

Compensation and moral damages for false paternity

La indemnización y el daño moral por la falsa paternidad

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Received: 05/04/2024

Accepted: 23/06/2024

Online publication: 05/07/2024

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How to cite this article:

Castañeda Méndez, J.A. y Quezada Perez, M.A. (2024). Compensation and moral damages for false paternity. *Chornancap Revista Jurídica*, 2(1), 17-30. <https://doi.org/10.61542/rjch.75>

ABSTRACT

This article focuses on the problem of false attribution of paternity and the need for compensation for moral damages in specific cases. Its main objective is to determine whether compensation for moral damages is due to false paternity. For this purpose, a qualitative approach and descriptive design were used, applying interviews to ten lawyers specialized in Family Law. One of the most relevant results was that, when the false attribution of paternity is discovered, there is moral damage, originating an affectation to the right to identity, belief of false filiation, defilement of the duty of fidelity and creation of a civil liability. In this sense, the problem poses not only a legal challenge, but also a palpable violation of fundamental rights, so that financial compensation for the damage should be a priority as a form of reparation for moral damage.

Keywords: Paternity attribution, Compensation for moral damages, Family law, Identity, Civil liability.

RESUMEN

El presente artículo se enfoca en la problemática de la falsa atribución de paternidad y la necesidad de indemnización por daño moral en casos específicos. Teniendo como principal objetivo determinar si corresponde indemnización por daño moral a razón de la falsa paternidad. Para lo cual se utilizó un enfoque cualitativo y diseño descriptivo, aplicándose entrevistas a diez abogados especialistas en Derecho de Familia. Uno de los resultados más relevantes fue que, al descubrirse la falsa atribución de paternidad, sí existe daño moral, originando una afectación al derecho a la identidad, creencia de falsa filiación, se mancilla el deber de fidelidad y creación de una responsabilidad civil. En ese sentido, la problemática plantea no solo un desafío legal, sino también una violación palpable de derechos fundamentales, por lo que una compensación económica por el daño debe ser prioritaria como forma de reparación del daño moral.

Palabras clave: Atribución de paternidad, Indemnización por daño moral, Derecho de familia, Identidad, Responsabilidad civil.

Introduction

In the framework of a Constitutional State, civil law is emphasized as a need for a response, insofar as its normativity is a daily and dynamic issue among our problems. One of those problems has to do with false paternity, a fact that is sought to be studied as a cause of moral damage in order to raise and base the claim for compensation. Especially in a civilized society where respect for the rights of others means not abusing rights.

Financial compensation for non-pecuniary damage, which is claimed by those who consider themselves harmed in the event of a false attribution of paternity, which, in the event of its inclusion, would allow compensation for the damage caused by the deception sporadically, since in most cases this occurs over years and long periods of time, leaving no effect on those involved. A false attribution of paternity causes moral damage and also economic damage to the father to whom, since an erroneous paternity is attributed, for these reasons both assumptions must be considered necessary and sufficient for the existence of a regulation that punishes the deception caused.

In this regard, Rivera Cupara (2019) highlights that:

The negative result of the DNA biological test in judicial filiation proceedings of extramarital paternity can seriously affect the rights to honour and dignity of the alleged father, who suffers significant moral damage due to the false imputation of paternity. (p.75)

Likewise, Tarazona Trujillo (2019) stresses that “the moral damage and economic harm derived from the false attribution of paternity not only deeply affect the emotional integrity of the alleged father, but also generate a considerable financial impact, which must be duly

compensated” (p. 83). This perspective reinforces the need for legislation that adequately protects the rights of those affected by false paternity attributions.

Palacios Mazabel (2018), who conducts research on the resignification that fathers have in society, contemplates an exploratory, focalization and comprehensive research, in which a reconstruction of the life course of the participants on their paternity, upbringing and care of their children in Colombia was carried out. The research aimed to advance in the understanding of social, normative and family transitions in a process that is not exclusive to women. This work helps in the present research because despite the gap between Colombia and the normative, it is known that fathers sought significant strategies in the processes of childcare. The normative approach to false paternity in the Peruvian legislation of the present topic to be discussed.

