

**SPECIAL COURTS AND SPECIAL PROSECUTOR'S OFFICES EXAMINING
CASES OF VIOLENCE AGAINST WOMEN IN SPAIN: TEN YEARS'
EXPERIENCE**

Barriers, remedies and good practices for women's access to justice

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Abstract:

Despite more than ten years increasing social, political and legal sensitivity regarding violence against women, relevant gaps in access to justice for women victims of violence persist. Related to special courts and prosecutor's offices examining VAW, more specialization is the key. Extend specialization to all levels of judiciary, compulsory training to all police, legal and judiciary professionals, as well as to all public officers involved in the judicial process, awareness raising and sensitivity and data collect are some of the good practices to be promoted.

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Bibliography

1. Spanish legal framework for gender based violence

The Organic Act 1/2004, 28 December, on Integrated Protection Measures against Gender Violence (hereafter referred as Integral Act), was of the result of the demand and advocacy work of women's organizations which, after the Beijing Declaration and Platform for Action adopted by consensus on 15 September 1995, managed to incorporate on the political agenda the State's commitment to prevent and address violence against women. The Third Plan for Equality between Men and Women, approved in 1997, included for the first time a specific section on violence against women.

In this context, the legislative process in order to protect the rights of women against violence was progressive, in particular:

-Organic Act 38/2002, on important reviews of the Code of Criminal Procedure to introduce the fast trials for specific offences and minor offences, enabling cases of domestic violence to be judged within two weeks from the offence;

-Organic Act 11/2003, on concrete measures of public security, domestic violence and social integration of foreigners, which changed the sanction of the former minor injury offences within the family environment as criminal offences in the new section 153 of the Criminal Code, including not only physical violence, but psychological and undefined injuries too;

-Organic Act 15/2003 on amendment of the Criminal Code, introduced the compulsory imposition of the additional penalty of a protection order in any case of domestic violence (sections 49, 57, 153 and 173 of the Criminal Code);

-Act 27/2003, on regulation of Protection Orders for domestic violence victims which, for the first time in our legislation, alludes to the difference between intimate partner

violence and domestic violence. The Act issues the so called “integral status of protection of the victim” which includes criminal (stay away and no contact provisions), civil (support provisions and exclusive use provisions) and assistance measures for victims of intimate partner violence. Victims of other forms of gender-based violence are allowed for restraining orders, that include only criminal measures such as “stay away and no contact” provisions as well as “relinquish firearms”.

Based on the recommendations of international organisms with the aim of tackling violence against women, the Integral Act, focuses on prevention, education, social, welfare, legislative and jurisdictional measures, as well as the specialization and coordination between different stakeholders as guarantee for the effectiveness of the measures adopted to prevent, protect and prosecute violence against women.

In its preamble the Integral Act states that violence against women is a form of gender-based discrimination, a political and structural problem requiring the commitment from all public institutions. Nevertheless, it sanctions only intimate partner violence exercised in a current or former relationship, even without cohabitation, on the grounds that intimate partner violence is more frequent in our social context. Consequently, our law leaves out the possibility of protection orders (criminal, civil and welfare measures) for other forms of gender-based violence such as sexual violence and harassment, sexual exploitation, sex trafficking, violence against women at work, harmful practices such as female genital mutilation, honour crimes, economic abuse and others...

The Integral Act focuses on violence against women with a holistic and multidisciplinary approach that includes judicial and penal measures, as well as educational, healthcare, social and assistance measures. Special courts concentrate on legal measures, but other measures need to be developed.

The institutional framework around gender equality was later strengthened by the following laws:

-Organic Act 3/2007, 22 March, on effective equality between men and women (hereafter referred as Equality Act), which entitles all public administrations to mainstream gender in adoption, implementation and budgeting of all policies. The

Equality Acts amends the Organic Act 6/1985 on the Judiciary, in order to create an Equality Commission in the General Council of the Judiciary with the task of assessing the Council in gender issues and evaluating gender impact in every law project. It includes as well the compulsory study of the principle of equality between men and women, including measures against gender based violence, in the examinations for induction and promotion within the Judicial and Prosecutorial Career (Section 310) and in the ongoing training programme for members of the Judiciary (Section 433 bis).¹

-Organic Act 2/2009, 11 December, on amending the Immigration Organic Act 4/2000, in order to ensure that undocumented women victims of violence or human trafficking can access justice and legal remedy without risking deportation.

-Act 4/2015, 27 April, on Crime Victims' Rights, adapting the EU Victims of Crime Directive establishing minimum standards on the rights, support and protection of crime's victims.

-Organic Act 8/2015, 22 July, on amending the protection system for childhood and adolescence, including the recognition of children as victims of gender based violence, compelling judges to adopt in every case of violence against women civil measures for the protection of the offspring, including the suspension of visits, stays, relationship and communication with the offender.

