

ACCESS TO JUSTICE OF VICTIMS OF GENDER-BASED VIOLENCE. SPAIN



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Introduction. From a private matter to a social and public problem. Specific characteristics of gender-based violence related within couples. Quickest and most effective judicial response. Myths which deviate from the problem's solution. Coordination of institutions. Epilogue.

Introduction.

This talk aims to illustrate the Spanish experience in the battle against gender-based violence.

It is the result of my professional experience in this matter: over twenty years' experience as a judge; as a member of the General Council of the Judiciary (governing body of Spanish judges) since 2008 and President of the Observatory against Domestic and Gender-Based Violence.

The Observatory is an instrument of analysis and coordination of different Spanish institutions. It promotes initiatives and measures, within the field of the administration of justice, aimed at eradicating this violence.

The judicial statistics from the past five years on gender-based violence reflect an overall stable trend in the most significant data, such as number of criminal complaints, withdrawals, restraining orders and convictions.

In the period from 2007 to 2011, over six hundred thousand criminal complaints were lodged in our Violence Courts Against Women. It is a significant number. It reflects the fact that women have placed their faith in Justice and confirms that training and specialisation of professionals

in gender-based violence offers good results.

At present women at risk of new attacks are protected effectively; we only have to be reminded that last year 23,514 restraining orders were granted.

Today there is no impunity for abusers. With 77% of cases ending in convictions in Violence Courts Against Women there has been a reversal of the prevailing situation in the past in which the first threats, coercion and abuse largely went unpunished.

Spanish society has made public what used to be a private matter: violence against women within couples. What used to be a domestic problem, confined to so-called “marital conflicts” and justified as “crimes of passion”, today has become a social challenge. A problem which has been identified and which has its own name: gender-based violence or male violence against women.

Although it may seem strange, until the nineties, the law was unaware of the specific characteristics of violence against women within the family, defined by the UN as the most frequently concealed crime in the world.

This criminal phenomenon has specific characteristics resulting, mainly, from the existence of a psychological, economic or social dependence of the victim on the aggressor. These factors of dependence are not usually present in other crimes, and it is therein that the difficulties in eradicating this social scourge lie.

From a private matter to a social and public problem.

At the beginning of the nineties associations of women and the feminist movement placed violence against women at the forefront of public debate. The alarm was sounded with the murder of a woman by her ex-husband, a few days after she told her story of abuse on television. Victims, aided by the media (the press, radio and television) singled out judges as specifically responsible and complained that they were not protected by the legal system.

At that time I was working in criminal investigation. I remember that many judges were surprised by those statements and we began reflecting on our work.

A study of sentences – undertaken by an association of lawyers – concluded that the majority of cases of women who reported their husbands for the first time for threatening behaviour or abuse were ended in acquittals. Sentences without penalty, punishment or compensation.

We began a process of analysis of the response in the judicial sphere. We studied international legislation and diagnosed that violence against women within couples (i.e. gender-based violence within couples) presents specific characteristics which differentiates it from other types of violence. They can be seen in the criminal process, as is the case of the particular difficulties in investigating and gathering evidence for the prosecution.

Specific characteristics of gender-based violence within couples.

One of these characteristics is the place where these types of violence are committed. According to our studies, about 75% of cases occur in the house or family home. The consequence is that there are not usually any witnesses other than the aggressor and the victim. The result is usually that, if we do not obtain other evidence for prosecution, the case will probably end in an acquittal, as the judge is faced with the plaintiff's testimony against the defendant's (conflicting stories).

To avoid impunity, our jurisprudence states that "no one should suffer any detriment on account that the occurrence which gives rise to the criminal proceedings occurs in private between the victim and aggressor, since if that is the case the greatest of impunities would result."

Based on this argument our Supreme Court admits the testimony of the victim as sufficient evidence for the prosecution, provided that it meets a series of requirements. Thus today our Courts deliver verdicts of guilty with just the victim's evidence. There is no need for other evidence, provided that the victim's evidence is credible without contradiction and meets reasonability requirements which the Court must explain in its verdict.

Another characteristic in gender-based violence within couples – which does not occur in other criminal offences – is the bond or dependence with regards to the aggressor. Dependence can be psychological, financial, emotional, social or a mixture thereof.

When we investigate a robbery, theft or fraud, the female victim identifies the aggressor and there is not usually any forgiveness or abandonment of the action. But when the aggressor is her husband or partner, we know that there is a probability that she will abandon the case, forgive or withdraw (according to our studies, about eleven percent of women who lodge a complaint subsequently retract it and do not wish to continue with the criminal proceedings).

Emotional or financial dependence, fear or family or social pressure usually cause the woman to abandon the case and forgive the aggression. This data enables us to propose public policies, such as the necessary strengthening of the position of the victims, prior to the complaint, through legal and psychological assistance. This is one of the recommendations of the Commission for Equality of the Congress of Deputies in its Document of November 2009.