On the other hand, we have the teachers Santiago Basaldúa & Huamán Lagos (2021) who analyze the moral damage and economic damage originated by false attribution of paternity according to the perception of the judges and prosecutors of the Superior Court of Ica, arriving to the idea that the false attribution of paternity causes moral damage and also economic damage to the father. Specifically seeking to regulate a correct compensation under the perspective that the moral damage must be taken into account after having been proven in order to be correctly compensated afterwards.

We also have Leiva Villena (2023) who refers specifically to the compensation of the damage, who stipulates that one of the main objectives within this work is to optimize the verification of a true paternity in case of marriage and presumption of this. Generating a situation of linking the relationship of filiation and fundamental rights such as identity. Being the compensation for moral damages, as it is presented in a generic way in our system lacking specifications, the casuistry with this issue is mostly exempted. In this sense, the theoretical justification in the regulation of the Peruvian legal system in relation to the compensation to the injured party due to a false presumption of paternity, referring clearly to the man who is falsely accused of being the father, this is related to the thousands of cases that exist and have been evaluated by other entities where the only support that these subjects receive is the civil reparation. The ambiguity of the norm plays against this casuistry due to the fact that the deficiency of the norms does not prevail in this situation; it is necessary to be aware that there are no laws that cover this specific problem.

In this context, Condezo Luna (2022) points out that:

The legal implications derived from the declaration of extramarital paternity under Law No. 28457 and its amending Law No. 30628 evidence the need for a regulatory review to ensure adequate protection of the rights of all parties involved. (p. 92)

In this line, the general objective is to determine whether compensation for moral damages is due for false paternity. The following specific objectives are, in the first place, to analyze the current legislation and identify the factors of compensation for false attribution of paternity, especially when there is malice, and in the second place to evaluate the emotional impact of the moral damage caused by a false paternity challenge, thus proposing and exploring guidelines for the development and contribution of a legal reform in cases of false paternity. Cirilo Huamán & De La Cruz Sotelo (2021) highlight that the “paternity challenge and the right to identity in the Fourth Family Court of North Lima, 2019, reflect the need for a clear and precise regulation to adequately protect the rights of minors and affected parents” (p. 47).

Likewise, Rivera Serquen (2022) highlights that the legal gaps that make it difficult to challenge marital paternity, even when non-paternity is proven through biological DNA testing in Peru in 2020, highlight the urgent need to implement legal reforms to ensure proper administration of justice in these cases. These perspectives reinforce the importance of specific and effective legislation to address the challenges presented by false attribution of paternity and ensure fair and just compensation for those affected.

Methodology

The present research was based on a qualitative approach, employing the interview as the main technique for the collection of data and perspectives of the participants, with the main objective being to obtain detailed information, which will contribute to the analysis and study contemplated in this research work. The study scenario was the city of Trujillo, where the criterion of family law specialty was prioritized to apply the instrument among ten lawyers. The design adopted is descriptive, which according to Guevara Alban et al. (2020), has as its main objective to obtain a deep knowledge of situations, customs and prevailing attitudes through the detailed description of activities, objects, processes and people. In this case, the development of each terminology and situations will help to obtain a more complete result.

Results

As for the results, based on the idea of Muñoz Quinde (2022), who highlights the need to “challenge the recognition of paternity due to the existence of malice on the part of the parent, which is essential to correct injustices and ensure that the rights of the father and the child are respected at all times” (p. 55), the instruments were applied and substantial results were obtained.

The first result of the ten interviewees showed that there is moral damage when a false attribution of paternity is discovered, this does cause this type of damage under considerations of

the situation that occurs and its characteristics such as the violation of the right to identity, belief of false filiation, the duty of fidelity is sullied and the creation of a civil liability.