Achieving the goal of eradicating any form of violence against women might be impossible, but the deep commitment of our legislation and public policies has raised awareness of our society on this problem, as a structural form of violence affecting society as a whole.

2. Special courts examining violence against women

1. The Integral Act created the special courts on violence against women, with exclusive jurisdiction in cases of intimate partner violence (Section 87 ter of the Organic Judiciary Law). One of the benefits of setting up a special court examining violence against

¹ Only judges and magistrates accessing to a position in the special courts follow mandatory courses on gender-based violence.

women is that it combines both civil and criminal jurisdictions, allowing the resolution of all legal issues related to intimate partner violence. Women do not need to navigate between different courts, which may be a confusing and daunting process. Moreover, it helps victims with children to resolve one of their main cares, how to solve the legal situation of their children and how to protect them from violence. Additionally, it prevents contradictory decisions between the criminal judge and the family court, and facilitates that a single judge evaluate the circumstances and characteristics of each couple and their offspring.

2. With the enforcement of the law in June 2015, 17 new special courts were created. By 2012, the special courts operated in all judicial districts: 106 courts in the largest towns and cities with exclusive jurisdiction in violence against women (for example, big cities such as Madrid has 11 courts, Barcelona has 5, Seville has 3) and 355 courts in little towns that share this jurisdiction with other general criminal matters and/or civil matters (the so called compatible courts).

In the last four years the number of special courts has remained unchanged. On the contrary, a new process, based on workload reasons that could hide austerity reasons, pretends to reduce the number of special courts and concentrate the special jurisdiction in some of them. This possibility was already mentioned in the Integral Act as section 87 bis. 2 provides that *“Nevertheless, in exceptional circumstances, Courts for violence against women can be established with jurisdiction over two or more judicial districts within the same province”*.

However, the impact victims should be evaluated in the future.

3. The Integral Act amended the Organic Judiciary Act in order to extend the specialization to Courts of Criminal Matters. According to current section 89 bis: *“To facilitate the hearing of cases investigated by violence against women Courts, one or several courts in each province should specialise, depending on the caseload, in accordance with article 98 of the present Act.”*

The first special Courts of criminal matters examining violence against women were created in October 2009, although not as exclusive but as compatible courts, meaning

that they keep their jurisdiction in general crimes too. Nowadays 23 Courts of criminal matters are specialized in violence against women as compatible courts. Some of them concentrate not only cases of intimate partner violence but domestic violence too, which raise difficulties of specialization as well. Regretfully, in the hearing phase of the procedure, specialization has not been gained.

Moreover, the Integral Act extends specialization one step further and section 82 of the Organic Act for the Judiciary states: “*Appeals established by law against the rulings in criminal matters issued by Courts for violence against women within the province. In order to facilitate the hearing of these appeals and in view of the number of existing cases, one or more of the sections must specialise in this area, in accordance with the stipulations of article 98 of this Organic Law. This specialisation will extend to those cases wherein it falls to the Provincial Court to try, in first instance, cases examined by the Courts for violence against women within the province*”. By 2005 every province had its specialized section in the Provincial Court.

4. In accordance with the stipulations of the Integral Act those “*who obtain a post, thorough competitive examination or promotion, in Courts for violence against women, in Courts for criminal matters specialized in gender-based violence or in criminal or civil sections specialized in gender-based violence are obliged to participate, prior to taking possession of their new post, in the activities of specialization established by the General Council of Judiciary*”. The course lasts around 10 days, and includes a theoretic and practice, with the aim to understanding the specific characteristics of gender violence.

5. Every exclusive special examining Court is aided by the Institute of Legal Medicine formed by doctors and a psychosocial team (psychologist and social workers). Legal doctors examine and evaluate the victim’s injuries in the forensic report. In 2011, the Ministry of Justice, in collaboration with the Government’s Delegation against Gender Violence, elaborated a Forensic Protocol for the urgent risk assessment in cases of gender violence, which is mostly unknown, but requires the Institute of Legal Medicine to assess the risk in 72 hours as a complement of the police risk assessment, to guide judges in their legal reasoning when adopting a protection order or sentencing a case. The psychosocial team assesses psychological damages too.

Exclusive special courts can count as well on a Victim Support Office, formed by a psychologist and administrative staff. Although this service is opened for every victim of a crime, especially after the Crime's Victims Act, most of its workload is related to intimate partner and domestic violence, specifically in cases of protection orders. They provide information to direct and indirect crime's victims, about their rights as victims and about the legal and judicial procedure; refer victims to other specialized services and supports in the community; accompany the victim to court proceedings, when appropriate; coordinate with lawyers and legal assistance and offer psychology assistance too. The service is public and free.

On the contrary, the compatible courts have more difficulties, not only because of their workload, but also due to the lack of specialized services, less auxiliary staff, difficulty to access victims support services as well as less specialization of the courts' staff.