Another characteristic is that these violent acts respond to an asymmetric and unequal relationship model. Violence is used by some men to maintain their position of domination and authority over the woman. There is a clear relationship between the violence and discrimination historically experienced by women.

It is thus summarised in the UN Declaration of 20 December 1993, on the Elimination of violence against women: "... violence against women is one of the crucial social mechanisms by which women are forced into a situation of subordination compared with men."

It is true, gender-based violence within couples has specific characteristics. Without forgetting the impact it has on any minor children experiencing the abuse.

Thanks to this, in 1999 Spanish law changed its stance on the problem. It went from viewing it

as a private matter, a mere family conflict, to viewing it as a public matter, as a human rights problem in that this violence undermines the dignity of women.

Within this course of action, the obligation of law enforcers to prosecute the first violent actions of threats, coercion and abuse by operation of law and without requiring the prior criminal complaint of the victim was established.

The Comprehensive Law of Protective Measures against gender-based violence related to couples of 28 December 2004 reinforces the judicial response with specialised bodies and prosecutors. Specific courts are created and continuous training of judges is carried out. This encompasses knowledge of the causes, signs and effects of this violence. Content such as the “cycle of violence”, psychology, forensic medicine and knowledge of the existing welfare resources available.

The scope of the law encompasses preventive, educational, social and medical aspects and aftercare for victims. It also covers the civil legislation which effects the family or couple’s environment where the aggression primarily takes place. Similarly, it vigorously addresses the punitive response which any manifestations of violence governed by this law should receive.

The objective of this law is to act against this violence which is a manifestation of discrimination, the situation of inequality and the power which men hold over women. This violence is inflicted on these women by whoever is or was their husband or whoever is or has been in a relationship with them, even if they were not cohabiting.

The law introduces regulations of a criminal nature by which the criminal penalty is increased when the harm is caused. Minor acts of coercion and threats of any kind committed against the aforementioned women are also punished as a crime.

Quickest and most effective judicial response.

In a brief evaluation of the years of operation of the specialised bodies we can conclude that the judicial response is quicker and more effective.

- Today women receive a judicial response to their applications for protection within 72 hours.
- RESTRAINING ORDERS can contain an order to leave the home and a stay away order for the aggressor. It may also contain civil measures with regards to the use of the family home, visitation rights concerning the children and amount of child support.
- 72% of restraining orders applied for have been granted by judges in the first 6 years of activity of the Violence Courts Against Women.

At present Violence Courts Against Women operate in all judicial districts. There are one 106 exclusive Violence Courts Against Women in the largest towns and cities which only hear domestic violence cases. They are aided by services such as Legal Medicine Institutes,

psychological-social teams and Victim Support Offices.

In the rest of judicial districts, there are 355 Violence Courts Against Women which also hear other civil or criminal cases. They are known as Compatible Courts and present more operating problems and less auxiliary staff.

Our violence judges over women hear both the complaint –criminal in nature- as well as the separation and divorce proceedings if the parties decide to initiate it. This accumulation of jurisdiction has several objectives.

- a. To avoid contradictory decisions by the Family Court judge and the judge. We have had a case where the criminal judge returned a verdict on the restraining order with regards to the children whilst the family judge established visiting rights with regards to those same children. Their decisions contradicted each other.
- b. One single judge would better hear the characteristics and circumstances of this couple and their children, including abuse. The decision process would be fairer.
- c. It prevents women from having to go from one place to another, one day to the Violence Court Against Women and the next to the Family Court.

With statistical data from five complete years (2007 to 2011 period) we can report that many women have managed to free themselves from the cycle of violence after putting their faith in the courts and lodging their complaint.

From 2007 to 2011 (5 years) there has been an average increase of 6% in the number of complaints lodged. A total of 672,065 complaints (annual average of 134,413). With regards to withdrawals, a total of 77,521 were counted (annual average of 15,504 which equates to 11.5% of women withdrawing their complaint each year).

At the Observatory and through the statistical reports completed at the judicial bodies we can see a snapshot of the judicial response.

At present, about 77% of the cases of first threats, coercion or abuse result in convictions. Therefore, it can be said that the situation with regards to previous periods has changed as the cases mainly ended in acquittals.

At the current time the data is as follows:

- a. The Violence Courts Against Women deliver a verdict in cases of offences when the defendant is in accordance with the facts and sentence; as well as in cases of trials of minor offences.

77.75 % of cases result in convictions in cases of first threats, coercion or abuse and harassment. (Data from 2011)

- b. Magistrates' Courts deliver a verdict in cases of crimes of up to five year prison sentences.

50.16% are convictions. (Data from 2011)

c. In crimes with prison sentences of over 5 years 77.3% percent of the sentences delivered in County Courts and specialised Criminal Sections are convictions. (Data from 2011)

Myths which deviate from the problem's solution.

