



## RECOMMENDATIONS ON SEXISM IN JUSTICE

Recommendation CM/Rec(2019)1 of the Committee of Ministers to Member States to prevent and combat sexism, which combines the legislative proposal and its practical repercussions, was the starting point for this Seminar on "Sexism in Justice", coordinated by the European Women's Lobby, with the participation of various countries, from which the following conclusions and recommendations can be drawn:

The need to know and put into practice all the legislation and jurisprudence issued by the Council of Europe and the European Union, since it constitutes a general framework that must be taken into account in the case of Spain, a member of both organisations. This integrated framework gives rise to a series of general constructions and various specific manifestations. The general constructions refer to equality as a value, equality as a fundamental right, non-discrimination on grounds of sex or sexual orientation including indirect discrimination, the mainstreaming of equality in all policies and the reversal of the burden of proof in all types of proceedings taking into account the balance that must be kept, in the case of criminal jurisdiction, in order not to undermine the presumption of innocence.

The need for respect for equality, which is protected by the EU's sanctioning procedure for infringements of values, should be stressed. And, among the specific manifestations, to point out that there are regulations on equal pay for equal work or work of equal value, equal treatment at work, equal treatment regarding social security and social assistance, reconciliation between family and professional life, non-discriminatory organisation of part-time work, dignity at work and the prohibition of sexual harassment, positive actions, balanced participation in political decision-making, economic and social cohesion, development cooperation, science and life-long education and vocational training, measures against violence against women and children, equal access to goods and services, the gender dimension within the Structural Funds and the implementation of equality in budgetary and financial forecasts, which have been incorporated into the regulations governing the various forms of the Funds. Finally, in this area, it is worth highlighting the Council of Europe's Istanbul Convention and all the case law generated in this organisation by the European Court of Human Rights and, in the case of the European Union, by the Court of Justice.

The programmes of the **General Council of the Judiciary and the Observatory against Gender Violence are of great importance in relation to sexism in the justice system.** The vast majority of sentences in Spain are handed down by women, as well as most of the indictments. Women are occupying important positions in the judiciary, although in high

positions there is **still a long way to go to reach 50%** and there are few women candidates for the issue of reconciliation. Women are highly represented in the Gender Violence Courts.

It is therefore essential that **judges and magistrates be trained in gender issues** so that they can apply the legislation in a way that takes account of the specific nature of this type of case. The specialisation that has been introduced into the judicial career is important in order to be eligible for these courts and the gender training should be mainstreamed across all specialities. Also the obligation of the Judiciary to combat gender stereotypes because they are hostile to women and relegate them to positions they may hold in society. **A fair judicial decision must be based on impartiality and objectivity and be free from these stereotypes. The image of justice must be free from them.** They are identified by interpreting the rules in a way that takes account of them, based on objective elements only. With regard to gender-based violence specifically, these must be made extreme.

The latest judgments of the Supreme Court, thanks to the judges and the public prosecutor's office, on the value of the victim's statement highlight the elements that differentiate between victim and witness, since sometimes the victim is the only evidence of the crime; having to remember makes this situation more difficult; neither should an immediate complaint be required, since the victim may not be in a position to do so; the difficulties that may appear in the statement due to fear of the aggressor and of reprisals from the environment, of losing one's children or of being harmed must also be taken into account, and emotional circumstances must be taken into account. The Stockholm syndrome can be present, both in the statement to the judge and to the doctor. And also the difficulties of cross-complaints with mutual aggression where it is necessary to sift through whether there is legitimate defence. All of this has also been included in the State Pact against gender violence but it is necessary to formalise proposals to reinforce that victims do not feel vulnerable, so that they can testify without fear, to suspend the visiting regime if violence has been suffered. Training and specialisation, with professional advisors, are essential. And to create the necessary specialised courts, family meeting points, etc.