5. Special courts examining violence against women examine the application of protection orders and give a judicial response within 72 hours. Every victim may go to a police station, examining magistrate's court, public prosecutor's office or State women's support services to apply for protection. The judicial authority to issue the protection orders corresponds to the court where the protection order is filled. After hearing victim, offender, witnesses and examining police reports, medical reports and any other evidence the judge gives it judicial response. Protection orders include criminal measures, such as forbidding the offender to approach the victim, her family, her residence, her workplace or any other place she might visit; forbidding the offender to contact the victim by telephone, sms, whatsapp, e-mail, post or through another person, prohibiting the offender the possession of firearms, prohibiting the offender to live in the same town as the victim and, in cases of severe risk or great harm to the victim, the court is allowed to take precautionary pre-trial detention measures.

Protection orders may contain civil measures too, such as temporary child custody, vacation determinations, payment for child support and basic living expenses. Urgent

civil measures last only 30 days, within this term any of them should file for separation or divorce.²

Since 2005, more than 300,000 protection orders have been asked in the whole country, more than 60% of them have been ordered by the courts.

6. Special Courts examining violence against women deliver the “so called fast trials”. According our Criminal Procedure Code when the police surprise the criminal committing a crime sanctioned with less than five years imprisonment, they must detain him and summon the victim and witnesses before the Examining Magistrate’s Courts. Most complaints of gender violence are considered as first threats, coercion, abuse, harassment and minor offences, crimes that can be deal as fast trials. If the offender pleas for guilty, the Court may judge and sentence him. If not, within two weeks the hearing will take place in the Criminal Court.

Since 2005, Special Courts examining violence against women have examined more than 1,400.000 crimes. They have sentenced more than 200,000 cases.

According to the data elaborated by the General Council of the Judiciary in the first term of 2016, 46,072 new criminal procedures were opened in the special courts examining violence against women, 28,55% of them as fast trials and 4,75% as minor offences. 57,7% of the total were minor injuries, that only received first medical assistance, without further treatment. In this term almost 50% of the procedures were dismissed and 12,50% of the victims refuse to make a judicial statement.

In the same period, the different courts sentenced as showed below:

	Total number of sentences	Guilty	%	Non guilty	%
Special	4595	3646	79,35%	949	20,65%

² Divorce petition must be filed within 30 days in order to keep the civil measures in place. If a divorce petition is not filed, civil measures will come to an end (e.g. end of payment or visits’ regulation).

Courts					
Criminal Courts	6964	3732	53,59%	3232	46,41%
Provincial Courts	62	55	88,71%	7	11,29%
Total	11621	7433	63,96%	4188	36,4%

(Data elaborated by Observatory against Domestic and Gender based Violence of the General Council of the Judiciary)

3. Special prosecutor's office examining violence against women

Among the instruments designed to strengthen and ensure the criminal and procedural framework of protection, the Integral Act 1/2004 created the position of "Prosecutor of violence against women" as a delegate of the Deputy Attorney General, and in each territorial prosecutor's office created also a "section specialized on violence against women" involved in criminal and civil matters of the special court.

Creation of the Prosecutor of Violence against Women represents an important advancement in the contribution of the prosecution to the fight against this type of crime. Its aim focuses in overseeing and coordinating the activity of every special section on violence against women in the country, as a way to assure similar criteria in the legal reasoning of the prosecutors and an effective and compromised response to the victims.

The development of the sections specialized in violence against women is uneven, depending mainly on the number of available prosecutors and the number of special courts to be attended. All big cities have a specialized section with prosecutors that exclusively attend this kind of procedure, but this is not generalized. It also depends on the gender sensitivity and self-commitment of the head of the prosecutor's office. Therefore, the extension of training for sensitizing all levels of the judiciary and prosecutor's office to gender concerns is essential.

In the case of the special prosecutors examining violence against women, the Centre of Judicial Studies offers annually some training related to gender based violence.

Regretfully these trainings are not compulsory for the special prosecutors, who gain their knowledge in the daily work experience. Initial training for new prosecutors in the Centre of Judicial Studies includes specific lessons on the matter, theoretic and practice, but no specialised training is offered or compelled before taking a post as special prosecutor.

The presence of women in the public prosecutor's office has increased in the last years. Nowadays 63% of the prosecutors in the whole country are women, especially between the younger ones: around 77% of the prosecutors aged from 26 to 35 are women, while the older ones are mostly men (70% of the prosecutors aged from 61 to 70). Nevertheless, this evolution should not be linked automatically to women's ability and awareness on gender issues, therefore training is necessary for both female and male prosecutors.

4. Barriers in the access to justice: victims' point of view

After more than twenty years of public policies, legislative action and judicial efforts, barriers in access to justice persist and violence against women is one of the main problems of our society in terms of inequality and discrimination.