Another of the results, related to the reasons for which moral damage is considered to be caused in relation to be considered in determining when to opt for this denomination, most of the interviewees were of the opinion that this generates a damage that must necessarily be compensated since the psychological affectation is present from the moment in which the truth of the facts is discovered, as well as the duties that have been erroneously fulfilled both patrimonially and extrapatrimonially, are also mentioned.

On the other hand, with respect to the identification of the presence of malice, the interviewees agreed that, if this can be proved, it would be a positive answer to the question. This misleading act should be indemnified if it was knowingly done in the presence of malice. Most of the interviewees agreed that in this aspect a net liability is generated and deserves compensation. Likewise, in the fourth result, the interviewees responded affirmatively that there is the presence of damages in the generation of this lie, which, in part, is caused by the mother, who acts in bad faith. Above all, more than half of the interviewees consider that in this item there are two psychologically related effects on both the father and the child involved.

Discussion

In principle, the science of law requires constant updating according to the social needs that arise with the passage of time and family law is no exception, since it regulates family relationships to solve the problems they face on a daily basis, this because of its public order and social interest, which means the protection granted by the State to the family without intervening directly, but creating conditions for their protection as courts, processes and family codes in order to safeguard their rights, maintain social stability and therefore, of the State (Aguilar Calderón, 2021). In this context, Castro Zamora & García Rebaza (2021) emphasize the importance of “compensation for damages to those who become aware of a negative paternity, stressing that this measure not only compensates the affected person economically, but also recognizes the seriousness of the emotional and social damage involved” (p. 37).

A false attribution of paternity goes beyond only considering a judicial process for civil liability, but also to appreciate the real violation of fundamental rights such as identity and integrity. Both the subject directly affected, the false father, as well as the child, who would suffer a serious psychological impact to be considered in this matter. It is transcendental to consider this issue. Without prejudice to the above, it should be taken into account that the possibility of compensation for moral damages resulting from the concealment of the true paternity of the child

that the husband believed to be his is denied, resulting necessary to reaffirm the legal nature of marital obligations and the possibility of applying general rules of civil liability in family law (De Verda y Beamonte, 2021). Likewise, Correa Jiménez (2019) adds that the false attribution of paternity by the mother, as well as its criminalization and penalization, must be approached with the seriousness they deserve. These acts constitute an intentional deception that must be punished to protect the rights of the affected party and deter future incidences.

If we analyze in detail the subject of this research, we find that the Peruvian Civil Code establishes a compensation for moral damages but ineffective due to its inaccuracy, which covers the reparation of damages resulting directly from the wrongful act. In addition, this indemnity also includes the damages that are immediately caused by the wrongful act. In summary, the law recognizes compensation for moral damages, but lacks clear guidelines for its determination, leaving to the discretion of the courts the evaluation and interpretation of each case to determine the seriousness of the act and the corresponding amount of compensation.

Professor Osterling (2010), emphasizes that, although the Peruvian Civil Code is broad and does not set specific amounts, judges must rely on principles of equity and reasonableness when determining the amount of compensation. Osterling emphasizes the importance of judges not having specific quantitative guidelines in the 1984 Peruvian Civil Code in order to calculate compensation for moral damages. Instead, what they must exercise is discretion taking into account equity and reasonableness in each case. There is greater flexibility in determining the amount of compensation, taking into account the individual circumstances of each situation and promoting a justice more adapted to the reality of moral damages cases. Within this subject, the amount would be equivalent to the damage in magnitude of a significantly irreparable deception.

The main objective of the compensation is to compensate the injured party for the damage suffered, whether in economic, physical, psychological or reputational terms. The amount of the indemnity, because it covers so many emotional, psychosocial, psychological and moral aspects, will require a thorough compensation if we refer to amount. It is important to emphasize that the purpose of the compensation is to provide justice and reparation to the injured party. However, in this matter there may even be two injured parties if the case so requires, such as both the false parent and the child who is also part of the fraudulently attributed paternity.