The work of the Office of the Prosecutor is essential in this context. The main obstacle to equality is not grotesque sexism but subtle sexism, sometimes unnoticed but present in many areas. Prejudices must be broken down and when we talk about justice we must use, as the Council of Europe, the Istanbul Convention specifically, the gender perspective. **Ongoing training** is essential, as well as emphasising with the victim, to understand what is happening without prejudice in this respect. The presumption of innocence must not be limited, but the specific characteristics of the victim must be taken into account. Receiving a statement, requesting precautionary measures, avoiding re-victimisation and giving equal treatment to the victim are essential in the judicial process. The testimony of the victim may be the only information available, so it must be valued in its fairness, taking into account all that the gender perspective implies. This is not only in the criminal field, but also in the fields of work, family, etc., which can also affect children. Training is essential in this respect, so that the work of the justice system is appropriate when prosecuting such behaviour.

In the **prosecutorial career itself, equality must also be strengthened**; we have had two women prosecutors general and women are beginning to be able to be prosecutors in the courtroom, but there is still a long way to go. Here too, the reconciliation of private and family life plays against women.

**Practising lawyers and specialised associations** also have a lot to say in this area of sexism in the justice system. The testimony given by the women concerned is essential to identify the obstacles.

Spain is an international reference, with laws and plans for equality and the fight against gender violence, also in the autonomous communities. Despite all this, there is a gap between formal and material law, between legislation and the application of the law, despite the progress that has been made. **Elements of sexism persist in judicial procedures, in the treatment of victims in terms of insults and humiliation, in the confusion between situations of violence and situations of conflict due to separation or divorce for example where violence may not be appreciated, in sexual violence the victim is still questioned by shifting responsibility to the victim, the convictions of courts and prosecutors have much to do with this.**

The proven facts can have several interpretations: economic violence, for example, when one of the partners controls the family property or the property of the victim, even though he or she is not the rightful owner of the property, is rarely reflected in the judgements. **A certain amount of structural violence is reflected in the lack of specialisation in civil matters as opposed to criminal proceedings, for example,** visiting arrangements for children are stereotyped, for example, when they are given to abusers and this can lead to blackmailing the mother to avoid complaints.

**The delay in the administration of justice,** although structural, has a very important impact on this violence because, if there is no psychological or legal accompaniment of the victim, she may end up retracting her complaint. The assessment of risk is also important because its appreciation can substantially vary the sense of the resolution. **New forms of violence** must be taken into account: through telematic networks and means, although it is difficult to prove this due to technical difficulties and lack of specialisation; or violence through sexual violence in networks, pornography, purchase of sexual services, all of which have not received good legislative treatment.

Taking into account positive aspects, it is essential to apply the gender perspective, specialized training and comprehensive monitoring units, which, although there are few of them, have a very important role to play. Reparation for damage would also be relevant in the fight against gender-based violence. Education on equality would also be basic in this whole area.

Equality, which is a value, must be consolidated. How is it consolidated? **Lifelong education,** with the participation of all social sectors, is decisive. Sometimes values are not respected and justice is the remedy. It is not only gender-based violence that is involved, but this violation of the value of equality can affect all areas of the law.

In order to get there, Spanish justice needs a major renovation, to leave behind the rigidities, the authoritarian dialogues, the scenarios in which statements are made, without taking into account that the trial, the procedure, must involve **mediation action to reinforce values.**

The system of access to justice has to be changed so that it is not just a matter of memory and the rite of judicial dialogue, to make them equal. **Communicating directly with the media** is also important, through press conferences explaining the judgement for example.

The legislation is not very flexible, for example, in the Civil Code and the prudence of the "father of the family" who could be replaced by a "reasonable person", without setting stereotypes. Paternity has more conceptual space than motherhood (Father in Treasury programme, parental authority assimilated to male fathers) and motherhood and the care it entails carry little weight. The fight against sexism has very clear aspects, but the specificities of women have to be valued in order to apply the gender perspective, the psychology which is attributed to women without taking into account, for example, the deep knowledge of female sexuality.

Little is known about what ablation means in certain cultures, and not so long ago excisions were performed medically in some places without a good understanding of the reality of female sexuality. The modesty that accompanies the social treatment of sex in women also has a negative influence on the reinforcement of the value of equality. The treatment of all this in the courts requires this multifunctional effort. Introducing comprehensive gender training into the law curriculum as a matter of urgency, not only in gender-based violence but in all disciplines, appears to be extremely necessary.

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