With the help of violence judges over women, at the General Council of the Judiciary we undertake studies and analyses of sentences which have served to achieve prevention objectives and dispel myths which deviate from the problem's solution. Myths are mentioned below.

a. *It is a myth that drugs, alcohol or insanity are the main causes of violence.*

This statement is taken from the fact that our Courts witness very few cases with extenuating factors of alcohol, drugs or insanity after the Hearing; despite the fact that very detailed expert reports are usually submitted to prove the innocence of the defendant. There are very few cases in which these extenuating circumstances are seen.

Therefore we can conclude that the main cause of violence against women is a consequence of the fact that the woman no longer wishes to be abused. She no longer wishes to be discriminated against and rebelled. Drugs, alcohol and insanity may play a part, however but it is not the determining reason for the murder. This is the conclusion we have reached as a result of our studies.

b. *It is a myth that women bring false allegations to take advantage of the criminal system and profit from separation or divorce proceedings.*

Often, the defendants or their friends and family use the argument of false allegation to profit from marriage separation proceedings. They run smear campaigns about the women lodging the complaints. A study of verdicts delivered by County Courts –undertaken in 2009 by the group of expert senior judges of the General Council of the Judiciary- concluded that in only one case out of the five hundred and thirty analysed did a Court consider investigating a possible false accusation. The Reports of the Prosecutor General inform each year of less than twenty-five requests for an investigation into a possible false accusation, compared with the one hundred and thirty-four thousand complaints filed on average each year. The judicial system is prepared to investigate any false accusation in any crime.

Our data also reflects that women do not obtain additional benefits. There are few judicial measures which deprive of guardianship or custody of children.

c. *The myth of the ineffectiveness of criminal complaints.*

The annual reports of mortal victims in relationships have served to allay the myth of the ineffectiveness of criminal complaints.

These reports examine the cases in which a complaint had been lodged previous to the murder; out of every ten women killed by their partner between seven and eight had not reported them.

Since the entry into force of the Comprehensive Law women's deaths have decreased by six point three percent.

“Spain have set up a system for collecting the information which emerges within the legal system in connection with legal investigations and court proceedings. It records relevant data on current crimes and the parties involved, such as the parties' sex, ethnicity, scene of the crime, use of weapons, etc. If the parties have previously been in touch with the authorities, this may also constitute relevant information to be recorded.”

This acknowledgement is detailed in Point five of the “Report on the Priorities and Outline of the New EU Policy Framework to Fight Violence Against Women 2010/2209 (INI)”, approved by the Committee for Women's Rights and Gender Equality of the European Parliament on 15 March 2011.

Coordination of the institutions.

Before the Comprehensive Law, a Protocol of coordination between the police and the courts was promoted and approved at the Observatory. Its aim was to prevent the victims from suffering additional harm as a result of their contact with the legal system. Avoiding, for example, reiterated and unnecessary statements or medical examinations. Other coordination measures are as follows:

- a. Design of the form filled in by victims when they apply for Restraining Orders at the police station or court.
- b. Central Register of Judicial Measures for recording sentences and protective measures, to which the different groups that work with the Administration of Justice have access. It enables the existence of criminal records and terms of the measures adopted against a detainee to be known immediately by telematics means.
- c. Protocol for the fitting of wrist bands or electronic devices which warn when the aggressor is breaching the restraining order.
- d. Protocol for judges to access the computerised system of risk assessment carried out by the police when a woman reports gender-based violence.
- e. Up-to-date maintenance of the Coordination Points.

Epilogue.

In Spain we have a specialised judicial organisation, institutions and accumulated experience in addressing violence. Many women have managed to escape violence after placing their faith in the legal system and reporting it. Today there is no sense of impunity and it is known that

violence infringes women's dignity, regardless of whether it is carried out in public or private.

What is important is that, after decisive social and institutional efforts, with the unanimity of all political parties, what was once a private matter has now become a public problem.

In Spain, we work towards improving the operation of our Courts and coordination with other professionals who are involved in this matter, such as hospitals, police and social services.

At the governing body of judges we offer specialised training in this subject, which is mandatory for judges working in judicial bodies dealing with violence against women.

However, we must take into account that the judicial system intervenes when the violence has already occurred. Therefore it is crucial to act in the prior phase, which falls under the scope of education and culture. We should also impress on young people not to copy this chauvinistic behavior and warn them that abuse kills.

Although we face a type of violence that has many centuries worth of advantage over us, the legal system is committed to combating this form of criminality. We are working to make it ancient history, both at the General Council of the Judiciary and the Observatory, whose studies and reports can be found on the website of the Spanish judiciary; as well as on the following website: observatoriocontralaviolenciadomesticaydegenero.com or through the web of the General Council of the Judiciary: www.poderjudicial.es.

Many thanks for your attention. With your attendance at this meeting you are demonstrating the commitment of judges to human rights and, specifically, to the human rights of women whose freedom, dignity and physical and psychological dignity have been attacked.

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