Moral damage is a type of emotional harm or suffering experienced as a consequence of a negative act or event, such as an unjust, offensive or humiliating action, which affects the integrity, dignity or personal values of an individual. Unlike physical harm, moral damage does not manifest itself in visible physical injuries, but involves psychological distress, anguish, sadness, humiliation or loss of reputation. Moral damages can be caused by various circumstances, such as defamation,

slander, harassment, discrimination, verbal or psychological violence, violation of fundamental rights, betrayal, breach of contracts or promises, among others. In many legal systems, moral damages may be subject to compensation in cases where it is demonstrated that a person has suffered significant emotional damage. It is important to note that the assessment and quantification of moral damages can be subjective, as it depends on the individual circumstances and the perception of the victim.

The brothers Henri and Leon Mazeaud, civil lawyers, together with André Tunc note that the question of the legitimacy of individuals to seek compensation for moral damages in cases of injury to emotional feelings is not defined in a specific legal rule. Instead, they propose to rely on the criterion of material injury to determine who can bring a claim, i.e., a concrete injury and a legitimate interest must be demonstrated. The requirement of concrete harm applies both to blood relatives and relatives by affinity, as well as to persons who are not related by blood or affinity. This perspective, which could have implications in cases of moral damage claims, is presented as an obstacle to the possibility of bringing claims in this area. Mazeaud and Tunc advocate the need to demonstrate a tangible harm and a legitimate interest in order to seek redress for moral damages, regardless of family ties. This could avoid an indiscriminate proliferation of claims for moral damages and establish certain limits to those who can resort to this type of claim. (Sánchez Ramírez, 2018)

The impact of moral damages may vary for each individual and in each specific situation. In some cases, people can find ways to overcome and recover from moral damage, while in other cases it can leave lasting emotional sequelae. In this case, learning of a false paternity can cause a total imbalance and break the self-esteem of a human being. In the Peruvian legal field, this institution has evolved throughout different editions of the Civil Code.

According to Cornejo Chávez (1999), this presumption is based on two key theories: cohabitation or sexual activity that involves the husband and wife maintaining intimate relations, and the duty to provide fidelity, which assumes that spouses must maintain loyalty, both for ethical and social considerations. Although this presumption of paternity ensures stability and security in the family structure, it can be rebutted by judicial evidence. This rule protects both the rights of the children by establishing a stable and legally recognized filiation, as well as the rights of the biological father to be identified as such. It is essential to emphasize that the presumption of paternity, in the legal context, not only takes into account biological factors, but also social aspects, by granting paternity to the spouse married to the mother of the child.

The presumption of paternity is a legal concept that has evolved over time to accommodate changing social and family dynamics. At its core, its purpose is to safeguard the rights of children

by guaranteeing a stable and legally recognized filiation, providing security in the family environment. The State protects the idea that parents should be responsible in their parenthood. Unfortunately, these aspects are affected when there is a false attribution of paternity, since all the above-mentioned rights are violated and, in addition, other people's obligations are assumed by someone who does not correspond.

However, like any legal principle, it presents advantages and challenges. On the one hand, the presumption of paternity can prove to be a valuable tool for maintaining stability in families and conferring a legally recognized father figure to children, regardless of biological issues. This can be of particular relevance in situations of divorce or separation, where legal paternity remains significant to the emotional and financial well-being of children.

On the other hand, it also poses challenges in circumstances where biological parentage does not coincide with legal parentage. This can give rise to legal disputes and conflicts, particularly when someone seeks to prove that he or she is not the biological father and, therefore, should have no legal obligations to the child. Although there have been cases in which the biological filiation has not been transcendent because the affective bond transcends, there are also others in which the deception causes a significant impact among the injured parties, because in a broad sense not only the false father is affected, but also the minor child victim of a false filiation.

