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Divorce Law Goes Into Effect

by LADB Staff
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Chile put into effect its law allowing divorce, ending decades of legislative wrangling to allow the practice and eight years of law-writing. Divorce had not been allowed under Chilean marital law, although annulments had been a favorite tactic of those seeking to dissolve their marriages, if they could afford the court fees necessary for the process (see NotiSur, 2004-05-21). While church leaders lamented Chile's abandoning its position as the last country in the hemisphere to legalize divorce, government ministers, officials, and women's advocates welcomed the change in civil matrimonial law.

In the first week of being in effect, the new law establishing divorce generated what press reports called an "avalanche" of divorce requests in the nation's courts. Judicial reports in the first week of the law, Nov. 18-24, showed 133 divorce filings, with 75 of them in metropolitan Santiago. The great majority of the filings came from only one member of the couples with the claim that there was a "nonfulfillment of marital duties," stemming from complaints like "intrafamilial violence" and "cessation of cohabitation."

More requests, higher costs

On the first day the law was in effect, Nov. 18, 35 requests were filed in Santiago alone, even though press reports say the new divorce procedure costs litigants more than the previous annulment process did. Media sources said the judicial process to dissolve marital bonds currently fluctuates between US$667 and US$833, while the previous separation procedure, established by law 120 years ago, had a price tag of around US$333. An eventual drop in procedural costs might lead to a greater demand to start divorce proceedings, something judicial sources say would likely come to pass in the second semester of 2005.

Yasna Provoste, Chile's minister of planning and cooperation, said the law would end a situation of economic discrimination that had existed regarding marital status. Provoste argued before a UN committee on economic, social, and cultural rights that the new Ley de Matrimonio Civil would "attempt to end the situation that had been generated with annulments," a process that before was available only to those with greater material means. That situation "created discrimination between those who could take that route and those who had to play along with the situation for lack of money."

The church, which had campaigned heavily against the measure and played a significant role in slowing the law's passage for 100 months in the national legislature, lamented its arrival. The Permanent Committee of the Conferencia Episcopal de Chile (CEC) made a public statement shortly before the new law took effect that divorce is a "strong threat to the stability of marriage."
The statement added that certain regulations "could dilute the spirit of that legal body [Ley de Matrimonio Civil] that may complicate its execution and, in many cases, could make it inoperable." The bishops who wrote the statement said "the efforts to put in order the situation of people who have had the misfortune of a rupture in their marriage have been made dark by the introduction of binding divorce, which includes the possibility of being enforced by the will of only one of the parties, as an irrevocable civil recourse. Thus a strong threat to the stability of marriage and the family emerges."

Questioned by the UN committee about the Catholic Church's rejection of divorce, Provoste answered that "in our country the legislative system functions very well and the laws are above the reactions of any particular creed." She pointed to the "high regard we have for the Catholic Church" and said the debates should be carried out "in parliament, which is the space where laws are discussed." "We hope that the people will be happy and that those who are not will have the opportunity to be so later," said Provoste. The new law, she said, "allows ending a series of anachronisms and discriminations, opening new spaces for social integration."

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