that do not have a legal process to dissolve marriage. Ireland, another longtime holdout, approved a divorce law in 1996. The only way to end a marriage in Chile is through an annulment process. About 5,000 marriages a year are annulled in Chile. The annulment process is costly and often requires witnesses to falsely testify to a judge that irregularities existed in the original marriage procedure. When an annulment is approved, each partner is officially registered as single again, and one partner can easily prevent the other from obtaining an annulment.

Until 1996, the children of an annulled marriage were considered "illegitimate" under Chilean law, meaning, among other things, that the fathers were not required to pay child support. An amendment seven years ago banned discrimination against children born "out of wedlock."

The daily La Tercera newspaper published some interesting statistics regarding the marital status of the senators who will decide the fate of the matrimonial legislation: almost 23% are separated, married for the second time, or unmarried but living with their partner.

Debate could take months

In the Senate, first the entire text will be considered, then each article separately. Since each senator has 15 minutes to present arguments, the bill could be approved in general within the next week or so, but the debate on each article could last months. If the bill is eventually approved by the Senate, it will go back to the lower house, probably in mid-2004. If passed, it will be the first major amendment to Chilean law on civil matrimony in almost 120 years.

The proposal to legalize divorce was passed by the Chamber of Deputies almost six years ago, in September 1997, but a conservative Senate has prevented passage in the upper house. The divorce

bill was last brought to the Senate in 1991, but it never reached a vote (see NotiSur, 2001-10-26). The balance of power has now shifted somewhat, and increased the possibility of passage.

The bill seems to have a majority support in the Senate, although conservative bishops have reportedly threatened Catholic lawmakers with excommunication if they vote in its favor. Only members of the far-right Union Democrtica Independiente (UDI), which has strong links to Opus Dei, the ultraconservative Catholic movement, are expected to vote against the bill.

Under the 347-page proposal, divorce would be possible if one partner seriously violated the matrimonial commitment. This would include, among other things, an attempt on a partner's life or physical harm inflicted on a partner or children from the marriage, homosexual conduct, or alcoholism. Divorce would also be possible if a couple stopped living together. If the application for divorce were mutual, the length of time apart before the divorce became final would be three years. If the petition were filed by just one partner, a five-year separation would be required before a divorce could be granted.

Sens. Jorge Pizarro of the Partido Democrtico Cristiano (PDC) and Carlos Ominami of the Partido Socialista (PS) are campaigning to change this section of the bill. They propose reducing the wait to one year for mutual-consent divorces and two years for divorces filed by one partner. "Once there has been an irreversible rupture, and both partners are in accord, there is no sense prolonging the agony," Pizarro said.

Church maintains strong opposition to bill

Perhaps the most controversial clause of the current bill is Article 21, which stipulates that civil marriage requirements could be satisfied by religious wedding ceremonies. Critics say this is another example of religious authorities encroaching on civil matters. Santiago's Cardinal Archbishop Francisco Javier Errazuriz, leader of the Catholic Church in Chile, recently proposed a change to the bill that would give couples a choice between two different types of union. One would be an "indissoluble" marriage, designed to attract "devout" Catholics, where the option of divorce would not exist; the other would include the possibility of a legal marriage break-up in the event of irreconcilable difficulties.

Protestant churches reacted strongly to the archbishop's proposal, describing it "dogmatic." Emiliano Soto, who heads the Metropolitan Region Council of Pastoral Organizations, said, "It seems intrusive that he is promoting an indissoluble perfect marriage, and another type of divorceable marriage for other creeds, or a kind of second-class arrangement. This is obviously discriminatory. It seems strange to me that the Church is trying to control these ideas."

Other Protestant leaders accused the Catholic Church of meddling in politics. Although Catholic clergy have every right to express their opinion, they should not "interfere unduly" with the legislative process for the proposed legislation, said Bishop Francisco Anabalón, president of Chile's Comité de Organizaciones Evangélicas. "Neither they nor any other creed has the right to impose their point of view on all of society. To try and force legislators to vote a certain way seems an unjustified intervention."

Meanwhile, Joaquin Lavin, Santiago mayor and former UDI presidential candidate, defended the church's proposal. "I like the position they have put forward," said Lavin, a member of Opus Dei. "To get married with the option of divorce or to have an indissoluble marriage, I think that's fair." The division between the Catholic Church and various sectors in Chile seems to be getting worse as the divorce debate continues. Catholic prelates questioned the initiative, saying it goes against Catholic values, while some deputies and senators also expressed reservations.

John O'Reilly, a priest with the ultra-conservative Legionaires of Christ and a member of the directorate of the Universidad Finis Terrae, said he was saddened by the situation, adding that "the senators have been superficial, not very profound, and lacking in respect for the church."

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