Ultimately, the presumption of paternity exemplifies how the legal system seeks to balance the stability and rights of children with the need to address the complexities of contemporary family relationships. This may involve reviewing and revising the regulations related to the presumption of paternity as family structures and changing conceptions of parenthood evolve.

This concealment refers to the father-child relationship, in which a person mistakenly believed that he or she had a biological link to his or her child, when in fact paternity is incorrectly attributed to him or her. Since the Peruvian legal system lacks specific regulations to address such situations. Some hearings adopt a more flexible approach, while others are more rigorous, even disagreeing with the prevailing opinion. Avoiding these occurrences should be considered in order to opt for an appropriate regulation.

In this regard, Dongo Quintana (2022) emphasizes that:

The right to filiation and the violation of the principle of the best interests of the child in cases of false paternity represent a serious affectation to the fundamental rights of the minor, highlighting the need for a more specific and protective regulation in the legal sphere. (p. 45)

This perspective underlines the importance of a regulation that adequately protects the rights of the child against false attributions of paternity.

Furthermore, Arce Guarniz & Yaranga Torres (2021) argue that:

The determination of the damage in civil liability arising from the improper attribution of paternity must consider both the economic damage and the moral damage suffered by the alleged father, which requires a detailed and fair assessment by the judicial authorities. (p. 63).

This approach highlights the need for clear and fair criteria for compensation in these cases.

In the legal field, bad faith refers to the fraudulent or deceitful conduct of a person when entering into an agreement, within the subject, a legal relationship, with the intention of harming the other party. This conduct manifests itself in various situations, such as accession, prescription, marriage and performance of obligations, and may give rise to tort liability. In addition, Professor Ordoqui Castilla (2017), in addressing the concept of subjective right, emphasizes that a subjective right is the capacity that a person may exercise at its discretion, provided that it conforms to what is permitted by the legal system and acts in good faith without causing unjustified damage to third parties. This entails the existence of subjective rights and the corresponding obligations or duties. The subjective right is presented as a power or prerogative granted by the legal order to the holder of the right to exercise it in accordance with what is legitimate. The act of bad faith of the mother who, knowing that the one to whom a false paternity is attributed, performs the act anyway is a deceitful situation that unfortunately not only harms this subject.

This situation poses a complex legal and emotional dilemma. On the one hand, it is important to recognize that family relationships, especially parenting, are deeply personal and emotional issues. From a legal perspective, it is understandable to seek a way to repair the emotional and psychological damage that can arise in these circumstances. However, it is important to keep in mind that each case is unique, and laws and regulations can vary significantly from place to place. The application of liability criteria in these cases should be carefully considered and weighed to avoid potential injustice. In addition, promoting honesty and open communication in family relationships is essential to avoid such conflicts and problems in the future.

Conclusions

It is undeniable the presence of both an emotional damage and an economic affectation towards the father who, being deceived, assumes affective and filiation responsibilities that are crucial for his integral development as a parent. Consequently, it is proposed that, in accordance

with the main objective of this article, financial compensation for the damage should be a priority as a form of reparation for moral damage.

The false attribution of paternity not only implies a legal process for civil liability, but also entails a profound affectation of fundamental rights, such as identity and integrity. Both the individual directly affected, the false father, and the child involved, would experience significant psychological consequences that must be taken into account in this matter. Consideration of this issue goes beyond a merely legal approach and highlights the importance of approaching it from a broader perspective, recognizing the emotional and personal dimensions involved.

False attribution of paternity represents not only a legal challenge in terms of civil liability, but also a palpable violation of fundamental rights, such as identity and integrity. The psychological impact on both the false father and the child underscores the importance of approaching this issue with sensitivity and understanding. Recognizing these broader dimensions is essential for a comprehensive approach that can provide adequate and fair responses in cases of such profound emotional and personal impact.

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Financing

This article does not have specific funding from funding agencies in the public or private sectors for its development and/or publication.

Conflict of interest

The authors of this article declare that they have no conflict of interest in its development.

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