From January 2003 to October 2016, according to official data from the Government's Delegation for Gender Violence³, 870 women were murdered. According to the Macrosurvey of Violence against Women 2015⁴, elaborated by the Government Delegation, 12.5% of women aged over 16 years have suffered physical or sexual violence throughout their lives. 13% of women have been afraid of their partner at some point. If the percentage is extrapolated to the female population of that age we are talking about more than 2.5 million women. In 2015 alone, 2.7% of women have experienced physical or sexual violence and 9.2% have suffered psychological violence, control, humiliation, harassment or threats. It is especially relevant the increase of cases of violence among young people and elder ones.

³ For more information (available only in Spanish):
<http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/home.htm>

⁴ For more information (available only in Spanish) :
http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/estudios/colecciones/pdf/Libro_22_Macroen_cuesta2015.pdf

Obstacles need to be removed. 67.8% of women who have suffered violence in Spain during their lifetime do not make a complaint or ask for protection.⁵ In case of murdered women, only two of every ten women had already made a complaint or asked for protection. As International Amnesty refers, different reasons continue to obstacle the victim's access to the protection system, among them:

-Distrust to public institutions, especially in the most vulnerable groups such as immigrants, elder people and disabled women.

-Lack of information about their rights, although a free hotline 112 offers every victim 24 hours information and most of local governments count with support services for victims of violence.

-Lack of diligence in the judicial process, although one of every three procedures related to intimate partner violence is a fast track trial, sentenced within fifteen days since the report.

-Difficulty of proving forms of psychological and emotional violence only based in the testimony of the victim and the psychosocial team reports, when there are moral damages.

-Gender stereotyped and disrespectful treatment of legal actors, as a barrier that avoids the victim to feel confident along the procedure.

-In the case of mothers, considering that the protection system does not protect their offspring, direct or indirect victims of violence.

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⁵ The Macrosurvey is elaborated every four years since 1999. Between 2011 and 2015, the number of women who suffered violence without making complaint has decreased.

5. Lessons learned from the specialization of the courts for violence against women

After more than ten years of experience of special courts and special prosecutor's offices examining violence against women, we can draw the following lessons learned to comply with the constitutional and international challenge of removing obstacles to the right of women to enjoy a life free of violence:

1. Specialization means training of all public officers involved in the judicial process. The expertise provided by the Integral Act is not satisfied with the mere creation of the special courts, but requires high level of training, awareness and sensitivity. Machismo and patriarchal culture is present in all expressions of our legislation and practice itself, therefore it is necessary to heavily invest in training and awareness raising to reach all judges, prosecutors, lawyers, court officials and psychosocial support staff. Initial and ongoing training must be compulsory for those who access to specialized courts and prosecution offices.
2. Specialization must extend to all levels of the judiciary, from the first instance courts to higher courts of appeal, including constitutional court.
3. Gender awareness raising in the interpretation and application of the law is necessary: Legal operators, mainly judges, prosecutors and lawyers should use gender sensitive criteria in the rules' interpretation, showing the knowledge and understanding of the phenomenon of violence and adopting solutions in their legal reasoning that assure equality and non discrimination as a principle of binding interpretation.

This general principle should result in gender mainstreaming when assessing the testimony of the victims in the context of violence, understanding the victim's ambivalent feelings and their refusal to impose sanctions to the aggressors as reason of the frequent retractions, as well as assessing and understanding the use of legitimate defence against aggressions.

The jurisprudential evolution on the subject shows the need to identify equality agents or structures such as equality commissions within the Judiciary and the Attorney General, with the task of examining gender-sensitive procedures and judgments to guide the jurisdictional task, supporting judges and prosecutors with gender sensitive legislation and jurisprudence that could guide their legal reasoning as well as guiding the initial and ongoing training of the judiciary.

Special attention should be paid to the use of sexist language in judicial decisions and the elimination of sexist judicial interpretations. Gender sensitive legal reasoning needs an inner-reflective work of each professional, as sexism and patriarchal culture often prevent the objective and impartiality application of the law. Therefore all training should include learning strategies to raise gender awareness and sensitivity as well as identify and combat gender stereotypes among all legal professionals.

4. One of the barriers for specialized courts is the need of sufficient funding for violence against women programmes. According to the United Nations and several NGOs, austerity policies to curtail government spending developed during the last five years act as a gender backlash, eroding the progress of the last twenty years, as they undermine State, regional and local administration efforts to tackle violence against women. From 2011 to 2015, there has been a decrease of 21% of State funds aimed at victims of gender violence in the State Budget Act. At regional level, the specific budget for care services to victims managed by the Autonomous Communities has been reduced by 50%⁶.

⁶ For more information (available only in Spanish):
<https://www.es.amnesty.org/en-que-estamos/espana/violencia-contra-las-mujeres/>

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